

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(7)

O.A.No. 2696/91

Date of decision: May 18, 1992.

Mrs Kamlesh Sethi

...

Applicant

vs

Union of India & Others

...

Respondents

CORAM:

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN

For the applicant

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Shri D.S. Jagotra,
counsel.

For the respondents

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Ms Jasvinder Kaur
Proxy counsel for
Shri Jog Singh, counsel.

JUDGMENT (ORAL)

The petitioner has come to the Tribunal for a direction to the respondents to pay her House Rent Allowance. It is not disputed that her husband is also a Government servant and that he is also working at the same station at Delhi. It is also not disputed that her husband has been allotted accommodation by the Central Government at Delhi. It appears that the relationship between the husband and wife are strained and proceedings were initiated for the guardianship of the child. The petitioner's case is that as she is not residing with her husband, she should be granted House Rent Allowance. Grant of House Rent Allowance is governed by House Rent Allowance Rules made by the President. The Rules indicate the rate of House Rent Allowance that is admissible depending upon the scale of pay and the cities where the

posting is made. Rule 4 says that those occupying or residing in Government accommodation are not eligible for House Rent Allowance. Rule 5 speaks of the conditions for eligibility of House Rent Allowance. Rule 5(c) is relevant for our purpose. It says that:

"A Government servant shall not be entitled to house rent allowance if -

- (i) he shares Government accommodation allotted rent-free to another Government servant; or
- (ii) he/she resides in accommodation allotted to his/her parents/son/daughter by the central government, state Government, an autonomous public undertaking or semi-Government organisation such as a Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India, etc.
- (iii) his wife/her husband has been allotted accommodation at the same station by the central government, state Government, an autonomous public undertaking or semi-Government organisation such as Municipality, Port Trust, etc., whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her."

Sub clause (iii) of Rule 5(c) is attracted to the facts of this case. The said clause makes it clear that if the husband or the wife has been allotted accommodation at the same station, he or she would not be entitled to House Rent Allowance. It is not relevant whether both the spouses live together or live separately. In other words, the question of separate living of any of the spouse is not at all relevant. What is relevant is the allotment of Government accommodation to either of the spouse.

(a)

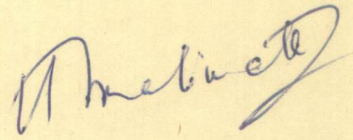
That condition is duly satisfied in this case as the petitioner's husband, though living separately, has been allotted accommodation at the same station. Hence, provision of Rule 5(3)(c) is attracted.

2. It is, however, contended by the learned counsel for the petitioner that S.R. 317-B-4(1) regarding allotment of Government residences (General pool in Delhi) Rules, 1963 is attracted to this case. The said provision says that no officer shall be allotted a residence under these Rules if the wife or the husband, as the case may be, of the officer has been allotted a residence unless such residence is surrendered, provided that this sub-rule shall not apply where the husband and wife are residing separately in pursuance of an order of judicial separation made by any court. This order has relevance to the allotment of residence from the General Pool in Delhi when either the wife or the husband seeks allotment of accommodation under these Rules. The fact that the husband or the wife is residing separately, in pursuance of an order of judicial separation made by the court, makes the main provision inapplicable. In other words, if they are living separately, in pursuance of an order of judicial separation made by any court, both of them would be entitled to seek allotment of government residences from the General pool. We are not concerned in this case with the allotment of the accommodation to the petitioner under the General Pool. We are concerned in this case with the grant of House

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Rent Allowance which is dealt with under separate rules which I have discussed earlier. Under the House Rent Allowance Rules the petitioner though living separately from her husband will not be entitled to house rent allowance as long as the husband is in possession of Government accommodation.

3. Hence, I do not find any good ground to interfere. This O.A., therefore, fails and dismissed. No costs.



(V.S.MALIMATH)
CHAIRMAN

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