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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:
CUTTACK.

ORIGINAL APPLICATION NOS.153 of 1991.

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ORIGINAL APPLICATION NO. 167 of 1991.

Date of decision:- 6th December, 1991.

In OA.153/91.

Kum.Neena Sinha & Ors. ... Applicants.

Versus,

Union of India & Ors. ... Respondents.

In OA.167/91.

Hrishkesh Chandra Ghosh & Ors. ... Applicants.

Versus,

Union of India & Ors. ... Respondents.

For the Applicants:-

M/s.J.Das, B.S.Tripathy,
K.P.Misra, S.Mallik,
B.K.Sahoo, Advocates.

For the Respondents:-

Mr.Ganeswar Rath,
Standing Counsel(Central).

C O R A M :

THE HON'BLE MR.N.SENGUPTA:MEMBER(JUDICIAL).

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1. Whether reporters of local papers may be allowed to see the Judgment ? *yes*
 2. To referred to the Reporters or not ? *yes*
 3. Whether Their Lordships wish to see the fair copy of the Judgment ? *yes*

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J U D G M E N T .

N. SENGUPTA: MEMBER (J) .

Since common questions arises in these two cases they are being disposed of by this common Judgment. In O.A.158/91 the applicants No.1 and 2 respectively are Programme Executive, Commercial Broadcasting Service and Senior Announcer, Artist Broadcasting Service of All India Radio, Cuttack. O.A.167 of 1991 is also an application by two persons, applicant No.1 is clerk Gr.II in the commercial Broadcasting Service and Applicant No.2 is working as Transmission Executive of All India Radio(AIR), Cuttack.

2. Most of the facts are admitted they may be set out at the beginning . For the All India Radio and Doordarsan staff at Cuttack some residential quarters are available. Under S.R.317(B) Rules relating to allotment of residential accommodation have been framed by the Ministry of Information and Broadcasting Government of India. Prior to the filing of these two applications, two other applications, No.OA.455/90 and O.A.496/90, were filed, these also the questions for consideration related to allotment of quarters. Those two applications have in the mean time been disposed of as the applicants stated that they were given the relief that they prayed for during the pendency of those two applications. The common case of the applicants in both the cases is that by an order of allotment the Station Director, the third respondent in both the cases,

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dtd.30.11.90/3.12.90 allotted quarters. The applicants in O.A.158 were allotted 'C' type quarters and those in O.A.167 'B' type quarters. The applicant in O.A.155/90 and O.A.496/90 had challenged the allotment of some quarters to others including the applicants of the present two applications, though indirectly. In those two cases i.e.O.A.458 and 496 of 1990 an interim order was passed which was to the effect that allotment of staff quarters would be subject to the result of those two cases. On 12.12.90 an office order was passed which informed all the staff members who were allotted quarters that their allotment order was subject to the final decision of this Tribunal in the case filed by All India Radio Motor Drivers' Association. After that on 10.5.91 the impugned order cancelling the allotment of the quarters infavour of the two sets of applicants was passed.

3. Applicant No.1 in O.A.158 of 1991 came on transfer from A.I.R., Ranchi and joined at Cuttack on 7.5.90. She was putting up in the quarters of her father who was then the Station Director. Her father retired and thereafter C/14 quarters was allotted to her by Respondent No.3. The applicant No.2 in that case is the Senior Announcer and has been allotted 'C' Type accommodation which is under his occupation and that he is a shift duty staff. The two applicants of O.A.158/91 have questioned the propriety of the order dtd.12.12.90 by saying that as the original applications 458 and 496 of

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of 1990 related to 'B' type quarters, and as they are entitled to 'C' Type quarters, the interim order passed in those two cases had no bearing on the allotment of 'C' type quarters and as such that order dtd.12.12.90 was passed on misconception.

4. On 10/20.5.91 a revised order of allotment was passed by Respondent No.3. In this revised order none of the applicants was allotted a quarters and they are under a threat of eviction for which a notice was issued on 10th May,1991. The two sets of applicants have questioned the justification of allotment of quarters in favour of the 4th and 5th Respondents of the two cases, they have averred that they (applicants) have earlier 'Priority dates' than respondents no.4 and 5 of their respective cases, therefore, they should have been allotted quarters in preference to those respondents. The other facts averred by the applicants need not be stated here.

5. Respondents No.1 to 3 have filed joint replies in the two cases. Respondent No.4 in O.A.158 of 1991 has filed a separate reply. The case of the Respondents No.1 to 3 is that the allotment made in November,1990 was invalid in as much as a member of the allotment committee was himself an aspirant for allotment of a quarter to himself. For this infirmity in the order of allotment and also as that order of allotment dtd.30.11.90/3.12.90 was

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against the prevalent rules, the department suo motu cancelled the order of allotment and asked the allottees to vacate. These Respondents have annexed a copy of the All India Radio (allotment of residential quarters) Rules, 1983. According to these respondents, and also Respondent No. 4 in O.A. 153 of 1991, for allotment of quarters of Type A to D the total length of service would be the criterion and not the continuous drawal of emoluments relevant for the particular type of quarters or its higher category. Respondent No. 4 of O.A. 153 of 1991 has taken a further plea that the then Station Director who was the Chairman of the allotment committee illegally allotted a quarters to his daughter i.e. applicant No. 1. He has further averred that the applicant No. 1 Ms. Nina Sinha was transferred on her own request and not in public interest. According to Respondent No. 4 in O.A. 153 of 1991 the meaning of the word emoluments cannot be confined to pay only.

