

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 31.07.1992

DA 1882/90

FATEH SINGH JASOL ... APPLICANT.

Vs.

UNION OF INDIA & ANR. ... RESPONDENTS.

CORAM:

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

For the Applicant ... SHRI C.L. NARSHIMAN.

For the Respondents ... SHRI P.P. KHURANA.

1. Whether Reporters of local papers may be *Y* allowed to see the Judgement?

2. To be referred to the Reporters or not ? *Y*

JUDGEMENT

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

applicant *equated*
The *is* an I.A.S. Officer and was on deputation from his parent cadre of Gujarat to the Govt. of India as Chairman of Agricultural and Processed Food Products Export Development Authority (APEDA), of which the Headquarters are in New Delhi. The Chairman of APEDA was *equated* in status and responsibility to that of a Joint Secretary to the Govt. of India under the Provisions of the Indian Administrative Services (Pay) Rules, 1954. The terms of appointment on deputation

has been laid down in the letter dated 3.9.86 (Annexure A-5) which contained the provisions regarding recovery of the licence fee for the residential accommodation arranged for the Chairman, APEDA, which was 10% of the pay + DP + CCA and in such a case the entitlement to draw HRA will also cease. In view of this, during the tenure of the applicant as Chairman, the licence fee @ 10% of pay etc. was recovered for the residential accommodation from the applicant w.e.f. 1.6.87 till date of the filing of the application. The grievance of the applicant is that the pay scales of the All India Services were revised w.e.f. 1.1.1986. However, the Central Govt. revised w.e.f. 1.7.87 FR 45 passed on the recommendations of the 4th Central Govt. Pay Commission to the effect that the licence fee should be fixed by a uniform rate throughout the country based on the cost of construction and plinth area, living area, type of accommodation allotted to the employees subject to the condition that the amount of any officer shall not exceed 10% of the monthly emoluments. According to the applicant under the revised dispensation the concept of rent was changed to that of a licence fee and from a percentage of pay to a flat rate. The applicant, therefore, submitted representation to the Central Govt. for a change in the terms and conditions of the deputation as to facilitate rent recovery for residential accommodation as per the

provisions of FR 45 read with the OM dated 1.6.87

(Annexure-9), this was rejected by the Govt.

2. The applicant in this application claimed the relief of a direction to the respondents that the terms and conditions of the deputation to the post of Chairman, APEDA with retrospective effect i.e. 16.7.1986 be modified as to provide for recovery of rent/licence fee from time to time at the same rate as applicable to officers of Central Govt. Services Group-A who are provided with Government residential accommodation. Further, a direction that the amount already recovered in excess of the sum determined as at prayer (i) above should be refunded to the applicant together with interest.

3. The facts of the case are that a Flat in the Asiad ^{was purchased} Village/for the purpose of providing residential accommodation to the Chairman, APEDA. The case of the applicant is that he is a member of Indian Administrative Service having been appointed w.e.f. 26.7.65. He was allotted to the State of Gujarat and was promoted to the Super Time Scale of IAS w.e.f. 2.7.82. His service conditions are regularised by All India Service Act, 1951. Section 3(1) of the aforesaid ACT envisaged that the Central Govt. may, after consultation with the Governments of the States concerned make rules for the regulation of recruitment and the conditions of service of persons appointed to an All India Service. Sub Section 1(A) of Section 3

provides that no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable. The All India Services (conditions of Service Residuary Matters) Rules, 1960, Section 2 thereof lays down that the Central Govt. may make regulations to regulate any matters relating to conditions of Service of persons appointed to an All India Service for which there is no provision in the rules made or deemed to have been made under the All India Services Act, 1951 and till such regulations are made, such matters shall be regulated in the case of persons serving in connection with the affairs of the Union by the rules, regulations and orders applicable to officers of Central Services, Class-I. Thus, the averments in the application are that the rejection of the representation by Ministry of Urban Developments vide letter dated 29.3.89 is unjustified and illegal. It is stated that the Director of Estates was not competent to decide this matter since it relates to the conditions of service of the applicant. Secondly, it is relevant whether the accommodation was a pool accommodation or otherwise. Thirdly, the Organisation APEDA for all purposes involves the Central Govt. and the residential accommodation was purchased by the Central Govt. specially for the purpose of the residence of the Chairman. Thus, the said residential accommodation also falls under the

control of the Central Govt. and the policy and orders of the Government contained in the Memo dated 1.6.87 (Annexure-7) will apply to this case.

