

Withholding of
yes (Jud)

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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXX~~

O.A. No. 498 of 1990.
~~XXXXXX~~

DATE OF DECISION 27.6.1991

Shri Prabhakar S. Bapat Petitioner

Party-in-persons Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

P.M. Raval Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi Vice Chairman

The Hon'ble Mr. S. Santhana Krishnan Judicial Member

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? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

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Shri Prabhakar S. Bapat,
Sr. Supdt. of Post Offices,
Vadodara West Dn., Vadodara
Now Vice Principal, Postal
Training Centre,
Vadodara - 390 006.
(Party-in-person)

.. Applicant

Versus

1. Union of India,
Through,
The Secretary,
Postal Board, Dak Bhavan,
Parliament Street,
New Delhi - 110 001.
2. Director General (Postal),
Department of Posts,
Ministry of Communications,
Dak Bhavan,
New Delhi - 110 001.
3. Chief Postmaster General,
Gujarat Circle,
Navrangpura,
Ahmedabad-380 009.
(Advocate - Mr. P.M. Raval)

.. Respondents

O.A. No. 498 of 1990

J U D G M E N T

Dated : 27/6/91

Per : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

In this application under section 19 of the Administrative Tribunals Act, 1985, two major points for decision have arisen. Can a Government quarter attached to a post be forced upon the incumbent of that post compelling him to occupy the quarter? If he does not occupy that quarter and arranges another house, can House Rent Allowance be refused to him on the ground that he does not occupy the quarter attached to his post and allotted to him?

2. The applicant has taken us through a long narration of the antecedents of his grievance from

which the salient facts for deciding this case can be called as follows :-

The applicant was posted at Sr. Supdt. of Post Office, Vadodara (West) from 29.7.1986 to 1.4.1990 and thereafter, he has been deputed as Vice Principal, Postal Training Centre, Vadodara. He has occupied rented premises because quarters allotted to him are not convenient for him to occupy. His daughter is attending some Training Class and the quarter has been located in an area which is difficult to travel to and fro. In March, 1987, after inspection of the Member Development Board, when some quarters were found to have been un-occupied for long periods a decision was taken to allot them to Gazetted Officers. By order dt. 26.6.1987 Director Postal Services, Vadodara, attached some quarters to specific officers by memo of that date. In that memo, the Senior Superintendent of Post Office, Vadodara (West) was attached with a quarter vide entry at item 3 therein. Quarter No. 7 of Block D-2 of Type - IV was attached to the applicant and House Rent Allowances was ordered to be discontinued from 3.7.1987 by Memo annexed at Annexure 4. These orders at Annexure 5 and 6 are challenged by the applicant. The applicant represented against this decision but it was turned down by the Director Postal Services, Vadodara. The applicant thereupon approached the Post Master General, but on 20.11.1987, Director Postal Services, Vadodara, intimated Post Master General, Ahmedabad's decision that he found that the decision of attaching the quarter to the applicant's post was justified; but the decision was deferred for implementation for three months. Thereupon, the applicant requested that the quarter be permitted to be shared with another Shri H.M. Dabav, but this

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was also turned down by the Director Postal Services, Vadodara, by memo dt. 20.1.1988, and again the Post Master General intimated on 8.3.1988 that unless all the Type - IV quarters were occupied, the applicant's request could not be granted. Inspite of the lapse of more than six months and inspite of reminders dated 5.5.1990 and 27.7.1990, no reply has been given to the applicant's representation dt. 19.1.1990 for which reason he has filed this case.

3. There is a clear distinction between the allotment of the quarter attached to a post to the incumbent of that post to occupy that quarter and the allotment of a quarter not attached to the post. In the former case exigency of work requires the incumbent to be available in the office premises round the clock conveniently, or where it is convenient for the public to find him accessible not only during office hours, but at all time of the day or night, or any other reason involving administrative exigencies. If the Government in the relevant matter decides that the quarter be attached to a post, it becomes obligatory on the part of the incumbent to occupy that accommodation, and he has no option in the matter unless he obtains permission from the competent authorities, if there is any such provision for it. For other quarters, it is necessary that the application should be made for allotment and Rules showing which place the Government quarters are available. On application they are allotted according to entitlement which also is specified in terms of pay or pay scale. House Rent Allowance is not allowed to be drawn unless quarters are not allotted inspite of application according to entitlement or according to scope left for allotment of quarter below entitlement

to the extent specified in the Rules.

4. The challenge of the applicant arises from his contention that the quarter attached to his post has been arbitrarily decided to be attached to it; that the quarter so allotted is of Type - IV while the applicant's entitlement is for Type - V; that the applicant has no obligation to occupy a quarter of a Type which is below that of his entitlement; that accordingly, the respondents have no right to withhold House Rent Allowance to him; and that there is no quarter according to his entitlement offered to him nor attached to his post.

