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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 540/2004
This the 16th day of April, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)

1. Sh. M.D. Valecha
S/o Late Shri Gulab Rai
Retd. Private Secretary,
Intelligence Bureau,
R/o 15/III, North West,
Moti Bagh, New Delhi-110021.
2. Miss Mooni Valecha
Daughter of Shri M.D. Valecha,
P.A. Grade II, Intelligence Bureau,
R/o 15/III, North West,
Moti Bagh, New Delhi-110021.

(By Advocate: Sh. S.P.Mital)

Versus

1. Union of India
through Secretary to the Govt. Of India
Ministry of Home Affairs,
North Block,
New Delhi-110001.
2. Director of Estates-II,
Government of India,
Nirman Bhawan,
New Delhi-110011.
3. Director,
Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
North Block, New Delhi-110001.

(By Advocate: Sh. R.N.Singh)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant has filed this OA for the relief to the following effect:-

- (i) set aside the impugned order dated 20.2.2003 of Respondent
No.2, it being contrary to law, discriminatory and unjust.
- (ii) Hold that the applicant No.2 was entitled to the ad hoc allotment
and /or regularization of accommodation in her name in terms of

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Judgement of the Hon'ble High Court of Delhi in the case of Pramod Kumar vs. Union of India and also under the provisions of OM dated 5.7.1976.

- (iii) Hold that the OM No. 12020/(1)/74-Pol-II dated 5.7.1976 is applicable in the case of applicants and not O.M.No. 12035(7)/79-Pol-II dated 1.5.1981.
- (iv) Allow regularization/allotment during the period 27.9.1996 to 15.7.1999.
- (v) Direct refund the amount of Rs.1,20,402/- alongwith interest @ 18% per annum by way of compensation and damages.

2. Applicant No.1 Sh. M.D.Valecha was working as Private Secretary in the Intelligence Bureau. He was allotted flat No.G-166, Moti Bagh-II, Type IV, New Delhi. He retired from service on 30.6.1996. On 27.9.1996 his daughter, applicant No.2 Ms. Mooni Valecha got employment in the Intelligence Bureau on the post of P.A. Grade-II on ad hoc basis. She applied for allotment of a flat or alternatively for regularization of the allotment of the flat in her name. The respondent initiated ejectment proceeding against the applicants. Applicants challenged the order in OA-2355/1997 and invoked OM No.12020/(1)/74-Pol-II dated 5.7.1976, which according to her, entitled her for ad hoc allotment of a flat after the retirement of her father. The respondent rejected her prayer and passed the eviction order against applicant No.1 on 18.9.1997. Applicant filed OA No.2355/97 assailing this order. It was dismissed and a review application also met the same fate but the applicant was allowed 90 days w.e.f. 19.5.99 for vacating the Government accommodation. In the meantime, on 12.7.99 she was allotted a Type III Government flat in her own turn and she vacated the premises No.G-166, Moti Bagh-II on 10.8.99. Applicant filed writ petition No.6559/2000 before the Hon'ble Delhi High Court, inter alia, on the ground that her case was covered by the judgment in Pramod Kumar vs. Union of India

and others, 81 (1999) DLT 25. The Hon'ble Court disposed of the petition on 3.12.2001 allowing the applicant to file a representation before the Director of Estates within one month for regularization of the period during which she had occupied the government flat after retirement of her father. The Director of Estates was directed to examine it in the light of similar cases dealt with by him and pass proper order in the matter within 3 months. In case her plea was accepted the applicant was entitled to the refund of any excess amount deposited by her. The respondents did not comply with this direction, so the applicant filed CCP No.573/2002 before the Hon'ble High Court. During its pendency the respondents passed the impugned order dated 20.2.2003. The contempt petition was disposed of in the light of the judgment of the Hon'ble Supreme Court in J.S.Parihar vs. Ganpat Duggar & ors., (1996) 6 SCC 291. It was observed that a fresh cause of action had accrued to the applicant and she was free to take proper action for redressal of her grievance before appropriate forum. The applicant then filed the present OA.

