

Central Administrative Tribunal
Principal Bench, Delhi.

(6)

REGN. NO. / O.A. 9/87 Date of decision 17.11.87

Shri Jai Narain Applicant

Vs.

Union of India & Others Respondents

PRESENT

Shri Sanat Kumar ... Advocate for the applicant.

Shri M.L. Verma ... Advocate for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act 1985 against the waiting list dated 20.2.1986 for change of accommodation from Type II to Type III issued by the Air Officer Commanding, Air Force Record Office, Subroto Park, New Delhi.

2. The case of the applicant is that he was initially appointed as a Lower Division Clerk on 15.10.1958 and according to Rule 2(i) of the Allotment of Residence (Defence Pool Accommodation for Civilians in Defence Services) Rules, 1978, the priority date of an employee who is entitled to Type-C residence would count from the date he has been continuously in service under the Central Government which in his case is 15.10.1958. Officers whose monthly emoluments under Rule 4 of the above Rules are Rs. 881.92p. are entitled to Type-C accommodation. The allotting authority is required to categorise officers according to their monthly emoluments on the first day of each allotment year which in the absence of any specified date should be first January of each year. Rule 12 of the said Rules deals with the cases of change of residences which provides that if an officer has already been allotted a residence, he may apply for change to another residence of the same type or a residence of the type to which he is eligible, not earlier

than a period of six months from the initial date of occupation of accommodation. According to the applicant, persons seeking change of their residence to a higher type to which they are eligible are required to apply in the said allotment year.

3. The applicant was transferred to Delhi and posted as Office Superintendent at Air Force Central Medical Establishment, Subroto Park New Delhi. At the time of his posting at Delhi, the applicant was eligible for Type-C residence. On joining at Delhi he applied for Type-C residence, but he was not allotted Type-C flat though it had fallen vacant after his posting at Delhi and inspite of the fact that he was seniormost amongst the eligible persons, the applicant was allotted Type-B residence on 4.11.83. He made an application for change of residence from Type-B to Type-C on 20.7.1984. On 19.1.85, the Air Officer Commanding, Air Force Record Office, Subroto Park, circulated a waiting list as on 1.1.1985 of the civilian staff who had applied for shifting of residence from Type-B to Type-C. The name of the applicant was 6th in the said waiting list. He made a representation against this waiting list submitting that he was the seniormost according to the priority date and his name should be at the top of the list. His representation was rejected on 8.2.85. The applicant made another representation submitting that for residences falling vacant in 1985 the applications made prior to year 1985 should not be considered. He also informed the Air Officer Commanding, Subroto Park, that he had applied again on 1.1.1985 for change of residence from Type-B to Type-C. Another waiting list was circulated in February, 1986 for change of residence from Type II to Type III. The applicant was at Sl. No. 6 in the said list but Shri M.L. Savita who was not in the previous list was shown above him. The applicant again represented to the respondents. His case is that he being longest in service according to priority date, he should have been given preference over others. He has come to the court for directing the respondents to allot him a Type III/C residence as he is the senior most person according to the priority date.

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4. Respondents in their reply have stated that the allotment year begins from 1st January and the applicant was allotted Type-B accommodation on his request. According to the respondents, the priority list was prepared strictly in accordance with Rule 4. One Shri M.L. Savita who was given change of accommodation from Type-B to Type-C, challenged by the applicant, as his date of application was much earlier to the applicant. The name of the applicant was registered for change of accommodation on 20.7.84 and, therefore has been put correctly at the appropriate place in the waiting list. It has been stated that Shri Savita had put an application on 22.2.84 for change of accommodation from Type-B to Type-C but due to clerical error, his name was omitted in the waiting list made on January 1985. This mistake was later corrected.

5. It is noticed that under the statutory rules and orders issued by the Ministry of Defence, the priority date of an officer in relation to a type residence to which he is eligible means the date from which he has been continuously drawing emoluments relevant to a particular type or a higher type in a post under the Central Government provided that in respect of a Type-B, C or D residence, the date from which the officer/ ^{under Central Government} been continuously in service shall be his priority date for that type. Rule 12 dealing with change of residence provides that an officer to whom a residence has been allotted may apply for a change to another residence of the same type or a residence of the type to which he is eligible under Rule 4, whichever is lower.

6. The above rules make it clear that normally the question of transfer of residence will be within the same type of residence because if an officer is eligible to a higher type of residence, change of allotment will be for the lower category. This appears to be correct because the change would normally be within the same category of residence. However, within Type B, C or D, the total length of service under the Central Government would be counted. This means that if a person has been promoted to a Grade which entitles him to a Type-C accommodation, in computing his priority, his total length of service even in lower grades would be counted.

Thus, if a person senior to him was appointed directly in the higher grade earlier than him, the person who has been promoted to that grade later may become senior for the purpose of priority in accommodation if his total length of service is more. While a person may apply asking for change of allotment, it would not mean that the claims of persons who have become eligible earlier would be overlooked. In that case it would become necessary for everyone to make applications on the 1st January every year.

7. Normally, there should not be a change of allotment from a lower category to a higher category because change of allotment should be in the same category. Allotment to a higher category or to a category to which a person is entitled should be a fresh allotment based on priority in each case according to rules. If the applicant has been eligible for Type 'C' accommodation based on his present emoluments, his total length of service under the Central Government has to be taken into consideration in fixing his seniority among the persons eligible to Type 'C' accommodation. Between persons eligible for Type 'C' accommodation, according to their existing emoluments, the person who has a longer service under the Central Government should be placed higher than the persons with lesser length of service, even though such a person may be senior to the person having the longest service. The question of date of change of residence in the same category or a lower category would certainly be on the basis of date of application for such change, but when making allotment to a higher category, the eligibility would be among officers who are eligible for the higher category and their length of service in the Central Government. In such cases, the date of priority will not be connected with the date of application for change of residence to a higher category.

8. The respondents are directed to examine the cases in the waiting list under category 'C' in the light of the above directions and decide the allotment of the applicant to Type 'C' accommodation accordingly. The case is disposed of accordingly.

There will be no order as to costs.

Deputy
(B.C. Mathur)