5. The respondents have not filed any reply and their written submission was filed giving only limited assistance to our resolving the merits of the case. It is not disputed that the house in question was attached to Senior Superintendent, Postal Services and the House Rent Allowance has been withheld only after refusal by the applicant to occupy the house attached to the post in question. By the circular dt. 19.7.1976 annexed at Annexure A-20 by the applicant, the following decision was communicated from Director General, Post & Telegraph, to all the heads of Postal/Telecom. :-

"In view of this decision, all orders attaching quarters to various posts in the P&T Departments automatically stand cancelled with effect from 9.9.1975 and all officers occupying such attached to post quarters will be treated on par with other Government servants who are occupying quarters in the general pool pending further orders and decision regarding attachment of quarters."

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After a review the posts to which quarters have to be attached were brought out in Annexure A-1 of this circular in item 3 thereof. Supdt. of Post Office at each station have been included in such posts to which quarters are attached. By the impugned orders and by the disposal of representation dated 14.4.1987, the competent authorities have considered it perfectly justified to attach the quarter to the post the applicant is holding. Whether a quarter should be attached to the post and whether the **particular** quarter allotted to the applicant should be attached to the post of S.S.P. have been examined and found justified and the term for implementation of the decision has even been extended to avoid causing inconvenience to the applicant. This matter is within the administrative domain of the competent authority and we find no circumstance of arbitrariness or malafide, justifying any interference with it. We, therefore, must hold that the decision of attachment of quarters in question to the post of Senior Superintendent Postal Service and to its incumbent the applicant is competent and justified.

6. The second question is whether the applicant is entitled to refuse the quarters attached to his post on the ground that he is entitled to Type V quarter and the quarter allotted to his post is Type IV. There is no dispute that the quarter allotted and attached to the post is of Type IV and that no Type V quarter is constructed or available. It is also admitted by the applicant that he is working in the pay scale of Rs. 3000-4500 from 26.5.1986. According to S.R. 317-B5 at page 388 of F.R.S.R. compilation by Swamy (Part-I) this would entitle the applicant to Type IV quarters.

The applicant has taken the plea that his pay has not been properly fixed. The applicant says that his average pay works out to Rs. 3,925/- which entitles him to Type V. He has shown the calculation at page 78, which is as under :-

Grade : IPS Group A Senior Class I

Scale : 3000-100-3500-125-4500

Formulae :

Average Cost = Minimum + (Maximum-Minimum) x
(3/4 - x/60) where x is length of T/S minus 5

Average Cost of therefore

3000 + (4500-3000) (3/4 - x/60)

3000 + (1500) (37/60) = 3000 + (25x37) = 3000 +
925 = 3925

The respondent has rightly stated that S.R. 317 B-5 is subsumed under the portion of 317 B-1 which is "Entitled Allotment of Government Residence General Pool" on page 383 and this Rule is not therefore, applicable to Vadodara.

7. While the applicant may have some case about his entitlement of Type V quarter on the basis of average pay of Rs.3925/-, it appears to us that this line of reasoning is not applicable to the facts of this case. This reasoning would have some relevance if it were a question of allotment of quarter to the applicant and if the quarter according to entitlement were refused to him, and a quarter of lower category was given to him. In that case the applicant may have the right of refusing such quarter without being deprived of House Rent Allowance, provided Government had no right to allot him a quarter of lower category, the refusal of which would carry with it the consequence

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of refusal of House Rent Allowance. However, when a quarter is attached to a post, and this decision is within the administration to make of competent authorities, the respondents have rightly taken the plea that under Rule 4 of the O.M. dt. 27th November, 1975 under S.R. 312 when a residence is allotted under Rule 311, it shall be considered to be deemed to be occupied during the period of his incumbency and on that deeming condition 4 of the memo is applicable to the applicant which causes him to losing his eligibility of House Rent Allowance. Whether the applicant's salary is to be computed on the basis of cadre, salary drawn @ Rs. 3000/- or according to his entitlement of Rs. 3925/- as pointed out by the applicant would not become relevant for the purpose of the attachment of the quarter to a post. In this case not only the competent authority attached the quarters but to show consideration to the applicant have deferred the due date by three months not to leave the applicant with any reasonable grievance about the notice for it.

8. The last challenge is on the ground of the applicant stating that the Postmaster General is not competent. This plea has been taken ^{by} the applicant ^{and} are related in the written submission and does not find a place in the application nor can this be regarded as a part of the rejoinder because it is not in reply to the affidavit in reply or any submission on behalf of the respondents.

9. In the result, we do not find that the applicant has made out any satisfactory case for granting him relief he has prayed for. The respondent's action in refusing payment of House Rent Allowance, and attaching the quarter to the post of which he is incumbent appears to be in

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confirmity with the relevant rules. We see no reason for interference with the impugned orders. The application is accordingly rejected. There shall be no order as to costs.


(S. SANTHANA KRISHNAN)
JUDICIAL MEMBER


(P. H. TRIVEDI)
VICE CHAIRMAN