

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Date of Order: 20.04.2001

OA No.17/2001.

Smt. Kirti Varshney W/o Shri Kanti Chandra Varshney aged about 59 years at present posted as Drawing Teacher, Kendriya Vidyalaya No.3, Nal, Bikaner, Resident of -2/E-19, Pawanpuri Housing Scheme, Bikaner.

Applicant.



VERSUS

Commissioner, Kendriya Vidyalaya Sanghatan, Near Tonk Phatak, Tonk Road, Jaipur.

2. Principal, Kendriya Vidyalaya No.3, Nal, Bikaner.

3. Station Commander, Air Force, (Chairman Managing Committee, KV No.3 NAL) Air Force Station, Nal, Bikaner.

Respondents.

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Mr. Sumeet Mehta, Counsel for the applicant.

Mr. K.K. Shah, Counsel for the respondents.

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Hon'ble Mr. Justice B.S. Raikote Vice Chairman.

Hon'ble Mr. Gopal Singh Administrative Member.

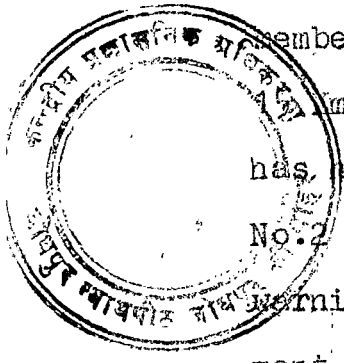
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ORDER

(per Hon'ble Mr. Justice B.S. Raikote)

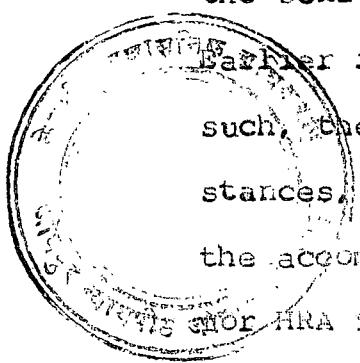
This application is filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned

order dated 13.12.2000 vide Annexure A/1 issued by the respondent No.2. The grievance of the applicant is that by the impugned order, the respondent No.2 has allotted quarter No.16 without applicant's applying for the same with a warning that if the employee refuses to accept the allotment within eight days from the issue of allotment letter, she shall forego her claim of HRA w.e.f. 15.12.2000. But this order forcing her to occupy the Government quarter against her will, is illegal and without jurisdiction. The applicant further submitted that her husband owns house No.2/E-19, in Pawanpuri Housing Scheme, Bikaner, and the applicant is living alongwith her husband and the family members in the said house, and the said house is situated within 1000 ms. from the school. It is in these circumstances, she has not applied for allotment of any quarter. But respondent No.2 suomoto has allotted the quarter to the applicant with a warning that in case the applicant does not accept the allotment order, she had to forego HRA, which she has been receiving all along. The learned counsel appearing for the applicant contended that the impugned order vide Annexure A/1 dated 13.12.2000 is illegal and contrary to the Kendriya Vidyalaya Sangathan (allotment of residence) Rules, 1998 (the Rules, for short). The learned counsel for the applicant further submitted that the Rules do not prescribe that the employees employed under Kendriya Vidyalaya Sangathan, at Bikaner, shall necessarily reside in the Government quarter. Since the applicant's husband owns a house at Bikaner, she has not applied for allotment of quarter, and the allotment of quarter could not be forced on her with a dire consequences of stoppage of HRA in case of her not occupying the said quarter. Learned counsel for the applicant invited our attention to the relevant Rules, which we will be referring to during the course of judgment. He contended that the impugned order is liable to be set aside.



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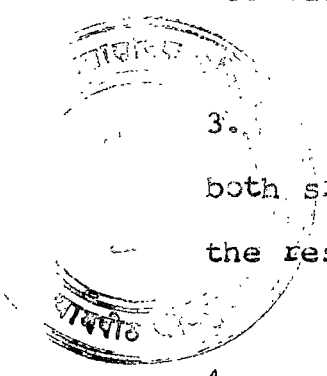
2. By filing reply, the respondents have denied the case of the applicant. They have stated that the provisions of the allotment rules are beneficial provisions. There are 21 Government quarters, of which one is earmarked for the principal, 4 for PGTs, 4 for TGTs, 8 for PRTs and 4 for group 'D' staff, and the present controversy related to 4 quarters for TGTs, and the applicant is TGT. They further submitted that the case of the applicant that her husband's house is situated within 15 Kms. of the school is not correct, but such distance is about 21 Kms. It is also stated that whenever the quarter is vacant, the same is allotted as per the seniority, and the applicant is the senior most TGT, at Bikaner.



