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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 101 1988
~~P.A. No.~~

DATE OF DECISION 13-5-1988

E.V. Krishnan Petitioner

Sri C.V. Francis, Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Sri P.M. Ramchandani, Senior Advocate for the Respondent(s)

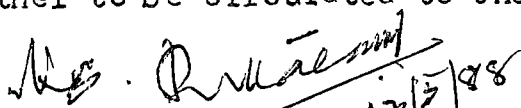
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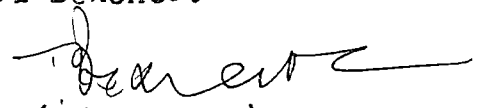
The Hon'ble Mr. B.C. Mathur, Vice-Chairman (A)

The Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to the other Benches.

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(K.S. PUTTASWAMY) 12/5/88
VICE-CHAIRMAN (J)


(B.C. MATHUR)
VICE-CHAIRMAN (A)

(Judgment of the Bench delivered by Hon'ble
Mr. Justice K.S. Puttaswamy, Vice-Chairman(J)).

J U D G M E N T

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 ('the Act').

2. Before May, 1984, the applicant, as a member of the Indian Army in the rank of a Major, was in occupation of a Government quarter appropriate to his rank exclusively earmarked for members of Defence Forces at a place called 'Jodhpur Officers Mess, New Delhi'. Some time in May, 1984 the applicant was appointed as an Officer on Special Duty (OSD) attached to the Ministry of State, Defence. On that appointment, he was allotted another quarter - Quarter No. CII/42, Bapanagar, New Delhi ('Bapanagar quarter'), a Type-VI quarter which he occupied in about May, 1984.

3. On 5-9-1985 (Annexure-A), Government of India in the Department of Personnel and Training (DPT) appointed the applicant as the Chief Welfare Officer (CWO) in that department on deputation basis for a period of five years from 2-9-1985 or till the date of his superannuation with reference to his parent cadre whichever was earlier. On that appointment also, the applicant continued to occupy the Bapanagar quarter.

4. On an examination of the applicant's entitlement to continue to occupy Bapanagar quarter, the Deputy Chief Administrative Officer/Estate Officer, Ministry of Defence, New Delhi (Estate Officer) by his order No. 0203/K 587/CAO/OI(E.O) dated 4-1-1988 (Annexure-P) directed his eviction from that quarter for the detailed reasons set out therein. On 18-1-1988 the applicant approached this Tribunal

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Tribunal under Section 19 of the Act challenging the said order with a prayer for stay. On the same day, one of us (Hon'ble Sri B.C.Mathur, Vice-Chairman) granted interim relief till 1-2-1988 which he continued thereafter.

5. On 8-4-1988 one of us (Hon'ble Sri B.C.Mathur, VC) upholding one of the preliminary objections urged by the respondents rejected the application holding that this Tribunal had no jurisdiction to entertain the same. Aggrieved by this order, the applicant filed a Special Leave Petition before the Hon'ble Supreme Court. On 22-4-1988 a Division Bench of the Supreme Court consisting of Venkataramaiah and Ojha, JJ. disposed of the same in these words:

" Special leave granted. It is the contention of the appellant that the Central Administrative Tribunal alone has the jurisdiction to deal with the question raised in this case. After hearing learned counsel for both the parties and having regard to the special circumstances of the case we set aside the order passed by the Central Administrative Tribunal but without expressing any opinion on the merits of the contention of the learned Additional Solicitor General that the Tribunal had no jurisdiction to hear this case. The Tribunal shall now proceed to decide the case on merits. We, however, reserve the right to the respondents to raise, if necessary, the contention that the Tribunal had no jurisdiction before this Court, if and when an appeal is filed against the order of the Tribunal. The Tribunal is requested to dispose of the case on merits within two weeks since we are informed that the matter does not brook any further delay. The parties shall appear before the Tribunal on 26th April, 1988. The respondent shall not take any action to evict the appellant for two weeks. The appeal is disposed of accordingly. No costs."

In pursuance of this order, this application has been restored to its original file and has been referred to this Division Bench for disposal.

6. On 11-5-1988 Government in the Department of Personnel and Training had communicated an Office Memorandum No. 32014/3/85-Ad.I dated 11-5-1988 annexing a copy

[Handwritten signature]

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copy of the notification No.2(22)/85/D(MS/IS) dated 15-4-1988 issued by the Ministry of Defence to the applicant and they read thus:

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OFFICE MEMORANDUM

Sub: Terms and conditions of Lt.Col.
E.V.Krishnan, Chief Welfare Officer,
Department of Personnel and Training.

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The undersigned is directed to say that the question of finalisation of terms and conditions of the deputation of Lt.Col.E.V.Krishnan presently working as Chief Welfare Officer, W.e.f. 2nd September, 1985, has been under consideration for some time in consultation with the Ministry of Defence. The Ministry of Defence have since issued the terms and conditions of Lt.Col.E.V.Krishnan in the post of Chief Welfare Officer under the Department of Personnel and Training vide their notification No.2(22)/85/D(MS/IS) dated the 15th April, 1988.

