

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

T.A. No. 172 of 1986.

Jagdish Shanker Kulshrestha Applicant/
appellant.

Versus

Union of India & others Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

This is a transferred case under section 29
of the Administrative Tribunals Act.

2. The applicant filed a suit in the Court of
Munsif City, Bareilly which was dismissed and against
which the applicant filed an appeal in the Court of
District Judge, Bareilly which, by operation of law,
has been transferred to this tribunal.

3. The applicant, who was a Health Inspector,
posted at Bareilly, was allotted quarter No. M-2
for the residential purpose in the year 1970. Rent
of the house was fixed as Rs. 19.05P and the electricity
charges as Rs. 3/- and as such he was required to pay
Rs. 22.05P which was deducted from his salary. It
appears that the respondent no. 2 wanted to enhance the
rent illegally, that is why the applicant filed the
suit.

4. The respondents have resisted the claim
of the applicant and have pointed out that in the
year 1970, the house was wrongly classified and
instead of Type-IV, it was entered as Type-I-A,
though it is a matter of fact, it was a type-IV
house. In the year 1982, when the Senior Divisional
Engineer made an inspection, he found that the
disputed house is of higher classification and the
plinth area of the quarter in question is equivalent

to a Type-IV quarter and, therefore, the rent of the quarter should have been Rs.48-85P. per month and that is why an order was passed by the Senior Divisional Engineer requiring the applicant to pay a sum of Rs.6,825-54P for the period 14.12.70 to 30.11.72 whereas only a sum of Rs.2605-42P had been deducted as rent from his salary and that is why it was ordered that a sum of Rs.4220-12P/more will be deducted from the salary of the applicant. The Court of Munsif came to the conclusion that it was fully proved that the house, which was allotted to the applicant, was TypeIV and the other amenities were also available in that house and the applicant was not entitled for that house and the house in question was wrongly allotted to the applicant.

No document, whatsoever, has been produced by the applicant to show that the classification of the disputed house was rightly done. The learned Munsif also came to the conclusion that there was a mistake in classifying the house and the Sub-Divisional Engineer has rightly passed the order that the applicant was liable to pay the rent at the rate of Rs.48-85P per month. The learned counsel for the applicant contended that the house was allotted in the year 1970 and a particular rent Rs.22-05P p.m. including the electricity charges was fixed and the respondents have no jurisdiction to pass an exparte order to fix the rent in this manner. A forged inspection was made and after inspection mistake was discovered. It is always for the Administration to rectify the mistake and for rectification of such a mistake, it was not necessary that any certain proceeding should have been taken and this patent fact is known to everyone and the applicant cannot get benefit of the same and as such the findings,

recorded by the learned Munsif, do not suffer from any error of fact and law but so far as the amount of rent is concerned and as the Government was under mistake of fact, the other party cannot be made to suffer. In case, they had apprised him of the fact from the very beginning that it is a Type-IV house and he refused to pay this particular amount of rent, then he would have been liable to pay such a particular amount of rent and as such he is not liable to pay the enhanced rent for the year 1970. He will be liable to pay the enhanced rent from the date when the mistake was discovered and an order was passed in this behalf i.e., in the year 1982. Accordingly the suit of the applicant is partly decreed to the effect that the applicant was required to pay the enhanced rent from the year 1982 when the mistake was discovered and the order was passed. In case any amount has been recovered from 1970 to 1982, the same shall be refunded to the applicant. With these observations, the application stands disposed of. No order as to costs.

MEMBER (A)

DATED: JULY 28, 1992

(ug)

VICE CHAIRMAN,