Earlier in the year 1993, she had refused accommodation and as such, the accommodation remained vacant. It is in these circumstances, it is made clear to the employee that refusal to accept the accommodation on allotment would disentitle such employee for HRA for the period of the accommodation remains vacant, and there are quite few TGTs who had not accepted the allotment of quarters in the past and they lost the HRA. A large number of employees do not submit applications for allotment of quarter inspite of asking for the same by the respondents. To avoid revenue loss to the Government by keeping the residence vacant, a meeting of the Management Committee for allotment of accommodation was convened under the Chairmanship of the respondent No.3, and in the presence of all the employees, various decisions were taken in terms of the allotment Rules of 1998, in the minutes of such meeting held on 20.4.2000, which is filed at Annexure R/2. It is also stated in the reply that the applicant has been staying in the husband's house since her posting in Bikaner in 1992. But she has produced rental receipts of her own house, showing someone else as landlord. Such receipts are also filed as Annexures

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R/3 and R/4. The learned counsel appearing for the respondents reiterated the reply statement and submitted that in view of Rule 11 of the said Rules, the employee would lose HRA, if an employee refuses to accept the allotment of quarter. It is also submitted that as stated in the reply statement, absolutely there is no mala fide on the part of the respondent No.2 to thrust the allotment of quarter on the applicant, but same has been done in view of the proceeding of the Management Committee vide Annexure R/2 dated 20.4.2000. He submitted that there is no merit in the application. Accordingly, the OA is liable to be dismissed.

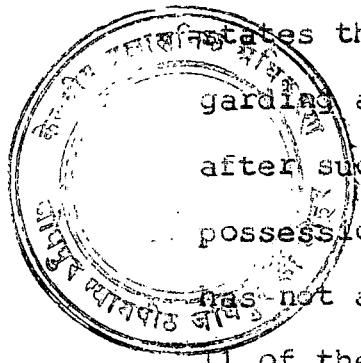


3. On the basis of the pleadings and also the contentions on both sides, we have to see whether the impugned order issued by the respondent No.2 vide Annexure A/1 is sustainable or not.

4. It is not in dispute that the rules called "Kendriya Vidyalaya Sangathan" (allotment of residence) Rules, 1998, apply to the facts of the case. According to the Rule 7(1), applications for allotment would be invited by the allotting authority before such a date, as may be specified by him, and under the Rule 10(1), such applications received for allotment, shall be considered by the Allotment Committee and after application being accepted for allotment, according to Rule 10(5), if an employee to whom residence is allotted, does not accept the allotment or does not take possession of the residence within a period not exceeding 8 continuous days from such allotment, the same shall be treated as cancelled and such employee shall not be eligible for another allotment for a period of one year from the date of such allotment letter. Under Rule 11, if an employee fails to accept the allotment of a residence within five days or fails to take possession after

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such acceptance within a period of eight days from the date of receipt of such a letter, would not be eligible for another allotment and such employee also would not be eligible for drawal of HRA. It is stated by the respondents under this Rule 11, the impugned order has been issued to the applicant for not accepting the allotment of the quarter, as per letter issued by the respondent No.2. But the contention of the applicant is that the applicant has never applied for allotment of such quarters, and if the respondent No.2 suomoto allots the residence to the applicant, the applicant is not bound to accept it. The learned counsel for the applicant further



states that under Rule 11 non-acceptance of the allotment is regarding a person who had already applied for such allotment and after such allotment being made in his favour, he has not taken possession of the said quarter. In the instant case, the applicant has not applied for allotment of quarter at all, therefore, Rule 11 of the Rules does not apply to the facts of the case. On the other hand, learned counsel for the respondents contended that Rule 11 applies to the facts of the case, and the applicant failed to accept the allotment of quarter, and in these circumstances, she has to lose HRA since the quarter has to remain vacant for such a non-acceptance of the allotment of quarter made by the authorities.

5. In order to appreciate the rival contentions on the issue, we think it appropriate to extract Rule 11 of the Rules, as under:

"Non-acceptance of allotment of offer or failure to occupy the allotted residence after acceptance:

If any employee fails to accept the allotment of a residence within five days or fails to take possession of that residence after acceptance within eight days from the date of the receipt of the letter of the allotment he/she shall not be eligible for another allotment letter. Such an employee will also not be eligible to the drawal of HRA for the period during which the allotted residence remains vacant or surplus."

