

Central Administrative Tribunal
Principal Bench
New Delhi

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OA No. 2167/94

New Delhi, this the 14th day of July, 1995.

HON'BLE MR B.K. SINGH, MEMBER(A)

1. Shri Narresh Kumar,
R/O C-271, Netaji Nagar,
New Delhi.
2. Shri Ganesh Dass,
S/O late Shri Uttam Chand,
R/O C-271, Netaji Nagar,
New Delhi.

--- -- Applicant.

(through Mr D.R. Gupta, Advocate)

vs.

UNION OF INDIA through

1. The Director of Estates,
Directorate of Estates,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. The Deputy Director of Horticulture,
CPWD, West Division,
I.P. Bhawan,
New Delhi.

--- -- Respondents.

(through Mr B.Lall, Advocate)

ORDER

(delivered by Hon'ble Mr B.K. Singh, Member(A))

This OA No. 2167/94 is directed against the order contained in letter No. 7241 G/452 TD/76 dated 2.8.1994 followed by another order contained in letter dated 3.10.1994, addressed to applicant No. 2 Shri Ganesh Dass, father of applicant No. 1, whereby the request of the applicant for regularisation of the Quarter No. C-271, Netaji Nagar, New Delhi in favour of applicant No. 1, who is the son of the retired Government Servant has been rejected. When the matter came up for hearing on the MA No. 3639/94 on 1.11.1994, an interim order was

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passed by a Bench of this Tribunal, which is extracted below:-

"Meanwhile respondents shall not evict the applicant from the quarter, occupied by the applicant."

2. The admitted facts are that the applicant No. 1 is the son of the 2nd applicant and has been in service since 10.3.1987 and is currently employed as Chowkidar in the Directorate of Horticulture in C.P.W.D. He has been residing in the quarter, which was allotted to his father, who retired from Government service on 31.1.1993. He has been sharing the accommodation with his father for three years before his retirement.

3. It is admitted by the respondents that he did not draw the H.R.A. during the period 1991-92, 1992-93 till the date of retirement of his father and refunded the amount wrongly drawn by him during the period from 1.1.1990 to 31.12.1990 and this refund was accepted by the respondents. The eligibility criterion, as laid down in the O.M. dated 1.5.1981, for regularisation of a quarter is as follows:

"In exercise of the powers conferred under SR 317-B-25 of the Allotment of Government Residences (General Pool) in Delhi) Rules, 1963, the Central Government have decided that when a Government servant, who is an allottee of a General Pool Accommodation, retires from service @ his/her son, unmarried daughter or wife or husband, as the case may be, may be allotted accommodation from the General Pool on ad-hoc basis, provided the

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said relation is a Govt. servant eligible for allotment of accommodation in General Pool and has been continuously residing with the retiring Government servant for at least three years immediately preceding the date of his/her retirement."

4. It is the admitted case of the parties that the applicant is a regular employee and working as a Chowkidar in the C.P.W.D., that he is the son of the retiree Ganesh Dass and that he had been sharing the accommodation for three years and the only stigma was that he had been drawing H.R.A. for a year and with the concurrence of the respondents, accepted the refund without any haul or protest, they are estopped from questioning the eligibility of applicant No. 1 for regularisation of the quarter in question subsequently. The refund of one year's H.R.A., drawn by the applicant and accepted by the respondents makes him fully eligible for regularisation of a quarter. The plea that he drew the H.R.A. for one year cannot be raised subsequently for denying him the regularisation of the quarter, once the refund was accepted by the respondents.

5. This case is fully covered by a decision of a Division Bench of this Tribunal in OA No. 1905 of 1990 decided on 10.2.1992, a copy of which has been placed on record by the learned counsel for the applicant. No S.L.P. was filed against this judgment by the respondents and, therefore, this judgment has achieved finality. The facts of the the present case and the previous case decided by a Bench of this Tribunal are similar and the present applicant's case is certainly on a better footing since he had refunded the amount whereas in O.A. No. 1905 of 1990

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the Tribunal directed the applicant to refund excess amount drawn as H.R.A. to make him eligible for allotment of the quarter. Therefore, this case is fully covered by the Judgment in the aforesaid O.A.No.1905 of 1990. The respondents implemented this judgment and did not file a S.L.P. in the Hon'ble Supreme Court. The same judgment was relied in O.A.No.2105 of 1994, decided on 31.5.1995 by a Single Bench of this Tribunal, presided over by Smt.Laxmi Swaminathan, Member(J). In the aforesaid judgment, reliance was placed in R.P.Goel & Others vs. Union of India and others (AIR 1986 Delhi 406) and Raj Singh vs. Union of India and others(OA No.1905 of 1994(supra)). The ratio laid down in the judgment is that where the applicant is otherwise eligible and refunded the excess amount of H.R.A.wrongly paid to him, he will be fully eligible for the regularisation of allotment of the quarter, which he was sharing with his father. Shri B.Lall appearing for the respondents fairly conceded that the judgment in O.A.No.1905 of 1990 Raj Singh vs. Union of India through the Secretary Ministry of Urban Development and another, decided on 10.2.1992(supra) has achieved finality since no S.L.P.was filed before the Hon'ble Supreme Court.

4. In the result, the application succeeds and is allowed. The order dated 31.5.1993 cancelling the regularisation of Quarter No.271, Netaji Nagar and subsequent action to institute eviction proceedings are quashed and set aside. The interim order passed by this Tribunal on 1.11.1994 is made absolute and the respondents are directed to regularise Quarter No.271, Netaji Nagar, New Delhi in the name of applicant No.1, the son of applicant No.2 from the

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date the latter retired and he will be liable to pay the normal rent from the date of retirement of his father.

5. In the facts and circumstances of the case, there will be no order as to costs.

(B.K. Singh)

Member (A)

14th July, 1995.
"SDS"