2. This department has accepted these terms and conditions issued by the Ministry of Defence. In pursuance of this terms and conditions the period of deputation of Lt.Col.E.V.Krishnan in the post of Chief Welfare Officer, Department of Personnel and Training will come to an end on 1st September 1988 afternoon and his services shall stand placed at the disposal of the Ministry of Defence. The copy of the notification dated 15th April, 1988 issued by the Ministry of Defence is enclosed.

Sd/-S.P.Chhibber
Under Secy.to the Govt.of India."

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NOTIFICATION

The services of Maj E.V.Krishnan, VSM are placed at the disposal of the Department of Personnel w.e.f 02 Sept 1985 on term and condition contained in Annexure II to Government of India, Ministry of Defence letter No.4(15)/58/99/8/D(MS/IS) dated 25 Feb.1970 as amended from time to time with the stipulation that the period of 3 years of deputation is not extendable under any circumstances.

2. The officer, while on deputation will be eligible to draw service rates of pay and grant of deputation allowance as admissible under this Ministry's letter No.13(1)/87/D(Pay/Services) dated 25 Sept 19 and will also be entitled to free supply of ration or payment of Rs.10.65 per diem in lieu thereof in terms of this Ministry's letter No. B/37857/AG/PS 3(a)/5454/D(QS) dated 16-12-1983 as amended from time to time.

3. In the event of retention of the officer beyond 1 Sep.88 i.e., the expiry of term of deputation, by Deptt. of Personnel, the case for his permanent absorption should be finalised before 1 Sep.1988.

Sd/- K.C.Jain,
Under Secretary to the
Govt. of India."


On the basis of these communications Sri C.V.Francis, learned counsel for the applicant prays for permitting the applicant to occupy the Bapanagar quarter which is in his occupation on the basis of the interim orders made by this Tribunal and the Supreme Court till 31-8-1988. In answer to a pointed query Sri Francis made it clear that the applicant was interested in occupying Bapanagar quarter over which the dispute in this case centres only till 31-8-1988 and not beyond that.

7. Sri P.H.Ramchandani, learned senior Counsel appearing for the respondents contends that the order made by the Hon'ble Supreme Court does not preclude this Tribunal from examining its own jurisdiction to entertain this application on all such grounds that are open and that we should decide that question as also merits. On merits Sri Ramchandani maintained that the applicant was not entitled to remain in Bapanagar quarter at all.

8. We have earlier reproduced the order made by the Supreme Court in its entirety. In its order, the Supreme Court in very express and clear terms had directed this Tribunal to decide this case only on merits. On the terms of the directions issued by the Supreme Court, it is not open to us to examine the question of jurisdiction of this Tribunal on any of the grounds urged by Sri Ramchandani. We, therefore, decline to examine the two grounds of jurisdiction urged by Sri Ramchandani and proceed to decide this case only on merits.

9. We have earlier noticed the developments which had taken place during the pendency of this application and the concession made by Sri Francis before us.

10. Whatever be the legality or illegality in the allotment or in the occupation of Bapanagar quarter allotted by



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by the applicant, the position now is that he is keen to occupy the same only till 31-8-1988. The applicant wants to continue the said quarter for another 3½ months' and not beyond that.

11. The period for which the applicant seeks our concession is a very short period. Whatever be the merits of the matter and whatever be the legality of the impugned order, this request of the applicant is a reasonable and we should therefore accept the same, without examining all other questions. Even otherwise, a dislocation or a direction to vacate and shift to other quarter before 31-8-1988 would naturally cause considerable hardship and inconvenience to the applicant. We are of the view that these factors also justify us to permit the applicant to occupy the Bapanagar quarter till 31-8-1988. On this view, we decline to examine all other questions.

12. On the very concession made by the applicant, he is entitled to continue Bapanagar quarter till 31-8-1988. But, this does not mean that he is not free to vacate the same before that date also.

13. On the question of licence fee or rents payable by the applicant, we leave open the same to be decided by the competent authority in accordance with law.

14. In the light of our above discussion, we make the following orders and directions:

- (a) We grant time to the applicant to occupy Quarter No.CII/42, Bapanagar, New Delhi till 31-8-1988. We direct the applicant to vacate the same on or before 31-8-1988 and deliver its vacant possession to the authorised officer of the respondents ~~the next~~. But, this does not prevent the applicant to vacate the same on or before that date also. If the

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the applicant does not vacate and deliver vacant possession of the Bapanagar quarter to the authorised officer of the respondents on or before the expiry of the time granted by us, the respondents are free to take forcible possession of the same thereafter from the applicant.

15. Application is disposed of in the above terms.

But, in the circumstances of the case, we direct the parties to bear their own costs.

K.S. Puttaswamy *B.C. Mathur*
(K.S. PUTTASWAMY) 13/5/88 (B.C. MATHUR) 13.5.88
VICE-CHAIRMAN(J) VICE-CHAIRMAN(A)
13-5-1988 13-5-1988