

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 6/1/88

APPLICATION NO 966 /86 (F)

W.P. NO _____

Applicant

Shri M.F. Karim

v/s

The Director, Central Poultry Breeding Farm, Hesaraghatta & another

To

1. Shri M.F. Karim
Electrical Foreman
Central Poultry Breeding Farm
Hesaraghatta
Bangalore North
2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

3. The Director
Central Poultry Breeding Farm
Hesaraghatta
Bangalore North
4. The Secretary
Ministry of Agriculture
Krishi Bhavan
New Delhi- 110 001
5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~SECRETARY~~
~~INTERIM ORDER~~ passed by this Tribunal in the above said
application on 14-12-87.

Raj. Venkatesh
DEPUTY REGISTRAR
~~SECRETARY~~
(JUDICIAL)

Encl : as above

RECEIVED 5 copies 7/1/88 *8/1/88*

Diary No. 1593/CD/07

Issue Date: 7/1/88 (AM)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE FOURTEENTH DECEMBER, 1987.

Present: Hon'ble Justice Shri K.S. Puttaswamy ... Vice Chairman
Hon'ble Shri L.H.A. Rego ... Member (A)

APPLICATION NO. 966/1987

Shri M.F. Karim
Electrical Foreman
Central Poultry Breeding Farm
Hesaraghatta
Bangalore North.
(Dr. M.S. Nagaraja, Advocate)

... Applicant

Vs.

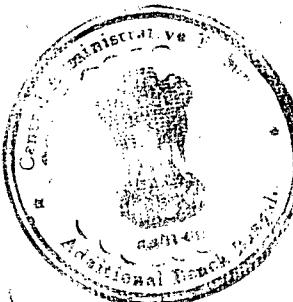
1. The Director
Central Poultry Breeding Farm
Hesaraghatta
Bangalore North.
2. Secretary
Ministry of Agriculture
Government of India
Krishi Bhavan
New Delhi.
(Shri M. Vasudeva Rao, Advocate)

This application has come up for hearing
before this Tribunal today, Hon'ble Justice Shri K.S. Puttaswamy,
Vice Chairman, made the following:

O R D E R

This is an application made by the applicant
under Section 19 of the Administrative Tribunals Act, 1985 ('the Act').

2. Some time in 1966, the applicant joined service in
the Central Poultry Breeding Farm of the Ministry of Agriculture
('Farm') as an Assistant Foreman. He was promoted as a Foreman in 1977.



3. While working as an Assistant Foreman at Hesara-ghatta Farm, the applicant had been allotted quarters, viz., Type-II at Hesaraghatta, appropriate to his grade and pay. He vacated the said quarters voluntarily on 1.5.1986. From 1.5.1986 and onwards, the applicant is not in occupation of any Government quarters either at Hesaraghatta or at any other place. On that basis, the applicant claimed House Rent Allowance('HRA') from 1.5.1986 and onwards and the Director on 11.9.1986(Annexure A-2), had disallowed the same and debarred him for further allotment of any Government quarters for a period of one year from 1.5.1986. In continuation of the same, Government and the Director, had made orders calling upon the applicant, to occupy appropriate Type III quarters allotted to him from 31.10.1987 at Hesara-ghatta. In this application, the applicant has challenged the directions made by Government to occupy Government quarters which he had not sought for and was not in need and had sought for a direction to the respondents to grant him, HRA admissible, under the Rules, from 1.5.1986 and onwards and continue to pay the same, till he did not choose to occupy Government quarters voluntarily.

4. In their reply, the respondents have asserted, that the nature of the duties performed by the applicant viz., maintenance and supervision of electrical works at the Farm, require compulsory occupation of the quarters, constructed by Government and on the allotment of Type-III quarters from 31.10.1987, he was bound to occupy the same, paying necessary licence fee, in accordance with the rules regulating the same.

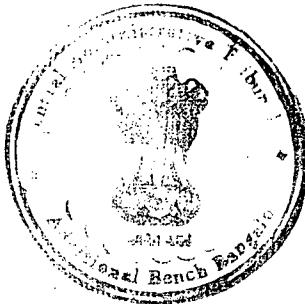
5. Dr.M.S.Nagaraja, learned counsel for the applicant

contends, that the Regional Poultry Farm Allotment of Residence Rules, 1964('the Rules') made by the President, under the proviso to Article 309 of the Constitution or any other orders, do not authorise Government/Director to compel the applicant to occupy Government quarters against his will at or near the Farm and the impugned orders made thereto, were without jurisdiction and illegal.

6. Sri M.Vasudeva Rao, learned Additional Central Government Standing Counsel appearing for the respondents contends, that the Rules and the orders, do not prohibit the authorities from compelling the applicant to occupy Government quarters, with due regard to the nature of the duties performed by him and, therefore, the orders made by Government and the Director were within their jurisdiction and legal.

