IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(11)

O.A. No.2544/1992

Date of Decision: 17.9.93

Shri Pratihar & Others ... Petitioner

Shri M.K. Gupta ... Advocate for the Petitioner

Versus

Union of India & Others... Respondents

Shri P.P. Khurana ... Advocate for the Respondent No.2

CORAM:

The Hon'ble Mr. J.P. Sharma, Member(J)

The Hon'ble Mr. S. Gurusankaran, Member(A)

1. Whether Reporters of local papers may be allowed to see the judgement? yes
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? yes.

JUDGEMENT

This judgement was delivered by Hon'ble Mr. S. Gurusankaran, Member (A).

Briefly stated, the essential facts of the case, which are not in dispute and which are necessary for deciding the case are as follows: Applicant no.1 is the father of applicant no.2. Applicant no. 1 retired on superannuation with effect from 30.6.1985 from the office of Respondent (R for short) no.2, i.e., Government of India Press. Applicant no.1 was allotted a Type II Government quarter no. F-2202 at Netaji Nagar during

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his service. The applicant no.2 joined the service under R-1 with effect from 24.11.1980 and he is residing with his father and is not drawing House Rent Allowance from 1.4.1981. Just before the superannuation of Applicant no.1, both applicants no.1 and no.2 made separate representations dated 4.4.1985 to R3 requesting for an adhoc allotment in favour of applicant no.2 as per O.M. of the Ministry of Works and Housing dated 1.5.1981 (Annexure-A4). The latter also made an application dated 29.7.1985 through proper channel for allotment of Government quarter in his favour and the same was forwarded by R1 to R3 vide Annexure-A3. However, the request was turned down by R3 vide letter dated 18.9.1985 (Annexure-A5) stating that since the applicant no.1 was occupying a Press Pool quarter and not a general pool quarter, his request cannot be agreed to as per rules. It is the case of the applicants that this rejection is illegal, unjust, arbitrary and unternable. However, on the basis of a letter received from a Member of Parliament, R3 requested R1 vide letter dated 15.5.1986 (Annexure-A6) to direct applicant no.2 to apply in the prescribed proforma for consideration of his request and applicant no.2 sent the application dated 10.6.1986 vide Annexure-A6. However, vide letter dated 7.8.1986 (Annexure-A7), Estate Officer of R2 advised applicant no.1 that the allotment of quarter no.F-2202 in his favour was cancelled with effect from 1.9.1985 after allowing concessional period of 2 months and since he was still in occupation of the quarter unauthorisedly, he was directed to appear before him on 20.8.1986. The Estate Officer of R2 finally passed an eviction order and the eviction order was challenged by applicant no.1 before the Additional District Judge vide PPA no.54/1986.

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The case was disposed off vide order dated 20.4.1987 (Annexure-A8). In the judgement the appeal was accepted setting aside the impugned eviction order and it was ordered that till the applicant's son is given adhoc accommodation on the basis of the office memorandum, the occupation of the quarter by the appellant and his family including his son cannot be deemed as unauthorised. In this case only R2 was impleaded as respondent probably since his Estate Officer was the one who passed the eviction order. In the order, it was also indicated by the Additional District Judge that R3 has to be moved by R2. After the pronouncement of the judgement applicant no.2 made a representation dated 11.6.1987 (Annexure-A10) to R3 through R1 requesting him to consider his case for allotment of adhoc accommodation. Applicant no.1 also made a representation dated 12.6.1987 (Annexure-A11) to R3. These representations have not been disposed of so far by R3. Aggrieved by the inaction of R3 in allotting an adhoc accommodation to applicant no.2, the applicants have filed this application and prayed for the following reliefs:

(i) declare that the applicant no.2 is entitled to regularisation/allotment of Govt.accommodation;

(ii) direct the respondents to regularise the Govt. accommodation, i.e., F-2202, Netaji Nagar, Delhi in favour of applicant no.2 with effect from 1.7.1985, which is the date of retirement of the applicant no.1 with all consequential benefits, i.e., payment of normal licence fee etc;

(iii) direct the respondent No.2 to refund the excess amount deposited by the applicant no.1 on account of licence fee;

(iv) allow the costs of the proceedings;

(v) pass any other order or orders which this Hon'ble Tribunal may deem just and equitable in the facts & circumstances of the case.

