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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO. CA 1073/87. August 21, 1987.

Shri K.K.Khanna Applicant.

vs.

Union of India and others ... Respondents.

CORAM:

Hon'ble Mr.Justice K.Madhava Reddy, Chairman.

Hon'ble Mr. S.P.Mukerji, Member

For the applicant ... Applicant in person.

For the respondents ... None.

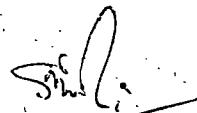
(Judgment of the Bench delivered by
Hon'ble Mr. Justice K.Madhava Reddy,
Chairman).

1. Whether Reporters of local papers
may be allowed to see the Judgment? Yes.

2. To be referred to the Reporter or not? Yes

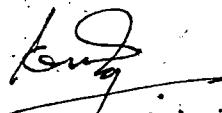
3. Whether their Lordships wish to see
the fair copy of the Judgment? No

4. Whether to be circulated to other
Benches? No


(S.P. Mukerji)

Member

21.8.1987.


(K.Madhava Reddy)

Chairman

21.8.1987.

21.8.87

This is an application under Section 19 of the Administrative Tribunals Act, 1985, for a direction to the respondents to pay a compensation of Rs. 1.00 lakh and for a further direction against Shri SM Verma, Controller of Accounts, respondent no. 2 herein to make available the information/documents requested by the applicant and relevant to the subject matter of this application and grant any other relief.

2. The claim for damages is based on the allegation that the applicant was required to share an office room allotted to 2 Pay and Accounts Officers. During March, 1982, the applicant was shifted to a very small cubicle which was part of B-1 Hutsments, and the window of which opened to an incinerator constantly emitting soot and smoke causing suffocation. Adjacent to that incinerator were some urinals and lavatories perennially emitting foul smell. The carpet area of that cubicle was just 50.90 sq ft as against the applicant's entitlement of 120 sqft. The table fan that was provided did not circulate air in the cubicle. According to him, being forced to work in this small cubicle his health suffered and he had to go on leave on several occasions. He repeatedly requested the two Controllers of Accounts for suitable alternative accommodation but to no avail. On return from medical leave, during June, 1984, he addressed a written communication of his intention



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to seek redressal from the court. Thereupon he was moved to Room No. 150-A during July, 1984. The FA (MEA) then visited the office on 11.7.84 and saw for himself the highly unsatisfactory, unhygienic and unhealthy cubicle where the applicant was forced to work from October, 1982 to June, 1984. He also addressed the Ministry for shifting the incinerator. The applicant claims that on account of his being forced to work in these unhygienic surroundings in a small cubicle, his health was seriously damaged and his life span is reduced and he is therefore entitled to damages.

3. In this application, he has impleaded Miss Meera Saxena, former Controller of Accounts and Shri SM Verma, Controller of Accounts as respondents. He has not chosen to implead the Union of India or any official by designation. According to him, since no action was taken by these officers who were the then controlling authorities, inspite of his written representation, they are liable to pay damages. The petitioner's requests for copies of the representations and other office notings made in this behalf were not granted to him. He therefore seeks a direction to furnish those copies/documents.

4. The claim of the applicant for damages is not based upon any contract. The claim is against the controlling officers. It is based on his alleged right to allotment of 120 sqft of office accommodation as Deputy Controller of Accounts. In allotting the

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office accommodation of 50.90 sqft instead of 120 sqft, the respondents were merely discharging their official duties. As such, they are not personally liable for any inconvenience or damage that the applicant who was himself a Government servant may have suffered. The claim, if any, tenable, should have been made against the Union of India, and not the individual officers in their personal capacity.

5. However, even against the Union of India, the petitioner's claim for damages on the facts averred is not maintainable. Allotment of office accommodation to a Government servant for discharge of official duties sitting in an office building constitutes exercise of sovereign power of the Government. In *Kasturi Lal V. State of UP* (AIR 1965 SC 1039), the Supreme Court enunciated the principles that must govern the claim for damages by a Government servant against Union of India and pointed out the

"distinction between acts committed by the servants employed by the state where such acts are referable to the exercise of sovereign powers delegated to public servants, and acts committed by public servants which are not referable to the delegation of any sovereign powers. If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is: was the tortious act committed by the public servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant? If the answer is in the affirmative, the action for damages for loss caused by such tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by

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him during the course of his employment is, in this category of cases, an act of a servant who might have been employed by a private individual for the same purpose. This distinction which is clear and precise in law, is sometimes not borne in mind in discussing questions of the State's liability arising from tortious acts committed by public servants."

The failure to provide 120 sqft and providing only 51 sqft for holding office, whether in fact has affected the applicant's health or not is a matter which is not free from doubt. Assuming that it has in fact affected the applicant's health, in our view, any claim for damages against the respondents is unsustainable. The failure to provide copies of the documents requested by the applicant which relate to this claim must also be rejected. This application therefore fails and is accordingly dismissed.

S.P. Mukerji
(S.P. Mukerji)
Member(AM)

K. Madhava Reddy
(K. Madhava Reddy)
Chairman