6. The parties are agreed, possibly they ~~are~~ could not have any other way out, that the fates of the two cases would depend on the interpretation of the clause relating to priority dates. Allotments are to be made on the basis of the priority dates, he who has an earlier priority date would have a better right to allotment, all other things being equal, of a quarters in preference to one having a later date. Mr. Jayanta Das for

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the applicants has invited my attention to Swamy's compilation of F.R. S.R. and the provisions under S.R. 317(B), particularly to pages 390 and 391 of the tenth ~~edition~~ edition. The applicants have annexed documents showing the particulars of initial appointments and subsequent promotions or holding of posts in higher scales. Applicant No.1 in O.A.158 of 1991 entered into service dtd.27.10.83, the applicant no.2 joined as Junior Announcer on 3.11.1970 and in November, 1977 he was brought to the revised scale of Rs.1640/- to Rs.2800/- from the revised scale of Rs.1400/- to Rs.2400/-. Respondent No.4 in O.A.158 was appointed as clerk Grade-II on 22.11.70, the pay scale of which under the Revised Pay Rules is Rs.950/- to Rs.1500/- and he was promoted as Head Clerk on 1.9.87 drawing the salary of Rs.1520/-. Respondent No.5 of case No.158 was appointed in April, 1969 as a copyist the present pay scale of which is Rs.950/- to Rs.1500/- and was appointed on 1.1.80 as a Production Assistant in the scale of pay of Rs.1400/- to Rs.2600/-. There is no dispute that any person getting monthly emoluments within the range of Rs.950/- to Rs.1500/- would be entitled to 'B' type quarters, one getting monthly emoluments within the range of Rs.1500/- to Rs.2800/- to 'C' type quarters. Mr. Das for the applicants has challenged the order of cancellation on three grounds namely; when the order of allotment was made, it created certain rights which could not be taken away without following principles of natural justice, that the authorities were bound

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to allot quarters to the applicants in preference to the Respondents No.4 and 5 as the applicants of the two cases have earlier priority dates, when compared to the priority dates of competing Respondents No.4 and 5 and the third ground is confined to the special claim of the applicant No.1 in O.A.158 of 1990.

7. So far as the first ground of attack by Mr.Das is concerned it cannot be rejected off hand . Admittedly there was an order of allotment on 30.11.90 infavour of the applicants. Of course the orders passed on that date were challenged by some others by filing original applications which were numbered as O.A.455 and 496 of 1990. The question that really falls for consideration is whether was the order only partially invalid or void. The Respondents No.1 to 3 have averred that one of the members of the allotment committee was an applicant for allotment of quarters and further that the then Station Director is the father of the applicant No.1 in O.A.158/91, therefore the entire process of allotment on 30.11.90 was vitiated from the very beginning. It is an elementary principle of jurisprudence that no interested person can be the judge of a cause. If the principle of natural justice of being given an opportunity of hearing can be attracted for cancellation of allotment of quarters, justice requires that no interested person should be charged with any duty for allotting quarters. To repeat once again, it is not refuted by the applicants that

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in the committee according to the decision of which the allotment order dtd.30.11.1990 was passed there were interested persons. Relying on the decision of the Supreme Court setting aside the induction of the State Forest Officers in the I.F.S.Cadre at its initial constitution, I would say that the allotment dtd.30.11.90 was void abinitio. Exercise which is void from its inception cannot clothe any body with any right, therefore, no question of giving a hearing for cancellation of such an order can arise.

3. The next and most important contention of Mr.Das is that from the materials on record it would be found that the applicants in O.A.158 had begun drawing emoluments relevant for 'C' type quarters from dates much earlier than Respondents No.4 and 5 in that case and the applicants in O.A.167 of 1991 began drawing emoluments relevant for 'B' Type quarters since dates prior to those from which Respondents No.4 and 5 of that case began drawing emoluments. ~~The~~ relevant for that type, therefore the allotment of quarters to the Respondents No.4 and 5 in the two cases in preference to the applicants is unsupportable. In this regard Mr.Rath has contended that no doubt under the main provision the continuous drawing of emoluments relevant for a particular type would be the determining factor but if the first proviso is read, it would be found that in respect of lower type of quarters the length of continuous service would

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determine the priority date. Mr. Das's contention is that if a proviso purports to do away with all that is provided for in the main part of a section or Rule, the proviso would be deemed to be invalid. No doubt if the first proviso completely sets at nought the main part of clause-(p) it cannot be given effect to but it requires an examination whether does the proviso really negate what is provided in the main part of the clause. For the sake of convenience Clause-(p) of T-2 of the Rules may be quoted here.