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2. The applicants had also prayed for interim reliefs for restraining R2 from evicting the applicants from the quarter no. F-2202 and directing the respondents to regularise the quarter in favour of applicant no.2. Along with the issue of notice, R2 was directed not to evict applicant no.2 for 14 days, which order has been subsequently continued till date. R2 has filed reply contesting the application. R1 & R3 have neither filed reply nor are represented.

3. We have heard Shri M.K. Gupta for the applicants and Shri P.P. Khurana for the respondents and perused the papers placed before us carefully.

4. Before we go into the contentions raised on behalf of the applicants, certain aspects, which are not in dispute, have to be highlighted. It is not in dispute that the quarter allotted to the first applicant was originally in the general pool and later on was transferred to the Press pool. Thus, when the first applicant superannuated he was occupying a Press pool quarter. The applicants made their request for regularisation/adhoc allotment of quarter in favour of the second applicant and the same was turned down by the competent authority R3. Thus, the cause of action arose, i.e., the right to sue accrued to the applicants on 18.9.1985, when R3 refused their request and they have filed this application praying for regularisation of the same quarter from 1.7.1985 in favour of the second applicant, only on 29.9.1992. They have, however, averred in the application that the application is within the limitation period prescribed in Section 21 of the A.T. Act, and have not, therefore, filed any application for condonation of delay in filing this application.

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There can be no doubt at all that the cause of action arose on 18.9.1985 with the refusal letter of R 3 and cancellation of accommodation by R2 w.e.f. 1.9.1985. Again, even when the Estate Officer issued the notice on 7.8.1986, he did not approach this Tribunal. Even after the eviction order was set aside by the Additional District Judge on 20.8.1986 and there was no reply to his representation dated 12.6.1987, the applicants have chosen to approach this Tribunal only in September, 1992. Hence, there has definitely been inordinate delay in filing this application.

5. The other important aspect is regarding the orders dated 20.8.1986 passed by the Additional District Judge setting aside the eviction orders passed by the Estate Officer of R2. In that case R3 was not impleaded as a party. Even in the order, it was only stated that R3 has to be moved by R2. It is not disputed that R3 had already rejected the request of the applicants as early as 18.9.1985, which order was very much in existence, when the first applicant filed the case against the eviction orders passed by R2. These orders of R3 have not been challenged or set aside so far by any competent authority or court or Tribunal.

6. We, therefore, asked the learned counsel for the applicants to explain to us as to how this application filed in September 1992 is within the limitation period, when the cause of action arose in 1985 or in 1986 latest. The counsel could not give any satisfactory explanation except saying that the applicants were not keeping quiet and were all the time making representations. We are not impressed with this line of argument. As already observed in para 4 above,

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this application is hopelessly time barred. Not only that, no application for condonation of delay has been filed to explain as to what prevented the applicants from approaching this Tribunal in time. Even the pleadings and arguments clearly indicate that the applicant did not take effective remedial action against the cancellation of allotment orders. From 18.9.1985 till he received the letter from the Estate Officer dated 7.8.1986, 1st applicant did not take any action, which means he had acquised to the order dated 18.9.1985. Even the second applicant sending an application in response to R3's letter dated 15.5.1986 will not come to the rescue of the first applicant as the cancellation order was with respect to the allotment made to him. Even after the court order dated 20.8.1986, he sent a representation only on 12.6.1987 and after that sent representations, whenever he could get details of some other case in which regularisation or adhoc allotment has been made. It has been made abundantly clear by the Supreme Court in the case of State of Punjab Vs. Gurdev Singh ((1991 4 SCC 1) that the statuate of limitation is intended to provide a time limit for all suits conceivable. As per sections 20 and 21 of the A.T. Act and as per the ratio laid down by the Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh (ATR 1989 (2) SC 335), since the applicant is aggrieved by the letter of R3 dated 18.9.1985 rejecting the request for regularising the quarter in favour of the 2nd applicant and the cause of action arose that day, this application is hopelessly time barred and we see no justification for this delay either. Hence, on this ground alone this application is liable to be rejected.

