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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 259 OF 1993

Cuttack this the 14th day of DECEMBER, 1994.

Chita Ranjan Patnaik ... Applicant

Vrs.

Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? No.

(M. RAJENDRA PRASAD)

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(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 259 of 1993
Cuttack this the 14th day of December, 1994.

CORAM:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

..

SHRI CHITA RANJAN PATNAIK,
aged about 48 years,
son of Padma Charan Patnaik,
Senior Farm Manager,
Central Rice Research Institute,
Central Rice Research Institute,
Bidyadharpur, Cuttack.

... Applicant

By the Advocate ... M/s. C.R. Behera,
B. Badsakh,
D. Rout.

Vrs.

1. The Director,
Central Rice Research Institute,
Bidyadharpur, Cuttack.

2. The Chairman,
House Allotment Committee,
Central Rice Research Institute,
Bidyadharpur, Cuttack.

3. The Secretary,
Indian Council of Agricultural Research,
New Delhi. ... Respondents

By the Advocate ... Mr. Ashok Mishra,
Senior St. Counsel (Central).

....

O R D E R

H. RAJENDRA PRASAD, MEMBER (ADMN.): Shri Chitta Ranjan Patnaik, Senior Farm Manager, Central Rice Research Institute was allotted a Type IV Quarter on 18th December, 1992, and occupied it three days later. On 30th June, 1993, the allotment was cancelled, however, and the applicant was asked to move to a Type III quarter. Aggrieved by this action,

9/12/1994

this application has been filed seeking the quashing of this order.

2. The applicant stresses the fact that he was allotted the Type IV Quarter in recognition of the fact that he was responsible for the upkeep and maintenance of the estate and was required to be on call at odd hours & because he was also charged with the responsibility of security of the campus. He asserts that he was in a pay-range at the time of allotment which entitled him to the quarter allotted to him. His grievances in this case are, that : the allotment was cancelled on the recommendation of an ad-hoc committee that is not envisaged by rules of allotment; the cancellation was abrupt and without any prior notice to him; that the provisions of Rule 7(2) of allotment rules were unfairly invoked to deprive him of a facility which he had been enjoying for some months; & that rules 5 & 10 infact favour his continued occupation of the quarters allotted to him. During the final hearing of the case, Dr. Prithvi Raj, the learned counsel for the petitioner, argued that the authorities are estopped from reversing a decision which had promised and conferred upon the applicant a certain facility in accordance with the rules. In support of this the learned counsel cited two decisions of Hon'ble Supreme Court & a judgment of the Tribunal.

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3. The Respondents in their counter-affidavit state that, according to the House Allotment Rules for CRRI, approved by ICAR, a type III quarter was earmarked in 1978 for the Farm Manager, but this reservation was deleted in favour of Security Officer during 1982. The applicant was, however, allowed to retain the quarter allotted to him. The rules were revised in 1981, & a quarter was once again reserved for the Farm Manager (since redesignated Senior Farm Manager). They point out that, as per the seniority & his pay-range, the applicant was not really entitled even to a Type III quarter, in the normal course, at the time of his entry in the Institute, but a quarter was nevertheless allotted to him because of the reservation that existed in the rules for the Farm Manager. They point out that no Type IV quarter is earmarked for the post & therefore shouldnot really have been allotted to the applicant, specially since there are more than twenty Scientists far senior to the applicant in a higher pay-range who are still awaiting allotment of such quarters. It is added that a Farm Manager has to have atleast eight years of service before he begins to draw Rs. 2000/- per month and becomes eligible for allotment of a Type IV quarter, & even then he does not get an overriding priority over others on the waiting

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list but has to necessarily await his turn for allotment. None of these conditions having been satisfied in the present case, the Respondents argue, the applicant is not entitled to the relief sought by him.

4. (i) According to Rule 5 of CRRI (Allotment of Residences) Rules, 1981, an officer becomes eligible to the allotment of Type IV quarters if he is in the pay scale of Rs. 2800-4499/- . Rule 7.1(i) lays down that the no quarter of a higher type than what an officer is eligible under Rule-5 shall be allotted to him. Rule 1 (k) defines the ' Priority Date' of an officer as the date from which he has been continuously in service under the Central Government in respect of (Type I to) Type IV accommodation. It is seen that on 1.1.1993 there are twenty officers who were drawing Rs. 4, 575/- as basic pay and whose priority dates ranged from 2.3. 1965 to 22.9.1977. All these officers are admittedly in a higher pay scale than the applicant, & it is also revealed that on 1.1.1993, the applicant was in receipt of Rs. 3800/- as basic pay. Inasmuch as there are many officers senior to the applicant who are in receipt of higher pay but are occupying a lower type of accommodation, the applicant's continued occupation of a higher type of residence would not seem to be correct or proper.

(ii) Rule 10.1 empowers the Director to reserve accommodation for such persons as are required for proper upkeep of quarters, or who may be required to attend official duties at odd hours. There is no specific mention here as to the ~~precise~~ Type of quarters that may be so reserved. While this is so,

Rule 10.4 lays down that not more than four Type IV quarters shall be reserved for officers holding managerial positions on tenure basis, irrespective of their priority dates (The respondents are silent as to the actual number of Type IV quarters that have been reserved under this enabling provision).