3. By the impugned order dated 20.2.2003 the respondent rejected the prayer of the applicant for regularization or giving ad hoc allotment of the quarter in her name. They distinguished the cases of K.S.Rawat, Bhagwati Prasad, Balaram Swamy and D.S.Malhotra and stated that they had made representations addressed to the Union Minister for Urban Development and after consideration of all the relevant facts and the circumstances the delay was condoned and the accommodation was regularised in the name of their wards. It was also stated that all cases of regularization and ad hoc allotment to eligible dependent ward of retiring employees received during the relevant period were examined in terms of the Directorate of Estate OM dated 1.5.1981/OM dated 9.1.1987 and were decided as per rules and condonation of delay in precedent cases referred to in the representation by the applicant were approved by the then Minister of Urban Development, the competent authority, "as a very special measure and such relaxation cannot be claimed as a matter of right".

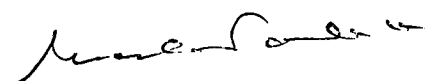


4. The respondents have filed a short reply raising legal objection as to the maintainability of the application before the Tribunal. It is submitted that the applicants have filed this OA for regularization of the accommodation in their possession in the name of the applicant No.2. They submitted that an allotment is regularized in accordance with the relevant rules and instructions and it was not a condition of service of the applicants, so it is not a service matter, and would not fall within the jurisdiction of the Tribunal. Reference was made to Babli and another vs. Govt. of NCT of Delhi and others 95 (2002) DLT 144 (DB). Relying upon the law laid down in this judgment the Tribunal had also taken similar view in OA-2088/2002 titled M.M.Khantwal and another vs. Union of India and others and another in OA-2086/2002 titled Ashok Kumar and another vs. Union of India and another. It was also contended that the present OA was barred by principles of res judicata since the applicant had earlier also filed an OA in this Tribunal and the Hon'ble High Court making same/similar prayer. They prayed that the OA be dismissed.

5. In the rejoinder, in para 4 the applicants have pleaded that in the case of Smt. Babli and another (supra), the Hon'ble High Court was considering the matter relating to the proceeding under Public Premises (Eviction of Unauthorised Occupant) Act, 1971 (the Act for short) whereas "in the present case it is confined only to the refund of the excess amount by the Directorate of Estate".

6. We have heard the learned counsel for the parties and have perused the relevant record.

7. The first question that arise for consideration is whether this Tribunal has jurisdiction to entertain this OA and grant the relief prayed for. Bare look at para 8 of the OA in which the relief claimed are mentioned, makes it abundantly clear that the applicants are claiming the relief of ad hoc allotment or regularisation of the allotment of the Government quarter in question for the period 27.9.96 to 15.7.99 in the name of applicant No.2. In addition they also



claimed refund of Rs.1,20,402/- with 18% interest which they had paid to the respondents as damages for unauthorized use and occupation of the said accommodation. In the rejoinder, however, in para 4, the applicant clarified that she was confining her OA to the refund of excess amount paid by them to the Directorate of Estate. At the time of argument, the learned counsel for the applicant did not ~~state~~ state that they are giving up relief pleaded in sub-para (i), (ii) and (iii) of para 8 of the OA, i.e., regarding ad hoc allotment or regularization of the accommodation in question in the name of the applicant No.2 for the period from 27.9.1996 to 15.7.1999. The averment made in para 4 of the rejoinder would show that the applicants had tried to distinguish the law laid down by the Hon'ble Delhi High Court in Babli and another (supra) and stated that the Hon'ble Court was considering the eviction aspect of the matter relating to the proceedings under the Act whereas the present OA was confined only to the refund of the excess amount recovered by the Directorate of Estate to the applicants. From the allegations made in this paragraph an inference can be drawn that they were not pressing the relief in para (ii) and (iii) of para 8 of the OA.

8. Whether the applicants are seeking relief of ad hoc allotment or regularization of the accommodation in question in the name of the applicant No.2 for a period specified in para 8 or they are seeking refund of the amount of Rs.1,20,402/- which had been recovered from them as damages for unauthorized occupation of the Government accommodation, the question ~~remains~~ still arises whether the present OA is maintainable before this Tribunal. The Tribunal is created under the provision of Administrative Tribunals Act, 1985 (CAT Act). Its jurisdiction, power and authority is limited to the four corners of the special statute which has created it. It cannot exercise the powers vested in Civil Court under Section 9 of the Civil Procedure Code. Section 19 of the Act allows a person aggrieved by an order pertaining to any matter within the jurisdiction of the Tribunal to make an application before the Tribunal for redressal of his