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7. Even otherwise, we find that the applicants have prayed for mainly directing the respondents to regularise the accommodation in favour of 2nd applicant w.e.f. 1.7.1985. The quarter allotment was extended in favour of 1st applicant upto 31.8.1985 and the allotment has been cancelled only w.e.f. 1.9.1985. Hence it is not understood how it can be regularised in favour of second applicant from 1.7.1985. It is also seen that there is no prayer for setting aside the cancellation order of R2 or the order of R3 rejecting the request for regularisation. As long as these orders are not challenged or set aside, the main relief prayed for cannot be granted. It has been averred in para 4(e) of the application that the order dated 18.9.1985 is illegal and arbitrary. Assuming, but not admitting, that the order is illegal and arbitrary, as held in Gurdev Singh's case (supra) even a void order has defacto operation until it is declared to be void by a competent body or court. If an act is void or ultravires, it is enough for the court to declare it so. But, if the statutory time limit expires, the court cannot give the declaration sought for. Hence, in this case, because of the inordinate and unjustified delay beyond the period of limitation laid down under Section 21 of the A.T. Act, this Tribunal cannot declare that the order dated 18.9.1985 of R3 stating that the request of the 2nd applicant cannot be agreed to and also the order of R2 cancelling the quarter allotment in favour of the 1st applicant, are arbitrary or illegal or void. On the other hand, we find that they have become final by lapse of time and absence of timely challenge.

8. The counsel for the applicant also referred to the orders of the Principal Bench of this Tribunal in the case of Ram Avtar Gupta Vs. U.O.I (O.A.412/1992 decided on

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1.9.1992) and argued that the present case is on all fours with that case and the applicants may be granted the relief prayed for, suitably modifying the same as deemed fit by the Tribunal. In that case, it has been held that the applicants had no right to retain a Press pool quarter and we are in respectful agreement with the same. Further in that case the eviction order was passed on 15.2.1990 was challenged in 1992 itself, which is not the case here. We also find that the final order passed by the Bench in Ram Avtar Gupta's case was purely in the circumstances of the case and does not lay down any point of law to be even binding in somewhat similar cases. The question of limitation and other aspects discussed in this case have not been raised herein.

9. Even the question of discrimination raised by the applicants has to be rejected straightaway. First of all it is evident that provision of residential accommodation to the employees is not one of the essential conditions of service. It has been provided as a welfare measure and sometimes also as an official necessity for calling out employees engaged in operational duties in an emergency. However, since the administration itself has made detailed instructions for registration of requests for allotment of quarters and their actual allotment, the administfation is ordinarily bound to follow them. Realising the occassional necessity, the instructions provide for "out-of-turn" allotment also under certain conditions from the very beginning. In fact the O.M. of 1981 is also a form of out-of turn allotment only based on compassionate grounds, since the son/daughter etc., who is not in normal turn for allotment of quarters, is given the same quarter or another quarter out-of-turn only because his/her father was

