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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 1414/1989

DATE OF DECISION : 14.2.92

SHRI MAHIPAL SINGH

...APPLICANT

VS.

COMMISSIONER OF POLICE & ANR.

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI C.N. SREEKUMAR

FOR THE RESPONDENTS

...MS. ASHOKA JAIN

1. Whether Reporters of local papers may be allowed to see the Judgement? ly
2. To be referred to the Reporter or not? y

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, Traffic Police Constable, moved this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dt.27.3.1989 (Annexure-A) rejecting his request for allotment/regularisation of quarter No.146, Type-II, also stating in the said letter that the request for allotment of Type-I quarter nearby Hauz Khas can be considered. The applicant has claimed the relief that quarter No.146, Type-II, Police Colony, Hauz Khas be directed to be regularised in his name and

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the amount paid in excess by the father of the applicant, which is over and above the normal rent be refunded to him. The case of the applicant is that his father Om Prakash who has since retired from Delhi Police was allotted quarter No.146, Type-II. The applicant's father retired on 31.8.1988 and he was asked to vacate the quarter, but the applicant is still residing in this quarter with his father as the applicant is entitled to out of turn allotment under Rule 12(iv) by virtue of standing order of the Commissioner of Police, Delhi-Standing Order No.III/1979 (Annexure-B). The relevant rule is quoted below:-

"(IV) On the death/retirement/superannuation of a Government servant, the quarter in his occupation legally may be allotted to his son/daughter/brother/wife/serving in Delhi Police provided it is according to his/her status and a request is made to this effect. If the son/daughter/brother/wife of such a Govt. servant is not entitled to the said quarter on this basis of his/her pay, he/she may be allotted another quarter according to entitlement/status in lieu of it if such a request is made.

NOTE : Ad hoc allotment/regularisation may be made on death/retirement of a Govt. servant to his son/daughter brother/wife/ if the Govt. servant was an employee of Delhi Police and was occupying accommodation of police pool and his dependent is, also an employee of the Delhi Police provided such dependent had been sharing accommodation with the retired/deceased Govt. servant for at least 6 months immediately preceding the date of later's retirement/death and was not drawing any house rent allowance during this period."

Para (vi) has been clarified on the revision of new pay scales and the persons drawing pay upto Rs.1049/- are entitled to Type-A or Type-I and those drawing more than Rs.1050/- to Rs.1819/- p.m. are entitled to Type-B or Type-II accommodation. The case of the applicant is that the

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applicant's father retired on 31.8.1988 while the applicant was already in service since 27.12.1982. He was not drawing HRA since last 11 months before the retirement of his father. After retirement, his father applied for extension for 4 months and was allowed to retain the quarter till 31.12.1988. He applied again for a further extension of 4 months, which was to expire on 30.4.1989. The applicant was asked to deposit a sum of Rs.2780/- as double of the licence fee for the period from 1.1.1989 to 30.4.1989. When the applicant's father did not deposit the amount, then eviction notice under Section 27(2)(1)(b) of Delhi Police Act, 1978 for eviction of the above quarter within 10 days, was issued on 2.5.1989. The applicant deposited the amount, so he was permitted to retain the accommodation till 30.4.1989. Constable Mahipal Singh, son of the retiree was allotted quarter No.H-44, Type-I, P.S. Lodhi Colony as per his entitlement according to his pay rank with the direction to get vacated the quarter No.146, Type-II, Police Colony, Hauz Khas from the retiree. The case of the applicant is that he is entitled for regularisation of the quarter because the emoluments he was drawing at the time when the permission granted to his father expired in April, 1989, were more than Rs.1050.

2. The respondents contested the application and have taken the simple plea that since the applicant was not

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drawing Rs.1050, so he was not entitled to the allotment of the quarter, which was allotted to his father, Om Prakash and he had to shift to the category of quarter allotted to him, i.e., Type-I according to his pay which he was drawing at the relevant time.

3. I have heard the learned counsel for the parties at length. The emoluments as defined in the said Order No.III of 1979 (Annexure-B) in para 5(vi), emolument means the emolument as defined in the Fundamental Rule 45(c) excluding compensatory allowance. According to the applicant, he was already drawing Rs.1050 because in addition to Rs.1030 which was his basic pay at the time the applicant was given a special increment of Rs.20 p.m. w.e.f. 1.2.1989 for services as personal pay (Annexure C). According to the respondents, however, Rs.20 p.m. granted to the applicant is not a part of his basic pay:

However, FR 45 (c) includes this amount in the basic pay itself. Thus it is evident from record that at the time when the permission granted to the father expired, i.e., 30.4.1989, the applicant was already in the pay range of Rs.1050 if DA is excluded from consideration, though DA is also a part of the pay.

