

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.371/93
M.A.No.4062/94

New Delhi this the 2nd Day of March, 1995.

Hon'ble Mr. B.K. Singh, Member(A)

Shri Surender Kumar Goel,
S/o Sh. Jagdish Sharan Goel,
employed as Postal Assistant,
Nanakpura Post Office,
New Delhi-21.

2. Shri Jagdish Sharan Goel,
S/o Sh. Rameshwar Dass,
R/o Qr.No.D-32, Moti Bagh-I,
New Delhi-21.

Applicants

(through Sh. Sant Lal, advocate)

versus

1. Union of India,
through the Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan, New Delhi-1.

2. The Chief Postmaster General,
Delhi Circle,
Meghdoot Bhawan,
New Delhi-1.

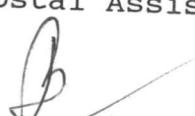
Respondents

(through Sh. M.K. Gupta, advocate)

delivered by ^{ORDER} Hon'ble Sh.B.K. Singh, Member(A)

This O.A.No.371/93 has been filed against
the orders contained in letter Nos. D-8(1) dated
17.12.92 and Bldg/Qr.-Cancel-47/92 dated 29.1.1993.

The admitted facts of the case are that the applicant No.2 was allotted Postal Pool Quarter No. D-32, Moti Bagh-I, New Delhi-21. He retired from government service as Assistant Postmaster (LSG) Sarojini Nagar on 30.06.1992. Applicant No.1 is the son of applicant No.2. He joined as a Postman on 3.7.1982 and was promoted as Postal Assistant on 24.6.1991.



The applicant No.1 submitted an application on 8.7.1992 for allotment/regularisation of the said Postal quarter in his name from the date of retirement of his father. This is annexure A-3 of the paperbook. Memo No.BDG/Qr-Cancel/47/92 dated 23-7/3-8-92 was issued from the office of Chief Postmaster General Circle New Delhi cancelling the allotment of the said quarter standing in the name of applicant No.2 with effect from 1.11.1992 i.e. 4 months after his retirement. This was followed by a letter from the office of Senior Superintendent of Post Offices letter No.BDG/1-49/92-93 dated 14.12.1992 informing the applicant No.1 that his request for regularisation has since been rejected by the competent authority. This is annexure A-1 of the paperbook.

Aggrieved by these two orders, one from the office of Chief Postmaster General and the other from the office of the Senior Superintendent of Post Offices, the applicant filed this O.A. on 15.2.1993. An interim direction was issued suspending operation of the two orders.

The reliefs prayed for are:-

(i) to set -aside the impugned orders dated 17.12.92 and 29.1.1993 (Annexures A-1 & A-2);

(ii) to direct the respondents to regularise the allotment of Postal Quarter No.D-31, Moti Bagh-1, New



Delhi in favour of applicant No.1 with effect from 1.11.1992 i.e. the date of cancellation of allotment of applicant No.2; and

(iii) to direct the respondents to release/refund a sum of Rs.1200/- deducted from the DCRG of the applicant No.2 on account of this quarter.

A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for.

I heard the learned counsel for the parties and perused the record of the case.

The learned counsel for the applicants argued that the applicant No.1 fulfilled all the qualifications needed for purposes of regularisation and that in certain cases relaxation had been granted by the competent authority to such persons who did not fulfil one or two conditions prescribed for regularisation of the quarter and that if relaxation was given to some and denied to the present applicant, it would be violative of Articles 14 & 16 of the Constitution. It is not denied that the applicant filed an application after the retirement of his father. He retired on 30.06.1992 and the application was filed in July, 1992. The main plank of the argument that he fulfilled the eligibility



criteria is based on instructions contained in the Directorate of Estate, Ministry of Works and Housing O.M.No.12035(7)79/Pol-II dated 1.5.1981 which was circulated by the Director General P&T New Delhi with the letter No.2-2/80-NB dated 25.6.1981. This has also been annexed as Annexure A-6 of the paperbook. It was further argued that applicant No.1 had been residing in the said Postal Quarter with effect from 1.5.1989 i.e. for over three years prior to the date of retirement of his father and has not been drawing HRA since then. It was further pointed out that Senior Postmaster of Sarojini Nagar, New Delhi who is the drawing and disbursing officer of applicant No.1 vide his letter dated 26.8.1992 had granted a certificated to this effect. It was argued that the applicant No.1 submitted his representation for regularisation of allotment of the said quarter in his favour on 8.7.1992 i.e. within eight days of the retirement of his father and alongwith this application form he submitted the necessary documents also. It was further pointed out that the competent authority has not given any reason for rejection of the genuine and legitimate request of the applicant for regularisation of the quarter occupied by applicant No.2 i.e. his father. It militates against the fair play and justice. In this connection, it was pointed out that one Shri Ghanshyam Gursahaney who had not been drawing H.R.A. for 35 months i.e. one month less than the prescribed condition of three years was allowed relaxation of this condition. In his case, it is admitted that he filed a case in the court of law and while granting the relaxation he was asked to withdraw the case from the court of law.

