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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

[REDACTED]
[REDACTED]
NEW BOMBAY BENCHO.A. No. 216/89 198
T.A. No.

DATE OF DECISION 18.10.1989

Shri S.R.Kamble

Petitioner

Shri C.B.Kale

Advocate for the Petitioner(s)

Versus

The Estate Officer & Two others.

Respondent

Shri S.R.Atre (for Shri P.M.Fradhan)

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S.CHAUDHURI, MEMBER(A).

18/10/89

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? []
3. Whether their Lordships wish to see the fair copy of the Judgement? [] No
4. Whether it needs to be circulated to other Benches of the Tribunal? []

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.216/89.

Shri S.R.Kamble.

... Applicant.

V/s.

The Estate officer & two others. ... Respondents.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:

Applicant by
Shri C.B.Kale, advocate and
Respondents by Shri S.R.Atre
(for Mr.P.M.Pradhan).

Oral Judgment:-

¶ Per Shri P.S.Chaudhuri, Member(A) Dated: 18.10.1989.

This application was filed on 21.3.1989 under section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays that Type-A Quarter No.A-9/5 in the P & T Colony, at Mulund, Bombay which had been allotted to his father when his father was in service be allotted to him and for further connected or consequential reliefs.

2. The facts may be stated. In about 1965 when the applicant's father was working as Overseer Postman at Colaba, Bombay he was allotted Type-A quarter No.C-35/L-3 at Sahar P & T Colony. In 1979 the applicant was appointed as a Postman in Jacob Circle Post Office. At that time he was staying with his uncle, Shri Sopan Hanumanth Kamble at Chembur. It is the applicant's submission that when he got this job he moved to his father's house at Sahar. By order dt. 25.2.1984 the applicant's father was allotted Type-A Quarter No.A-9/5 at Mulund in mutual exchange with the quarter at Sahar. It is the applicant's case that he moved to Mulund with his father. It is the applicant's case that even though he was staying with his father he continued to draw HRA right from his appointment in 1979 onwards because he did not know that he was not entitled to do so if he was staying with his father in accommodation allotted

to his father. On 30.9.1986 the applicant submitted an application to the Senior Superintendent of Post Offices, Bombay City West Division. This application is quoted below:

"My father named R.H.Kamble, is working at Colaba P.O. Bombay-400 005 as Sorting postman. He has been allotted a P&T Quarter No.A-9/5 at Mulund, since long. I am also staying in the said quarter since my entry in the Deptt. But I was not aware that House rent was not entitled to me from that date (since entry).

I therefore request your honour kindly cause to intimate the total HRA paid to me since my entry in the Deptt. till September, 1986 so that I will pay the same in cash. Further I request you to kindly stop payment of HRA to me from October, 1986 onwards, till I continue to stay in the quarter allotted to my father.

I hope, needful will be done in the matter early."

The applicant did not receive any reply to this application, but the drawal of his HRA was stopped w.e.f. October, 1986. Some time in or about August, 1987 the applicant was told orally by his Postmaster to bring the arrears of HRA which he wanted to refund. By order dt. 12.8.1987 a sum of Rs.3,947.60 being the HRA paid to the applicant during the period August, 1979 to September, 1986 was credited at Bombay Central Head Office. In the mean time, the applicant's father had retired from service w.e.f. 1.7.1987 (F.N.). Also, on 2.7.1987 the applicant submitted an application for allotment of accommodation in the name of the son of a retired Government Officer who has been allotted accommodation from the P & T Pool. The applicant did not receive any reply to this application also, but on 24.2.1988 the Senior Superintendent of Post Offices, Bombay City West Division wrote to the applicant's father. This letter reads as follows:

"It has been intimated by the PMG By that the request of your son Shri S.R.Kamble for allotment of quarter on ad hoc basis cannot be considered due to the following omissions:

1. The list of the family members shown in the application form is not satisfactory. The names shown on ration card and the names given by the applicant are different. The date of issue of ration card

and CGHS card and their particulars are not mentioned.

2. There is no document which can show that the applicant is staying in the quarter with his father since the date of allotment. The address given by the applicant at the time of his recruitment in the department is other than P & T Colony which clearly shows that he was not staying in the quarter.