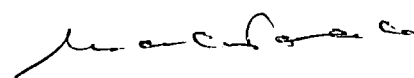


grievance. The explanation appended also defines the word 'order' for the purposes of this Section. Section 15, on the other hand, laid down the parameters of the power, authority and jurisdiction of the Tribunal. It is provided that the Administrative Tribunal shall exercise on or from the appointed day of the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to, inter alia, all 'service matters' concerning a person appointed to any civil service of the State or any civil post under the State etc. The expression "service matters" used in this Section is defined by clause (q) of Section 3 of the Act. Being relevant it is extracted below:-

"(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects -

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever;"

9. As per this definition in relation to a person "service matters" means all matters relating to the conditions of his service. It means the Tribunal has jurisdiction, power and authority under Section 19 of the AT Act to decide only those matters which relate to the "conditions of service" of a person. Nothing has been brought to our notice, nor is it argued, that the allotment or regularization of Government accommodation was part of the service conditions of either of the applicants. As a result proceedings for eviction of the applicant No.1, allottee of a Government accommodation being not a matter relating to the conditions of service of the applicants could not be challenged before the Tribunal. The Hon'ble Supreme Court in Union of India vs. Rasila Ram JT 2000 (10) SC 503 on the question of maintainability of the petition filed for



challenging the eviction from the Government allotted accommodation before the Tribunal held as under:-

“Once a government servant is held to be in occupation of a public premises as an unauthorized occupant within the meaning of Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies as provided under the said Act. By no stretch of imagination the expression any other matter in Section 12 (q) of the Administrative Tribunal Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the PPE Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal over an order passed by the competent authority under the Eviction Act must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside.”

10. The Hon'ble High Court in Smt. Babli and another (supra) was also considering a case where legal heirs of deceased allottees of the Government accommodation (who were themselves in government service) were holding on the possession after the death of the allottee employee and were asking for regularization of the allotment of another accommodation in their name. The Director of Estates rejected their request and imposed damages at market rates on them beside initiation of eviction proceeding against them under the Act, 1971. OA ^{was} filed before the Tribunal to challenge the proceedings. The Tribunal relying upon the judgment of the Hon'ble Supreme Court in Union of India vs. Rasila Ram and others (supra) dismissed it holding that it had no jurisdiction to decide it. After examining the provisions of the ^{C.A.T.} Act in particular the provision of Section 3 (q) (v) it was observed as under:-

“8. We have gone through that judgment which proceeds on the premises that once eviction action was initiated for his unauthorized occupation of premises under the relevant Act, Tribunal could not assume jurisdiction in the matter by reference to Section 3(Q)(V) by treating it as “any other matter”. That conclusively settles the issue once for all and it need be hardly expressed that law laid down by Supreme Court was binding on all including Tribunal and therefore its impugned orders could not be faulted for that. This is so for the added reason that Eviction Act provided its own safeguards and remedies and where an employee felt aggrieved of any orders passed under this Act, he was to seek appropriate remedy provided therein instead of approaching the Tribunal with his grievance in this regard.

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9. In the present case also eviction proceedings stood initiated against petitioner who had all the options to avail of the safeguards and remedies provided under the relevant Act. The question of Tribunal assuming jurisdiction therefore did not arise.

10. We, accordingly, hold that CAT had no jurisdiction to entertain OA claiming allotment or regularization of Government accommodation unless such claim was shown to be a condition of service. Nor could it assume jurisdiction when eviction action was taken against an employee for his alleged unauthorized occupation of the premises under the Eviction Act. These petitions are accordingly dismissed and Tribunal order affirmed."

11. Accordingly, there is an authoritative pronouncement of the Hon'ble Supreme Court in Union of India vs. Rasila Ram and others which has been followed by the Hon'ble High Court in Babli and another (supra) that an application for ad hoc allotment or regularization of a Government employee after the death of the allottee or his retirement or against charging of damages for unauthorized occupation imposed by the Director of Estates, if it did not relate to the conditions to the service of the employee, would not lie within the jurisdiction of the Tribunal in view of Section 15 and 19 read with Section 3 (q) of the Act. In the instant case, the prayer which are made in Sub-para (ii) and (iii) of para 8 relief clause of the OA are manifestly for allotment/regularization of the allotted government accommodation in the name of applicant No.2. The allotment of a government accommodation being not a condition of service of the applicant or even applicant No.2, the Tribunal would not have any jurisdiction, power or authority to grant this relief and entertain the application for it.