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in posession of a quarter and he/she, who is also employed with the Central Government, has been shering accommodation with the father. Hence, such out-of-turn allotments can be challenged successfully only if the discrimination is proved beyond doubt. The applicants suffered an order dated 18.9.1985. The orders dated 25/28.5.1990 and 1.4.1991 (Annexure-A13 colly) in favour of one T.S. Rawat and one Ms. Maya Chowdhry respectively have been passed by R3 more than 5 years after the order of refusal passed in the case of the present applicants. That cannot give a fresh cause of action or make the limitation to run afresh. Further, from these orders, we can only gather that some out-of-turn allotments have been made in specific cases depending upon the circumstances. That is the discretion vested in the respondents by the instructions. Apart from the fact that this case is hopelessly barred by limitation, no sufficient details have been given even to come to prima facie conclusion that the cases of T.S. Rawat and Ms. Maya Chowdhary are exactly on all fours with the present case, since such out-of-turn allotments can be made even on other grounds of serious ~~ill~~-health of family members, necessity for immediate medical attention etc. discretion has been exercised arbitrarily.
or the/Since we are rejecting the main relief of regularisation of allotment, we cannot consider the relief for refund of over-payment. We also do not find any justification for U.O.I being impleaded through Secretary, Railway Board, as Railway Board are in no way concerned with the allotment or regularisation or eviction in the present case.

10. In the result, we find no merit in this application and accordingly we dismiss the same. The interim order passed by this Tribunal on 30.9.1992 and continued till date is vacated.

(S. GURUSANKARAN)
MEMBER(A)

(J.P. SHARMA)
MEMBER(J)

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11. Before we part with this case, we may observe that the orders of the Additional District Judge are not under challenge before us in any manner. With the setting up of the Central Administrative Tribunal under the A.T. Act, 1985, Civil Courts have no jurisdiction over service matters of Central Government employees. It is nobody's case that allotment and cancellation of allotment of quarters is not a service matter. In the case of Rasila Ram Vs. U.OI (1989(2) SLJ (CAT) 342) it has been held by a Full Bench of this Tribunal that the eviction proceedings initiated against Central Government employees under the Public Premises (Eviction of unauthorised occupants) Act (PPE Act for short) falls within the purview of CAT. It has also been held in that case that the employee aggrieved by the cancellation of allotment orders can approach CAT, but once he goes before the Estate Officer, he must seek his remedy there. After the Estate Officer has passed his order, the employee, if he is still aggrieved, can approach CAT or file a case before the District Judge under Section 15 of the PPE Act. It was further held that after the disposal of the case by the District Judge, he can approach CAT. Even though the above orders of the Full Bench have been stayed by the Supreme Court, as has been held by a Full Bench in the case of Ganga Ram Vs. UOI (1989(2)SLJ(CAT)342) the stay orders in the case of Rasila Ram is not a declaration of law. Hence, the orders of the Full Bench are binding on the Tribunals. While it has been held by the Full Bench in Rasila Ram's case that the applicant can approach the court of the District Judge against the eviction orders passed by the Estate Officer under section 15 of PPE Act, it has nowhere been laid down that in such a case involving eviction, the District Judge can deal with purely service matters like allotment and

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cancellation of allotment of quarters in view of the clear provisions of the A.T. Act, 1985 under section 28 and 29. In this connection we may refer to the judgement of the Bombay High Court in the case of Ishwarbhai Jaganji Naik Vs. Returning Officer (1991 (1) SLJ (Bombay H.C.) 36). It was a case of election petition and in that case a question arose as to when the petitioner had discontinued Government service w.e.f. 4.1.1988 and/or whether the petitioner had voluntarily retired w.e.f. 3.10.1989. Even though it was a question of fact and the out come of the same had a direct bearing on the election petition, the High Court held that civil courts have no jurisdiction over service matters on question arising directly or incidentally and hence it would normally follow that a decision on this question given by CAT must be taken as decisive. Following this ratio, the Government employees can approach the court of the District Judge under Section 15 of the PPE Act against the eviction orders passed by the Estate Officer, the District Judge has to confine himself to deciding upon the validity of the eviction order passed and he cannot go into the question of cancellation of allotment orders or allotment order to be passed, which are purely service matters. Further, no order has been passed against R3, who was not at all impleaded, but who was the necessary and proper party and who only can allot a quarter from general pool. In any case, this application is neither against the orders of the Additional District Judge nor for its implementation.

Gurusankaran

(S. GURUSANKARAN)
MEMBER(A)

Sharma

(J.P. SHARMA)
MEMBER(J)

17.9.93

mr.

Pronounced by me.

Sharma (JM) A.
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