He has credited the amount of excess drawn HRA from August, 1979 to September, 1986 at Bombay Central Head Office on 12.8.1987 without any orders from C.O. and that too after your retirement i.e. 1.7.1987. As such it is proved that he has failed to intimate the department about the excess drawal of HRA since 1979 to 1986.

All these facts clearly show that the applicant was not staying in the quarter with you till your date of retirement but staying somewhere else.

In view of the above facts and with reference to PMG By letter No.BMA-14/A-9/5/MLD dated 10.2.88 addressed to you and copy endorsed to this office you are directed to vacate the quarter within a week from the date of receipt of this letter."

3. On 25.4.1988 the applicant's father requested for re-consideration of the matter, but he did not receive any reply to this representation. On 18.7.1988 the Estate Officer in the Office of Postmaster General, Bombay issued notice to the applicant's father under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The applicant's father replied to this notice on 28.7.1988 and 16.8.1988. Simultaneously, the applicant addressed a representation to the Postmaster General, Bombay seeking ad hoc allotment of the quarter originally allotted to his father. On 18.8.1988 this request of the applicant was rejected by the Postmaster General, Bombay. In this reply it was communicated that:

"For adhoc allotment of quarter after the retirement of father, the son is required to prove that he was residing with his father for atleast three years prior to the date of retirement of the father. The son i.e. govt. servant claiming for adhoc allotment should not have drawn HRA during the period of his living with his father in the P & T Colony."

On 25.8.1988 the applicant submitted an appeal to the Director General, Department of Posts, New Delhi against the Postmaster General Bombay's order dt. 18.8.1988. The applicant did not receive any reply to this appeal.

4. On 7.3.1989 the Estate Officer in the office of the Postmaster General, Bombay issued an order to the applicant's father "and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within fifteen days of the date of publication of this order." Being aggrieved at this the applicant filed the present application. The applicant's father had, in the meanwhile, obtained a stay of the execution of the eviction order from the City Civil Court, Bombay upto 24.4.1989. By this Tribunal's Order dt. 21.4.1989 the respondents were restrained from enforcing the eviction order of the City Civil Court till 5.5.1989. This stay was subsequently extended until the final decision of this case.

5. The respondents have opposed the application by filing their written reply. I have heard Shri C.B.Kale, learned advocate for the applicant and Mr.S.R.Atre, holding the brief of Mr.P.M.Pradhan, learned advocate for the respondents.

6. The rules governing the ad hoc allotment of General Pool accommodation to eligible dependents/relations of Government employees on their retirement have been mentioned in the relevant portion of Postmaster General, Bombay's letter dated 18.8.1988 to the applicant which we have already quoted earlier.

7. As far as the second condition is concerned, the

applicant stoutly contended that he did not know that he was not entitled to draw HRA in view of the fact that he was staying with his father and that as soon as he came to know about this, he attempted to pay back the amount that he had received. This was approved and he did pay back a very large sum, i.e. Rs.3,947.60, covering the period August, 1979 to September, 1986. Furthermore, he did not draw any HRA thereafter. It was the applicant's contention that by this payment and subsequent non-drawal he had fully complied with the condition that the Government servant claiming ad hoc allotment should not have drawn HRA during the period of his living with his father. The respondents attempted to counter this by submitting that mere acceptance of the fact that the applicant could credit the amount of HRA does not entitle the applicant to claim for the allotment of the quarter on ad hoc basis. I do not see any merit in this submission of the respondents. Whatever might have been the position prior to 12.8.1987, the applicant was permitted to pay back the HRA that he had received and the subsequent drawal of HRA by him was also stopped. So it cannot be disputed now that the applicant has complied with the condition regarding non-drawal of HRA that has to be ^{met} made to enable him to claim ad hoc allotment of the accommodation initially allotted to his father.