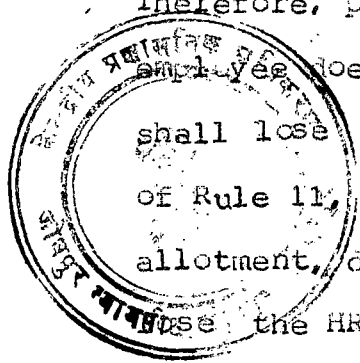
6. The above Rule 11 has to be understood in the context of the Rule 7 to Rule 11 of the Rules. As we have already stated above, after inviting applications under Rule 7 and if some persons apply for allotment of quarter, their applications shall be considered under Rule 10 of the Rules, and the allotment letter shall be issued to the concerned employee. If such employee who had applied and to whom the allotment is made by the Allotment Committee, refuses to accept the allotment of quarter or does not occupy the allotment quarter within a period of eight days, such allotment is liable to be cancelled and such employees shall necessarily forego the HRA for the period during which the allotted quarter remains vacant or surplus. In the context, Rule 11 is a penal provisions only for those who had applied for the allotment of residence and allotment who had not accepted and taken possession of such residence, and this Rule 11 does not apply to an employee who has not applied for allotment of quarter at all. If the respondent No. 2, for the best reasons known to him/her, allots the Government quarter to an employee suo moto without an application, for non-acceptance of such allotment, an employee cannot be visited with any penal consequences, since there would not be any default on the part of such employee. Moreover, the official respondents have not brought to our notice any other rule making it mandatory to the employee to occupy the Government quarter as part of the service conditions. The very fact that according to the allotment rules, applications were to be invited for such allotment of the quarter, would clearly indicate that to seek allotment of the quarter, is according to the desire of such employee, and the respondent No. 2 or any authority cannot force an employee to occupy the Government quarter without there being any application by such employee. If by any chance, the Government quarters fall vacant



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due to no fault on the part of any particular employee, such employee cannot be punished by denying the HRA. The Rules that are brought to our notice do not make it mandatory for any Government employee to occupy the Government quarter either on his/her application or without application. These are, statutory rules and if any mandatory provisions is required to be introduced, in the rules making compulsory for a Government servant to occupy such quarter, it shall be done in the rules itself and such statutory rules cannot be modified or amended by any circular or letter etc.

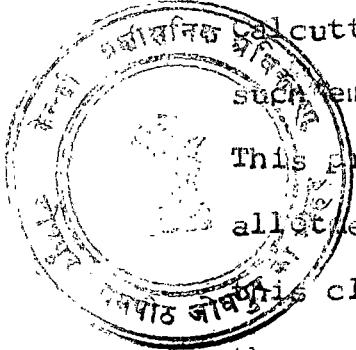
Therefore, the proceedings of the Vidyalaya Management Committee dated 20.4.2000 cannot be taken as the one modifying the rules.



Therefore, paragraph 6 of the proceedings Annexure R/2 that if any employee does not accept the allotment of quarter, such employee shall lose HRA, shall necessarily be understood as repetition of Rule 11, meaning thereby that if the employee applying for the allotment, does not accept the allotment of quarter he/she shall lose the HRA. If paragraph 6 of the said proceedings is taken as the one providing penal consequences of refusal of HRA in case the authority decides to allot the quarter suomoto without any application and employee refusing it, such paragraph 6 of the proceedings would be ultra vires of the rules, and consequently, unenforceable. At the cost of repetition, we may point out that there is no provision for allotment of quarter suomoto without an application, and if an employee applies and after such allotment if he fails to accept the said allotment of quarter, the Rule 11 would be applicable and such employee would lose the HRA only in case such quarter remains vacant or surplus, and not otherwise. From this position, it is clear that the impugned order vide Annexure A/1 refusing HRA to the applicant with effect from 15.12.2000 would be illegal. It is not in dispute that Annexure A/1, the allotment order, is issued, by the respondent No.2 suomoto

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without there being any application by the applicant. In case of such suo motu allotment, there could not be any denial of HRA if the employee does not accept such allotment for the best reasons known to him/her. In the instant case, it is also not in dispute that applicant's husband owns a house at Bikaner, and in such circumstances, such refusal of the applicant cannot be said to be found fault with. In fact, similar was of the view of this Bench in OA No.407/93 (Guman Mal V/s U.O.I. & Ors.) decided on 5.4.1995, reported in 1995 (2) SLJ (CAT) 374, and the same has been followed by the Jaipur Bench of the Tribunal vide its judgment and order dated 23.3.2001 in OA No.563/2000 and the batch. Moreover according to the said rule, if an employee or any other member of his/her family owns house within 15 Kms (20 Kms for Delhi, Calcutta, Bombay and Chennai) from the place of his/her posting, such employee would not be eligible for allotment of residence. This provision is relevant to be considered only at the time of allotment, if an application is made for such allotment. Therefore, this clause as to ineligibility, does not apply to the facts of the case, since the applicant has not applied for allotment, nor she wants such an allotment of a Government quarter.




7. In view of the consistent law declared by this Tribunal and also by the Jaipur Bench of the Tribunal referred to above, in our considered opinion, the Annexure A/1 dated 13.12.2000 is liable to be quashed so far it pertains to the applicant.

Accordingly, we pass the order as under:-

"Application is allowed. The impugned order vide Annexure A/1 dated 13.12.2000 so far it pertains to the applicant is hereby quashed. If any HRA is with-held in pursuance of the impugned order, the same shall be paid to the applicant within a period of three months from the date of receipt of a copy of this order. No costs."


(Gopal Singh)
Admn. Member


(Justice B.S. Raikote)
Vice Chairman