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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH LUCKNOW,

Original Application No. 340 of 1992

Someshwar Prasad . . . . . Applicant

Versus


Union of India and others . . . . . Respondents

Hon'ble Mr. S.N. Prasad, Member (J)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for quashing the impugned orders dated 10.3.1987, 31.7.87, 6.9.1989 and 7.1.1992 passed by the authorities concerned as specified therein; and for directing the respondents to refund the amount recovered illegally due to withholding of one increment for one year and for further directing the respondents to allow the applicant to cross Efficiency Bar from due to i.e. 1.10.1985.

2. Briefly, stated the facts of this case, interalia, are that the father of the applicant namely Sri Mangal Prasad Postal Assistant Barabanki post office was allotted government accommodation Quarter No. 2A/3 in Barabanki and the applicant was residing with his father and passed his High School, Intermediate and B.A. Examinations from Barabanki, and after passing his B.A. examination, the applicant was selected as Postal Assistant in Barabanki Postal Division and was appointed as Postal Assistant in Head Post Office Barabanki w.e.f. 9.10.1979. The applicant in all his applications for recruitment had given his residential address as


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Quarter No. 2A/3 where he was residing with his father. The Superintendent of Post Offices Barabanki , the appointing authority as well as all other authorities of the department were fully aware about the above facts. In the month of May, 1982, the father of the applicant was transferred from Barabanki to J.B. Raj Sub Post Office, which was about 10 K.M. from Barabanki, but his entire family resided in Barabanki ~~was not~~ residential accommodation attached with other posts of SPM was available at J.B. Raj Sub Post Office. The applicant's father retained aforesaid Quarter No. 2A/3 and used to perform his duty from the aforesaid quarter. The applicant used to receive monthly salary which was paid to him by the office on the certificate granted by the Postmaster Barabanki, who was the drawing and disbursing officer. On 31.10.1984 the applicant's father was served with notice to vacate the aforesaid quarter and the applicant's father had paid the penal rent in regard to the aforesaid quarter, ~~which was~~. It has further been stated that the applicant was due to cross Efficiency Bar w.e.f. 1.10.1985 at the stage of Rs. 308/-, but he was not allowed to cross Efficiency Bar from the due date, for the reasons best known to the Superintendent of Post Offices Barabanki (Vide Annexure -1 to this application). The applicant was issued a charge-sheet under rule 16 on the allegation that he had illegally drawn House Rent Allowances w.e.f. 1.8.82 to 8.7.1986 (Vide Annexure -2). The applicant was issued memo dated 17.10.1986 to refund H.R.A. within a

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week(Vide Annexure -3); thereupon the applicant requested for the details of the amount paid in excess to him according to respondents, but instead of giving the details of the alleged over drawn amount, the applicant was chargesheeted and enquiry proceedings proceeded with against him under rule 16 of CCS(CCA) Rules 1965 and which culminated into passing the impugned order dated 10.3.1987, whereby increment of the applicant for one year was withheld without cumulative effect. Thereafter, the applicant's appeal, revision and review were dismissed by the authorities concerned as per order dated 31.7.87; 6.9.89 and 7.1.1992 respectively(vide annexures 5, 7, 9 <sup>and</sup> 10); hence the applicant has approached this tribunal for the relief<sup>~</sup> sought for as indicated above.

3. In the counter-affidavit filed on behalf of the respondents, the respondents have resisted the claim of the applicant with the contentions, inter alia, that at the time of his appointment, the applicant had <sup>~</sup>given his address as care of Sri Mangal Prasad, Head Post Office, Barabanki and had <sup>~</sup>not given his residential address. The applicant was found guilty of unauthorised occupation of Government quarters and taking payment of house Rent Allowance(H.R.A.) which was not admissible and permissible to him under the rules. It has further been contended that the matter regarding debarring him from crossing Efficiency Bar from due date i.e. 1.10.1985 is highly

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belated as the order to this effect was passed on 30.10.85 (Vide annexure 1 to the application). It has further been contended that all the above impugned orders were passed by the authorities concerned properly, legally and as per extant rules and regulations and there is no illegality therein and as such the application of the applicant is liable to be dismissed.

4. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

5. The learned counsel for the applicant while adverting to the contents of the application, counter-affidavit and the papers annexed thereto and while re-iterating the view points as set out in the application, has stressed while drawing my attention to the "NOTE" appended to para 5 (E) of Swamy's compilation of F.R. and S.R. part V House Rent Allowance and compensatory (City Allowance); and has further stressed that since the applicant and his father both were Central Government employees at the crucial time in question and since the father of the applicant namely Sri Mangal Prasad was allotted the aforesaid quarter and since he was not withdrawing the House Rent Allowance, The applicant was rightfully withdrawing the house rent allowance in view of the clarification given in the aforesaid "NOTE" and has further stressed that the entire imputation against the applicant to the effect that he had drawn H.R.A. for the period from 1.8.1982 to 8.7.1986 while he was residing with his father in the government quarter

allotted to his father wherein he (the applicant) unauthorisedly occupied the same quarter upto 8.7.86 is illegal and suffers from legal infirmity as the aforesaid Mangal Prasad was not withdrawing his house rent allowance, and has further stressed while adverting to para 8 of the aforesaid F.R.S.R. part 5th that it was the responsibility of the drawing and disbursing officer to pay house rent allowance to the applicant as while giving the necessary certificate under aforesaid para 8, it was bounden duty of the drawing and disbursing officer to verify the facts and as such the application of the applicant be allowed.

5. The learned counsel for the respondents while drawing my attention to the contents of the pleadings of the parties and the papers annexed thereto and view-points as set out in the counter reply has drawn my attention to para 5(C) (II) and has stressed that since the aforesaid Mangal Prasad's occupation of the aforesaid quarter was unauthorised after his transfer in the month of May, 1982 from Barabanki to J.B. Raj Sub Post Office and since the aforesaid Mangal Prasad remained in unauthorised occupation of the aforesaid quarter for sufficiently long time and vacant possession of the aforesaid accommodation could be obtained after great fuss including help from Police as would be obvious from the Annexure R-1 and R-2 to the counter reply, the

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Applicant was not entitled for any house rent allowance during the aforesaid period i.e. from 1.8.1982 to 8.7.1986, and has further stressed that all the impugned orders were passed properly, legally and as per extant rules and regulations and there is no illegality therein and as such the application of the applicant should be dismissed.

6. This is worth-while making mention<sup>2</sup> of this fact that para 5 (C) (II) reads as follows:

"A Government servant shall not be entitled to house rent allowance if :-


- (ii) "He/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as a Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India, etc."

NOTE appended below above para 5 of the aforesaid F.R.S.R. part 5th, reads as follows:-

"NOTE- In cases where husband/wife/parents, children, two or more of them being Central Government servants or employees of State Governments, autonomous public undertakings or semi-Government organisations like Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India, etc., share accommodation allotted to another Government servant, house rent allowance will be admissible to only one of them, at their choice."

Thus, a careful perusal of the above provisions contained in para 5 read together <sup>~ with ~</sup> ~~for~~ the above "NOTE"

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connotes that either of the two Central Government employees in cases where husband/wife/parents share accommodation allotted to another government servant, house rent allowance will be admissible to only one of them, at their choice .

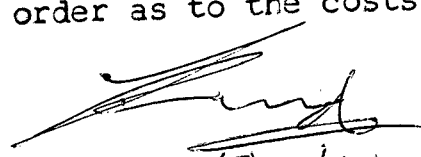
7. This is significant to point out that a perusal of para 4.5 to 4.8 of the application of the applicant shows that the father of the applicant namely Mangal Prasad was transferred from Barabanki to J.B. Raj Sub Post office and even after his transfer retained the said quarter in an unauthorised manner and as such he was saddled with the responsibility of paying panel rent. In this context, it is also significant to point out that a perusal of Annexure R-1 and R-2 to the counter reply shows that the possession of the aforesaid quarter by father of the applicant and as well as by the applicant himself began unauthorised as the aforesaid quarter after transfer of the aforesaid Mangal Prasad from Barabanki was allotted to Sri R.B. Dubey A.P.M. Barabanki, headquarter, but neither aforesaid Mangal Prasad nor the applicant vacated the above quarter, as is obvious from the scrutiny of the entire material on record and from the perusal of Annexure 7 to the application;

8. It is well settled that in the eyes of law "the term "accommodation allotted to another government servant" as appearing in the aforesaid "NOTE" below the aforesaid para 5, connotes legal allotment and lawful possession of the allottee employee and

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lawfully sharing of the accommodation by the another employee and not unauthorised occupation of the allottee employee and the unauthorised sharing of the accommodation by another employee. Thus, from the foregoing discussions and after scrutinizing the entire material on record and keeping in view all the circumstances of the case, I find that the application of the applicant is devoid of merit and there is no illegality in the aforesaid impugned orders.

9. In the result, the application of the applicant is dismissed. No order as to the costs.

  
Member (J)

4.12.92

Lucknow Dated: 4.12.1992

(RKA)