(iii) Reading these two sub-rules together, it is indeed possible to argue that the Senior Farm Manager (whose duties include the proper upkeep of quarters, & who, according to his statement, which is not disputed by the Respondents, is required to attend official duties at odd hours) is entitled to occupy at least one of the four Type IV quarters so reserved irrespective of his priority date, if it is accepted that he holds a managerial position.

5. Question relating to cancellation of allotments is dealt with in Rule 7.2. An accommodation

— 1.5 J. J. J. —

of the type below the type of residence in occupation of an officer can be allotted on cancellation of the existing allotment, provided the circumstances are emergent, or if the quarter currently under his occupation is required to be vacated. The basic conditions to be fulfilled for invoking this provision are (i) emergent circumstances & (ii) requirement of vacating the accommodation. When asked to clarify as to how these two conditions have been fulfilled in the instant case, Shri Ashok Mishra, learned Senior Standing Counsel (Central), replied that the very fact that as many as twenty seniors are on the waiting-list for Type- IV accommodation is emergency enough making it inescapable that the said quarter is got vacated. It is to be observed here that this was by no means a newly-arisen emergency since the very same situation obtained even when the original allotment had been made in favour of the applicant.

6. The respondents then go on to admit that that the allotment of a Type IV quarter which was one type above the entitlement of the officer on the date of such allotment, and when such higher type of accommodation was not earmarked for the post held by the applicant, and even as many of the seniors were awaiting their turn for this very type of quarters, was an administrative error. They explain that the subsequent cancellation of allotted accommodation was merely by way of rectification of a genuine error

and was meant to terminate a resultant anomalous and iniquitous arrangement that had flown from the original error. Such correction of a bonafide administrative lapse is not indeed objectionable, specially if the aim was to end a long-continuing indefensible arrangement.

7. Nevertheless, cancelling the existing allotment and directing him to occupy a lower accommodation did indeed affect the interests of the applicant. Before issuing such an order, the authorities should have atleast served an advance notice and apprised the applicant of the contemplated action, so as to afford him an opportunity to respond and place his version or view-point. This was the very minimum required of the authorities in the interest of natural justice. By omitting to take this simple action, they have acted not merely peremptorily but, in the process, needlessly denied themselves the chance of taking an all-sided view and arriving at a well-considered decision.

8. The question of estoppel raised by the counsel to the petitioner, has to be disposed of by an observation that it cannot be invoked to compel the authorities to extend a benefit to the applicant unless such benefit is conclusively proved to be available to him under the relevant rules. No estoppel can be pressed to make any one exercise a power which

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is not available to him under the law and the regulations.

9. The plea advanced by the Petitioner's counsel that the term 'emoluments' is inclusive of the basic pay as well as allowances is unacceptable. Whatever the lexicographers and dictionary-makers may say, - & they are no doubt correct in a purely literary and linguistic sense, - 'pay' in Government parlance in a context such as the present always refers to a monetary range in terms of the basic pay drawn in a specified time-scale. To stretch it to include sundry allowances is illogical and defies common and widely accepted definition.

10. It was emphasised by Shri Ashok Mishra that a Type-IV quarter cannot be earmarked under the rules for a Senior Farm Manager. No such prohibition could be found in the rules. While Rule 10.1 permits reservation of accommodation (of no specified Type) for certain persons with specified duties, Rule 10.4 does indeed envisage reservation of upto 4 Type IV quarters for officers holding managerial positions. If the earmarking of a Type-III quarter was made at a time when the Farm Manager was in a lower pay-scale, there is no reason why such earmarking cannot be suitably upgraded with the upgradation of the post to Senior Farm Manager with consequent upward revision of pay-scale & in view of the availability of an officer



in the post who has reached the minimum prescribed (Rs. 2800/-) for being considered for Type IV accommodation. This aspect of the matter needs the attention of the Director who should form an authoritative view as to whether or not the Senior Farm Manager holds a Managerial position & is entitled or not entitled to be considered eligible for allotment of one of the four Type IV quarters earmarked for such officers.

11. Taking the totality of circumstances into careful consideration, the orders contained in Office Order No. 193/Admn.III dated 31st January, 1993 (Annexure 2 to O.A. & Annexure D to the Counter-Affidavit) are hereby set aside with the following directions:

(1) The question of allotment of a suitable accommodation of appropriate type - including the need or otherwise for the cancellation of accommodation at present occupied by the applicant, - shall be examined afresh.

(2) A suitable notice shall be served on the applicant if any cancellation of allotment of the accommodation now under his occupation is contemplated.

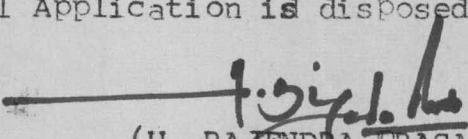
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- (3) Any representation that may be submitted within reasonable time by the applicant in response to such notice shall be taken due note of & examined on merits.
- (4) The case shall thereafter be considered in the light of the overall facts and rules by a properly-constituted Allotment Committee envisaged in Rule 2(b) of the CRRI (Allotment of Residences Rules, 1981).
- (5) The final decision in this regard shall be communicated to the applicant through a speaking, reasoned order.

All the above actions shall be completed within forty-five days from today. It is further directed that the applicant shall not be disturbed from the occupancy of his present accommodation till then, or till the receipt by him of the final decision mentioned at (5) above, whichever is later.

Thus, the Original Application is disposed of.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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