"PRIORITY DATE of an officer in relation to a type of quarter for which he is eligible under the provisions of S.R.318-XXVI-T-7", means the earliest date from which he has been continuously drawing emoluments relevant to a particular type or a higher type in a post under the Central Government or a State Government or on foreign service or as a staff artist, except for period of leave. Provided that in respect of a type A, type B, type C or type D quarter, the date from which the officer has been continuously in service under the Central Government or the State Government (including the periods of foreign service) shall be his priority date for that type:

Provided further that where the priority dates of two or more officers are the same, seniority among them shall be determined by the amount of emoluments, the officer in receipt of higher emoluments taking precedence over the officer in receipt of lower

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emoluments, and where the emoluments are equal, by length of service:

Provided also that in respect of officers who come to a station on transfer a pool of quarters will be reserved to the extent necessary and in keeping with the other provisions of the rules relating to shift duty staff entitlement, concessional period of retention, etc.

EXPLANATION:- In cases referred to in the third proviso, transfer would mean effective change of station(city) involving duty for one year or more excluding periods of leave other than casual leave;

9. Mr.J.Das has contended that what the first proviso to clause(p) means is that for quarters of types other than A to D, only the leave period is not to be excluded but the point of time from when an employee draws emoluments relevant for a particular type of quarters remains as the factor for determining the priority date. If what Mr.Das contends ~~is~~ correct then it would lead to an anomalous result. In the main part of clause(p) the word " continuously" has been used. "Leave" may be even leave on half average pay, so a person who goes on leave on half average pay can not continue to draw the emoluments that he was drawing prior to his proceeding on leave. For ~~that~~ reason at the end of the main part of clause(p) " except for period of leave" had to be added. The ordinary rule of interpretation is to interpret a Section or Rule without any external aid,

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but when there are similar provisions relating to similar matters, for proper under-standing, a reference to such provision may be made. On referring to the definition of " priority date " as given in clause(i) of Government Residences (General Pool in Delhi) Rules, 1963, it would be clear that the continuous drawal of emoluments relevant for a type of quarters applies only to higher types and not to the lowest 4 types for which the length of continuous service would be the determining factor. Mr.Das has laid very much stress on the words " for that type" used in the last part of first proviso of that clause, to contend that it is the earliest date from which a person began to draw emoluments for particular type would be the determining factor. This contention of Mr.Das is not correct. On referring to clause (u) where " type " has been defined it would be found that in determining the entitlement to a particular quarter, the emoluments at the time of consideration are relevant.

10. Mr.Das has next contended that the applicant No.1 in O.A.158/91 is entitled to preference both as a single lady employee and also on account of having come on transfer. In this regard Mr.Das has referred to the 3rd.Proviso to clause(p). On reading this proviso what would be found is that in respect of officers who come to a station on transfer a pool of quarters would be reserved but this would be subject to the other provisions of the rules relating to shift duty staff, concessional period of retention etc. and to the extent of necessary. Respondent

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Respondent No.4 has taken the definite stand that applicant no.1 came to Cuttack on her own request and not in public interest. Application lacks information with regard to if any pool of quarter has been kept reserved for persons coming on transfer. Therefore this contention of Mr.Das cannot be accepted for lack of material pleadings.

11. Mr.Das has next contended that the first applicant in O.A.153/91 is entitled to accommodation from ladies pool. Mr.Das has drawn my attention to Page 390 and 391 of Swamy's compilation of F.R. & S.R.. In the Allotment of Government Residence (General Pool in Delhi) Rules, 1963 provision has been made ^{for} Lady Officers' Pools, but in the copy of the Rules framed for A.I.R. Staff there appears no mention of any such pool. In para-7 (at page-6) of the reply filed by Respondents no.1 to 3 it has been specifically mentioned that in the Rules framed for the Information and Broadcasting Department there is no provision for any Ladies' Pool. Mr.Das has urged that the Govt. of India have decided to extend the provisions relating to lady officers to all Regional ^{centers} ~~counters~~ where general pool accommodation is available or are under construction, therefore a quota has to be reserved for lady officers of A.I.R. working at Cuttack. It is not very necessary to discuss whether can a Rule framed by the president be amended by a Government order, because from the footnote at page-333 of the compilation it would be found the 1963 Rules have been extended, with some minor

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changes, to some other stations mentioned in the footnote ~~xxx~~ and Cuttack is not one of those places.

12. The applicants in O.A.153/91 have claimed to be shift duty Staff, but on reading Annexure-A to the reply filed by Respondents 1 to 3, this claim does not appear to be tenable as neither of the two fall in any ^{of the} 26 categories mentioned therein.

13. From the pleadings it is clear that all the private parties claim allotment of B & C type quarters and the persons arrayed Respondents 4 and 5 in the two cases have greater length of Service than the applicants, hence the respondents 4 and 5 have better claims to allotment.

14. For the reasons mentioned above the applicants cannot succeed. The cases are disposed of accordingly without any order as to costs.



Sd/ N. Sengupta.

Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack, Hossain/