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The learned counsel for the respondents in his counter reply has rebutted the arguments advanced by the learned counsel for the applicants. The applicants have filed a rejoinder reiterating the same facts as narrated in the O.A.

After hearing the rival contentions and going through the records, I find that the main ground taken by the respondents in their reply and also in their argument was that the applicant No.1 does not satisfy the requirement of three years stay with applicant No.2 and that his name also was not included in the ration card prior to 23.2.1990 and as such the contention raised by the applicant that he is residing with his father i.e. applicant No.1 since 1.5.1989 cannot be sustained in the eyes of law. The irresistible presumption would be that he was not residing with his father for three years on the date of his superannuation and that is the reason why the competent authority rejected the application. It was further pointed out that the applicant No.1 was directed to vacate the quarter vide letter No.BDG/Qr.-Cancel-47/92 dated 29.1.1993 within 15 days positively and also directed to deposit the damage charges. The respondents have filed a copy of this letter dt. 29.1.1993 as annexure M-1. It was further pointed out that his name does not find place in the CGHS card. That also supports the contention that he was not living with his father and other family members. It was further pointed out that he started living with his father only with effect from 23.2.1990 when his name was included in the ration card. This was in order to enable him to seek regularisation of the government

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accommodation occupied by his father in his name. The learned counsel for the respondents argued that in the ration card only the name of applicant No.1 and his wife was included till 22.2.1990. It was further submitted that a specific enquiry had been made in this regard from the office of Food and Supply Officer, Circle No.38, Laxmi Bai Nagar, New Delhi. The correspondence made in this regard and the report obtained from the said Food & Supply office on 28.11.1994 has been annexed as annexure M-2 to the counter reply. A perusal of the said report/certificate dated 28.11.1990 goes to show that names of two adults i.e. applicant No.1 and his wife were added on 23.2.1990 and one minor i.e. daughter of applicant No.1 was included on 13.4.1992. The only inference that can be drawn is that these names were included only when the applicant started residing with his parents and two names became four with the addition of the son and his wife and the fifth name that is of the minor child was included on 30.4.1992. From these facts, the learned counsel for the respondents argued that the contention of the learned counsel for the applicant that he was residing in the quarter from 1989 cannot be sustained. If he was actually residing from 1989, the learned counsel for the respondents argued that his name should have figured in the ration card and also in the CGHS card. In a place like Delhi if not for rice and wheat atleast for sugar one needs a ration card because there is great deal of difference in the market price of sugar and that of sugar available through a ration card. The learned counsel further pointed out that there is no declaration on record to show that he was living with his father from 1989. The



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affidavits filed by the neighbours are dated 30.6.1992 and these are after thought. These solemn affirmation cannot rebut the fact that his name did not find place in the ration card and the CGHS card and if he was actually living, his name ought to have been included in both the ration card and CGHS card. These are vital documents in the eyes of government and if one is a part of the family and living with his parents while serving the government and not drawing HRA, the name will find a place in both the ration card and CGHS card. The enquiry also made by the respondents goes to show the same fact that he was not living with his father and this is also supported by the vital documents like ration card and CGHS card. Merely not drawing HRA will not entitle the applicant to get the quarter regularised in his name.

After hearing the rival contentions, I find that the facts and circumstances of the case is that the applicant started living with his father with effect from 22.3.1990 and not from 1989. It was only from this date when the period can be reckoned and since the father retired on 30.6.1992, the period works out to only two years and four months. This is certainly less than three years. In the exemplar cited by the learned counsel for the applicants that is of Shri Ghanshyam Gursahaney, the period involved for relaxation was only one month and in the instant case, the period involved is practically eight months.

The allotment and cancellation of a quarter are not strictly within the domain of the Tribunal. It is strictly within the domain of the executive. The competent authority is empowered to allot a quarter or

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to cancel it or to regularise it or not to regularise the same if the conditions are not fulfilled. The power of relaxation also vests in the competent authority and courts are not competent to issue any direction to the competent authority to relax the eligibility criteria in respect of individuals. If a particular condition is causing hardship, the competent authority must be approached in this regard to waive that qualification or condition but courts cannot interfere because these matters are strictly within the domain of the Executive. This has also been held in case of J. Ranga Swamy Vs. Government of Andhra Pradesh & Ors. reported in AIR 1990 SC 535 that the relevancy and suitability of a criteria or a qualification is not for courts to consider and assess. In case of any hardship in that respect, appropriate authorities might be moved and courts must refrain from expressing their opinion in such matters. Thus, the rules regarding allotment/cancellation/regularisation of a quarter have always been framed by the competent authority and they are required to adhere to these rules and since they are only competent to relax the rules, the court is not competent to issue any direction in this regard. Thus, the O.A. fails and is dismissed as such, leaving the parties to bear their own costs.

Interim order passed on 17.02.1993 is also vacated.

/vv/


(B.K. Singh)
Member(A)