12. As regards the relief of reimbursement of amount of Rs.1,20,402/- which the applicants have paid to the respondent Director of Estate as damages for unauthorized use and occupation of the Government accommodation it may be stated that the damages were imposed and recoverable under the provisions of the Act. The determination of the damages, its recovery, or its refund are not part of any conditions of service of the applicants, so the relief prayed in para (i)



and (iii) of para 8 of the OA would also be beyond the jurisdiction, power and authority of the Tribunal to grant. The OA, as such would not be maintainable before this Tribunal, in view of the judgment of the Hon'ble Supreme Court in Union of India vs. Rasila Ram (supra) Hon'ble Delhi High Court in Babli and another (supra).

13. Learned counsel for applicant has argued that the Tribunal had entertained and has decided on merit the previous OA No.2355/97 filed by the applicants and challenge to the order of the Tribunal in writ petition No.6559/2000 was not rejected by the Hon'ble High Court on the ground that Tribunal had no jurisdiction to entertain the OA. Rather a direction was given to the respondents to dispose of the representation of the applicant by a reasoned order. It is argued that the order of the Hon'ble High Court, as such, is binding even if the OA from which the writ petition arose, was not maintainable. Reliance was placed to the judgment of Hon'ble Supreme Court in Authorised Officer (Land Reforms) vs. M.M.Krishnamurthy Chetty (1998) 9 SCC 138 in which it was held that "it is well settled that even orders which may not be strictly legal become final and are binding between the parties, if they are not challenged before the superior Courts." It is, therefore, argued that the order of the Hon'ble High Court has become final and has not been challenged before the superior Court, therefore, it is binding.

14. There is no quarrel with proposition of law laid down by the Hon'ble Supreme Court in the Authorised Officer (Land Reforms) (supra). There is no occasion for this Tribunal to decide that the previous OA No.2355/97 filed by the applicants was not maintainable before the Tribunal and the proceeding arising therefrom before the Hon'ble High Court was within or without the jurisdiction. The fact remains that the objection as to the maintainability of the OA No.2355/97 was neither raised nor was decided in the order of this Tribunal dated 13.8.98 or in the order of the Hon'ble High Court in CWP No.6559/2000 decided on 3.12.2001. The Hon'ble High Court did not decide that this

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Tribunal had jurisdiction to decide the OA. So the argument of the learned counsel for the applicant that even a wrong decision, which becomes final, is binding on the parties on the strength of judgment of the Hon'ble Supreme Court in *Authorised Officer (Land Reforms)* (supra) is not tenable. The Hon'ble Supreme Court was considering a case where the High Court had decided a case on the basis of the order of the Supreme Court which later on was reversed. The question was whether the Authorised Officer (Land Reforms) had to implement the order of the High Court or not. It was in this context that the Hon'ble Supreme Court held that even orders, which are not strictly legal, but which become final were binding on the parties and it was held that Authorised Officer (Land Reforms) (supra) had to implement the direction of the High Court. Ratio of law laid down was clearly on peculiar facts of that case.

15. Learned counsel for applicant has further submitted that the respondents have filed only a short reply and they have not rebutted the allegations made by the applicant in the OA, therefore, the Tribunal should proceed on the assumption that allegation made in the OA have been admitted by the respondents. Reliance in this regard is placed on the judgment of Hon'ble Supreme Court in *Naseem Bano vs. State of U.P.* AIR 1993 SC 2592. Since legal objection as to the maintainability of the OA before the Tribunal has been raised in the short reply and we have taken a view that this Tribunal has no jurisdiction, power and authority to entertain and decide the present OA, ⁱwe refrain from expressing any view on the other question which have been raised by the applicant.

16. The result of the above discussion we hold that this Tribunal has no jurisdiction, power and authority to entertain this OA. The OA is rejected. But the parties are left to bear their own costs.



(M.A. KHAN)
Vice Chairman (J)

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