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4. It is not disputed to the respondents that the applicant is entitled to out of turn allotment, so it is needless to go into that matter at this stage. The only question to be seen is whether the applicant is entitled for Type-II quarter and as Type-II quarter was already in possession of the retiree. His father Om Prakash was also a Constable. Then whether the applicant is entitled to regularisation of this quarter or not. Standing Order No.III appears to have been revised and a revised copy thereof has been filed. It appears to have come into force from 3.8.1989. By this revised order, Type-II quarter can be allotted on compassionate grounds to eligible persons under the heading, 'Allotment on Compassionate Grounds'. The relevant rule is quoted below :-

"Regularisation of quarters on compassionate grounds in the names of sons/daughters of police officers/men in legal occupation of Police Pool accommodation shall be permissible under these Rules within 6 months from the date of retirement/death while in service of the retired/deceased officer/man. Applications received thereafter may be considered upto a period of 8 months from the date of retirement/death of such a Govt. servant with the prior approval of Addl.C.P.. Eligibility of type of accommodation in such cases shall be determined with reference to the pay of the son/daughter of the deceased as under and inter-seniority of such applicants maintained with reference to date of appointment.

- 'A' (I) Less than Rs.950/P.M.
- 'B' (II) Rs.950/- P.M. to Rs.1639/- P.M.
- 'C' (III) Rs.1640/-P.M. and above.

NOTE :- (i) Dismissal/removal/voluntary retirement from service shall bestow no right of the type mentioned at 'C' above.

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(ii) Ad-hoc allotment/regularisation may be made on death/retirement of a Govt. servant to his son/daughter/brother/wife/if the Govt. Servant was an employee of Delhi Police and was occupying accommodation of Police pool and his dependent is also an employee of the Delhi Police provided such dependent had been sharing accommodation with the retired/deceased Govt. servant for at least 6 months immediately preceeding the date of latter's retirement/death and was not drawing any house rent allowance during this period; provided further that he gives an undertaking to keep retired/deceased officer's family in the said quarter and to vacate the family in the said quarter and to vacate the premises in one month from the date he ceases to do so. In the event of his failure to abide by his undertaking, such an allottee shall be deemed an unauthorised occupant and allotment of house in his favour shall be deemed as cancelled w.e.f. the date of his ceasing to comply with the condition."

5. In view of the above discussion, it is evident that at the time when the applicant applied for the regularisation of the quarter which was allotted in the name of his father, the applicant was entitled for regularisation of the quarter No.146, Type-II, Hauz Khas, New Delhi and the impugned order dt. 27.3.1989 appears to have been passed earlier to the coming into force of the revised Standing Order No.II quoted above. But since the applicant was already having a special pay of Rs.20 to his credit, which was paid for all purposes and was awarded one increment in addition, then for the purpose of allotment/regularisation of the quarter that increment cannot be ignored.

6. The learned counsel for the applicant also referred to Rule 28 where power of relaxation has been given and the applicant in the application has also referred to a number of cas-s in para 4(v) at p-6 of the application where some of the Constables were regularised in the quarters

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already allotted to the retiree, though their pay was not according to the Order III of 1979. Not considering the case of the applicant on that basis, any relaxation of rules which is provided under Rule 28 of the said order III of 1979 will be discriminatory. This assertion of the applicant in the application in para 4(v) has not been specifically denied by the respondents in their counter. What is mentioned is that the contents of para 4(v) are to be strictly proved by the applicant. In fact, the record was with the respondents and if they did not choose to contradict those assertions of the applicant, then it shall be presumed that what is stated therein is correct. In view of this fact, when there has been practice of regularising the quarter to the wards of the retiring employees of Delhi Police, as such ward was already in service with the respondents, then not considering the case of the applicant on those precedents would also be arbitrary.

7. In view of the above discussion, the application is partly allowed and the respondents are directed to regularise the quarter No.146, Type-II, Police Colony, Hauz Khas, New Delhi in the name of the applicant. The other relief for a direction to the respondents to refund

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the market rent collected from the applicant's father over and above the normal rent is disallowed for the reasons mentioned in the MP, already disposed of by the order dt. 10.2.1992. The respondents are directed to ^{from the date of receipt of the copy of the order} comply with the order, within a period of three months. In the circumstances, the parties to bear their own costs.

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14.2.92
(J.P. SHARMA)
MEMBER (J)