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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1745 of 1992

Khalifa Prasad Applicants.

Versus

Union of India & ors. Respondents.

Hon'ble Mr. A.K.Sinha, Member-J

The applicant herein who is working as Mali in Regional Labour Institute, Sarvodaya Nagar, Kanpur; a grade IV employee, has prayed that the impugned order dated 13.1.1992 (Annexure A-2) passed by respondent No. 1 and appellate order dated 26.8.1992 (Annexure A-5) passed by respondent No. 2, whereby quarter No. type I/5 was allotted to respondent No. 4 rejecting the prayer of the applicant as also his appeal dated 14.2.1992, be quashed and the respondents be directed to allot the quarter in question to the applicant immediately besides cost.

2. The undisputed facts are that the applicant is working as permanent class IV employee on the post of Mali, he is senior to respondent No. 4 Shri Hari Narayan Yadava, Labour Assistant about 6 years & 4 months. In 1991, type I quarter had fallen vacant and applicant applied for the same before the respondent No. 1 for allotment of the quarter in his favour. Respondent No. 4 also applied for allotment of the quarter. It is alleged that respondent No. 1, ignoring the relevant provisions and claim of the applicant, allotted the said quarter to the respondent No. 4 by the impugned order dated 31.1.1992 (Annexure A-2). The applicant preferred an appeal before respondent No. 2 on 14.2.1992 and when no reply was received, he filed

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O.A. case No. 810/92 which was finally disposed of with a direction to the respondents to dispose of the appeal on merit in accordance with law with speaking orders, vide Annexure A-4.

3. Respondent No. 2 decided the appeal of the applicant by the impugned order dated 26.8.92 (Annexure A-5) without considering the Rules and hence, the applicant has filed this application under Section 19 of the Administrative Tribunal Act, 1985 (herein after called the Act).

4. The respondents have appeared on notices and filed their written statement and, on amongst other grounds, while repudiating the claim of the applicant stated that the order dated 31.1.1992 passed by the respondent No. 1 by means of which type I quarter was allotted in favour of respondent No. 4 and was in accordance with Rule enforce in the respondent's department and the Rules regarding allotment of Government residence under the Administrative Control of the Directorate General Factory Advice Service and Labour Institute Rules 1973 are applicable in this case and according to the said Rule, the eligibility for type of quarter is decided on the basis of 'emoluments' drawn by an Officer as on 1st January each year for all allotments occurring in a year. According to the respondents, type I quarter is allotted to an employee whose salary is less than Rs. 950/- per month. It is submitted that both the applicant and the respondent No. 4 are class IV employees under the respondents and it is also admitted that a type I quarter which fell vacant was allotted to respondent No. 4 since the applicant was not entitled for the said quarter at

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the time of the above allotment, because his basic pay was Rs. 954/- (including Rs. 14 as stagnation increment) as on the 1st day of the allotment year 1992. It is stated that infact, the applicant was drawing Rs. 954 including stagnation increment from the previous allotment year, 1991 and was, therefore, not entitled for type I accommodation.

5. The learned counsel for the respondents further submitted that vide office memorandum No. 7(20)/E III/87 dated 7.6.1990 of the Ministry of Finance, stagnation increment drawn by an employee is also counted as basic pay for all purpose and thus, counted as 'emoluments' along with basic pay and in this connection, they have filed a photo copy of the said Rule which is Annexure CA-1&2 respectively.

6. On all these grounds, it has been sought to be urged that this application has got no merit and the same be dismissed.

7. The only question that arises for consideration is whether the applicant is entitled to the relief claimed!

8. So far the facts are concerned, there is no dispute. It is an admitted fact that the applicant is - drawing basic pay Rs. 954/- including Rs. 14 as stagnation increment, whereas, the respondent No. 4 is drawing basic pay Rs. 940/- per month. It is also an admitted fact that the applicant is senior to the respondent No. 4 and both of them are grade IV employees. Both the applicant and respondent No. 4 are employees

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under the respondent No. 1 and they are governed by their Rules which is known as allotment of Government residences under the Administrative Control under the Directorate General of Factory Advice Service and Labour Institute Rules 1973. These Rules are known as SR 317-Y-1.

9. The definition of 'emoluments' mentioned in SR 317-Y-2 (vide Annexure CA-2) definitions (E) means emoluments as defined in fundamental Rule 45-C but excluding the compensatory allowances. Under FR 45-C, 'emoluments' means:-

- (i) "Pay
- (ii) Payments from general revenues and fees, if such payments or fees are received in the shape of a fixed addition to monthly pay and allowances as part of the authorised remuneration of a post;
- (iii) Compensatory allowances other than travelling allowances (Childrens Education allowances, Uniform allowances);
- (iv) Exchange of compensation allowance
- (v) Pension v.....;
- (vi) In the case
- (vi) In the case of a Government servant under suspension and in receipt of a subsistence grant;

It does not include allowances attached to the Indian Police Medal."

10. The applicant has filed Annexure A-1 which is the photo extract of Swamy's Establishment and Administration Act Chapter 67 in which under the definition item 'C' "emoluments" means emoluments as defined in FR 45-C but ignoring compensatory allowance. In the case of an officer who is under suspension the emoluments drawn by him on the first day of the allotment year in which he is placed under suspension, or, if he is placed under the suspension on the 1st day of the allotment year, the emoluments drawn

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by him immediately before that date shall be taken as emoluments."

11. The learned counsel for the respondents has drawn my attention towards Annexure CA-1 which is the office Memo dated 7.6.1990 of Ministry of Finance and in paragraph 4 in the said memorandum it has been clearly mentioned

"that it has been decided that stagnation increment shall be treated as pay for all purposes other than for fixation of pay on promotion. This will have the effect that stagnation increment will be taken into account for all purposes like DA, CCA, HRA and retirement benefits"

These orders will take effect from 1.1.1986.

12. Thus, on consideration of the pleadings of the parties and the relevant documents annexed thereto and the submissions of the learned counsel of the parties as also the Rejoinder filed by the applicant, it is obviously clear that for the purpose of reckoning the basic pay of the applicant, the stagnation increment of Rs. 14/- has got to be taken into consideration for determining his "emoluments" for the purpose of allotment of quarter and if that is taken into consideration, the basic pay of the applicant comes to Rs. 954/- whereas the basic pay of the respondent No. 4 comes to Rs. 940/- per month and in that view of the matter, the applicant becomes disqualified for allotment of type I quarter because his salary is more than Rs. 950/- and he was entitled to type II quarter.

13. In that view of the matter, and considering the facts and the relevant provisions of the Rules

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in this regard, to my mind, it is obviously clear that the impugned orders passed by the respondents rejecting the claim of the applicant as regards allotment of type I quarter do not suffer from any infirmity and the impugned orders passed do not called for any interference by this Tribunal.

14. In the result, I do not find any merit in this application and the same is accordingly dismissed, but, in the circumstances, there will be no order as to cost.

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Shri Kumar Satho.
Member-J
** 9/9/93.

Allahabad Dated: 9.9.1993

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