4. The respondents contested this application and it is stated that a Flat in the Asiad Village was purchased by APEDA and also spent sum of Rs.1.18 lakhs on repair and renovation to the flats before handingover possession to the officers. Further, it is stated that the applicant is covered by Rule 2(A) of the AIS (conditions of Service Residuary Matters) Rules, 1960. The accommodation provided to the applicant by APEDA was not from the General Pool accommodation from where the officers got accommodation while working in the Central Govt. The instructions of the rules governing the allotment of accommodation and the deduction of licence fee etc. chargeable from such officers working with the Central Ministries and Departments are not relevant in the case of those officers who are sent on deputation to the Public Sector Undertakings. The APEDA is the owner of the accommodation provided to the applicant and they are competent to make their own recovery of rent etc. In case the officer was not satisfied with the terms and conditions of appointment he could have sought reversion to his parent cadre. The terms of the appointment of the officer issued in 1986 are being maintained and no revision has been effected to this ^{do.} advantage.

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5. I have heard the learned counsel for both the parties at length and have gone through the records of the case. The terms and conditions of the service of the applicant were duly communicated to him vide letter dated 3.9.1986, para 3 of the said conditions of appointment on deputation is relevant and is reproduced below :-

"HRA AND CCA : He will be eligible to city compensatory allowance and house rent allowance at the rates admissible to officers of his status under the rules of APEDA. If any residential accommodation is hired by the APEDA under Govt. direction in this regard, 10% of the pay plus DP + CCA will be payable by the officer for such accommodation and in this case his entitlement to draw HRA will also cease."

When the applicant has accepted these terms and conditions of deputation then after joining the aforesaid service as Chairman, the applicant cannot challenge the same or pray that the terms and conditions are not in line with the terms and conditions laid down for Indian Administrative Officers either under the Act of 1951 or the Rules of 1960, referred to above. The respondents have not changed the terms and conditions subsequent to the joining of the applicant on the post. The APEDA is an autonomous body and governed by its own rules and procedure and is a creation of statute i.e. ^{Act} No.2 of 1986. There is a record of certain correspondence recommending the case of the applicant for allotment of a Central Government Pool Accommodation. The Joint Secretary, Ministry of Commerce in December, 1986 has

also written to the Secretary, Ministry of Urban Developments that the Chairman, APEDA is not entitled to Govt. accommodation, so the proposal was made to buy a residential quarter for him. Thus, the applicant was not at any time allotted Central Govt. pool accommodation as by virtue of his deputation post in APEDA he was not eligible. The contention of the learned counsel for the applicant is that since similarly situated officer of IAS cadre of the status of Joint Secretary are given general pool accommodation by the Central Government and the licence fee being charged as per OM of 1.6.87 (Annexure-9), so the applicant, who also has a similar status and belongs to IAS should also be charged under the amended FR 45. However, the applicant belongs to Gujarat cadre and has joined on deputation in New Delhi as Chairman of APEDA, the moment he has joined as Chairman in terms of Memorandum and his services are governed by the APEDA Act, 1985 (Act No.2 of 1986). Section 5 of the said Act lays down that the Chairman shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and other matters as may from time to time be fixed by the Central Govt. There is no mention of the fact that the Chairman shall be entitled to as a residential accommodation in the same manner as the Central Govt. employees. The Central Govt.

has already fixed the terms and conditions of the applicant in the Memo dated 3.9.86. The applicant, therefore, bound by these terms and conditions of service. Neither the applicant nor the Central Govt. to ~~vary~~ ^{vary} these terms and conditions which is an appointment agreement between the parties. The applicant cannot take analogy with the other similarly situated IAS Officers unless and until the emoluments he was getting were in any way ~~effect~~ ^{were} to ^{his} prejudice. Merely because there is a provision of realisation of 10% of the pay towards residential accommodation will not be discriminatory or arbitrary. Moreover, the fixation of flat rate of licence fee were introduced by the Memo dated 1.6.87 (Annexure-7). Thus, the applicant on the account of discrimination or arbitrariness has no stand.

5. Another aspect of the matter is that the application has filed in September, 1990 and the applicant was informed as early as on 29.3.89. That the Chairman, APEDA is not entitled to general pool accommodation, the flat rate of licence fee fixed for equivalent accommodation as per orders dated 7.8.87 cannot be made applicable to him. It was further clarified that in view of the terms of his appointment recovery of 10% of pay is considered to be in order and, therefore, the same be charged for the accommodation provided to him. The applicant has sent a representation against this letter on 13.6.89 to the Deputy Secretary, Ministry of Commerce and nowhere

he has requested that he should be sent back to his Gujarat cadre and rather in this representation he has written that the rent payable according to the terms and conditions of the deputation is 10% of pay then ^{the} it is only requested Ministry of Commerce to take up the matter again. The applicant, therefore, should have filed this application within one year thereof, but this application has been filed in September, 1990 which is beyond limitation as provided under Section 21 of the Administrative Tribunals Act, 1985. The repeated representation do not add the limitation as laid in AIR 1990 SC Page 10 ^{31.7.92} S.S. Rathore Vs. State of Madhya Pradesh. Thus, this application is also hit by limitation, and also devoid of merit and is, therefore, dismissed leaving the parties to bear their own costs.

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