8. Coming to the other condition viz. proof that he was residing with his father for at least 3 years prior to the date of retirement of his father, the applicant fairly stated that at the time of his appointment he was not staying with his father, but was staying with his uncle at Chembur. He also submitted that Chembur was his permanent address and so this was the address he had given when filling in his service book and other documentation. It is the applicant's

submission that, thereafter, he moved over to his father's quarter and has been staying with him since then. It is the applicant's contention that proof of this lies in the invitation for the applicant's marriage on 3.6.1984 and in his father's ration card. The respondents have countered this submission of the applicant on a number of grounds. The first is that the marriage invitation only details the place where the marriage was to take place and was not any evidence that the applicant was, in fact, residing with his father. It was the respondents' contention that the applicant had his name, as also the names of other members of the applicant's family inserted in his father's ration card as late as 1987. The applicant attempted to counter this by submitting that initially he had no ration card and that he had had his name inserted only later when he was advised to do so because one of the items which would be taken into consideration at the time of deciding ad hoc allotment of his father's quarter to him would be the particulars in his father's ration card. If that is so, it is not open now to the applicant to put forward the ration card as evidence that he was, in fact, staying with his father ever since his appointment. The respondents also contended that during his service the applicant had, off and on, occasionally been taking leave on medical grounds. It was their submission, which was not controverted by the applicant, that all these leave applications were supported by medical certificates from doctors in the Chembur area. The applicant, however, countered this by submitting that it was not as if he never went to Chembur. Even though he was staying with his father he certainly did visit Chembur often and if he fell ill there it was but natural that he would avail of medical assistance there. It was the

respondents' further submission that in the nomination form for benefits under the Central Government Employees Insurance Scheme, 1980 the applicant had shown the address of his nominee, viz. his wife, as Chembur. The applicant attempted to counter this by submitting that his permanent address, as recorded in his service book, was Chembur and that it was this address that he had given in the application form. The respondents' penultimate submission was that the applicant's father had submitted an application in or about June, 1985 regarding sharing his quarter at Mulund with one Shri U.W.Wankhede, Postal Assistant. In the form prescribed for such applications ~~the applications~~ the applicant's father was required to indicate the names and relationship of the family members who were residing with him in his quarter. In this form he had indicated the names of only 4 members, viz. Smt.Vasala, his wife and Kum.Shashikanth, Praveen and Sunil his sons. It was the respondents' contention that the applicant's father had not mentioned that either the applicant, who was married by that time, or the applicant's wife were staying with him. The applicant attempted to counter this by saying that there had been an omission in giving these particulars. The respondents' final submission was that at no time after his appointment had the applicant ever given any application or other documentation showing that he was residing with his father. It was their contention that the applicant did so for the first time only when he sought ad hoc allotment of his father's accommodation. Based on all the evidence that has been put forward, I am unable to accept the contention of the applicant. To my mind there is no evidence to show that the applicant was, in fact, residing with his father since his appointment or, for that matter, residing with his father for at least

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3 years prior to his father's retirement w.e.f. 1.7.1987(F.N.). The applicant's contention that he willingly paid a large sum of about Rs.4,000/- by way of refund of HRA does not prove that he was, in fact, staying with his father. His application to do so was made only in September, 1986, after he had been in service for over 7 years and only shortly before his father's impending retirement. In this view of the matter, I am unable to conclude that the applicant had been continuously residing with the retiring government servant for at least 3 years immediately preceding the date of the latter's retirement even though the applicant had been appointed to Government service almost 8 years before his father's retirement.

9. In this view of the matter, it can not be held that the applicant has complied with the rules regarding ad hoc allotment of his father's accommodation and it can not be held that he is entitled to such an allotment. However, since this conclusion is based on the fact that he was not residing with his father, the logical consequence has to be that the applicant is entitled not only to the refund of the amount of Rs.3,947.60 that he had refunded in respect of HRA which he was due during the period August, 1979 to September, 1986 but he is also due for payment of HRA for the entire period from October, 1986 onwards.

10. I therefore, pass the following order.

O R D E R

(i) The application is dismissed.

(ii) The respondents are directed to pay HRA to the applicant for the entire period from his initial appointment in August, 1979 onwards. This payment should be made within a period of 3 months from the date of receipt of a copy of this order.



(iii) The interim orders passed during the hearing of this application are hereby vacated.

(iv) In the circumstances of the case, there will be no order as to costs.

P.S. Chaudhuri
(P.S.CHAUDHURI)
MEMBER(A).

18- 10- 1989