7. The Rules made by the President under the proviso to Article 309 of the Constitution, do not specifically regulate, compulsory occupation of Government quarters and they are silent on the point. There is a yawning gap on the point.

8. That a yawning gap on a point, can be filled up or removed by Government, in exercise of its executive powers is now well-settled. On that view, it was open to Government to make an order against the applicant. On an examination of the fact-situation as a whole, Government had made such an order in the present case. If this is so, then we cannot hold, that the order of Government was not within its jurisdiction and power at all. In this view, the question of our examining the power of the Director does not arise. But we are inclined to hold, that that Director also can exercise that power.



9. On the necessity or otherwise, of an official being compelled to stay in the official quarters attached, Government/Director are the best judge to decide the same. This Tribunal which is ill-equipped to decide on the same, cannot examine such a decision as a court of appeal and come to a different conclusion. In the absence of a plea of mala fides, this Tribunal should accept such a decision and should not even interfere with the same. On these considerations, this Tribunal should reject the challenge of the applicant to the orders of Government/Director.

10. The applicant is the head of the electrical works and maintenance of the Farm. The nature and responsibility of work at the farm require presence of the applicant at the Farm almost round the clock to attend to emergencies that may and will arise now and then. As to when an emergency will arise cannot be predicted by the Director or the Government or by anybody. But, the job-requirement of the applicant, undoubtedly necessitate his constant presence at the work-spot. If that is so, then the orders made by Government/Director are undoubtedly justified and cannot be interfered solely on technical ground, urged by Dr.Nagaraja.

11. We very much wish, that the matter is completely regulated by the Rules on orders made by Government in the matter. But, absence of the same, is no ground to interfere with the order made by Government.

12. On the foregoing discussion we hold that there is no merit in the challenge of the applicant, to the orders made by Government/Director compelling him to reside, at Government quarters near the work-spot and we reject the same.

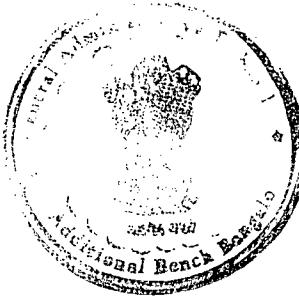
13. The occupation of Government quarters and payment of licence fee and all other related matters are regulated by the Rules called 'FRSR Part-V/HRA & CCA' ('HRA Rules').

14. Rule 4(b)(1) of the HRA Rules, prohibits grant of HRA to a person, for a period of one year from the date, he vacated Government quarters, on his own. The validity of the said Rule is not in challenge. When that rule is enforced against the applicant, as had been done by the Director, it necessarily follows from the same, that the applicant cannot claim HRA for the period from 1.5.1986 to 30.4.1987. We, therefore, uphold the order of the Director, disallowing grant of that to the applicant for the period from 1.5.1986 to 30.4.1987.

15. HRA is paid to a civil servant, by way of compensation for Government quarters not having been allotted to him and he is not in occupation of the same.

16. From 1.5.1987 to 31.10.1987 there is no dispute that the applicant had not been allotted Government quarters. If that is so, then there is no justification to disallow HRA to the applicant for the said period. Even otherwise, we see no justification, for disallowing HRA admissible to the applicant, for the period from 1.5.1986 to 31.10.1987. From this it follows, that the claim of the applicant for payment of HRA from 1.5.1987 to 31.10.1987 has to be upheld.

17. On and from 1.11.1987, there is no dispute that the Director had allotted Government quarters to the applicant appropriate to his grade and pay at the 'Farm' and had directed him to occupy the same which he had not occupied ever since then. The same had also been kept vacant ever since then to facilitate



his occupation. We have earlier upheld, the orders of Government/ Director compelling the applicant to occupy Government quarters. In these circumstances, the applicant cannot claim HRA from 1.11.1987 and onwards. We therefore reject this claim of the applicant.

18. On what we have expressed earlier, Dr.Nagaraja, prays, for more than one reason advanced by him, that the applicant be allowed to occupy Government quarters, from 1.7.1988. Sri Rao opposes grant of any time to the applicant in this regard.

19. We have carefully examined the request of the applicant and the reasons given by him for not occupying Government quarters till 1.7.1988. We are satisfied, that all of them, which are not very necessary to notice, only justify us to permit the applicant not to occupy the quarters and to continue to reside upto 30.4.1988 in the private residence he had secured. We, therefore, propose to grant time to the applicant in this regard till 30.4.1988. But this does not prohibit the applicant from occupying the earlier, if he so chooses ^{the same} the Government quarters allotted to him appropriate to his status and pay. But till then, the applicant will not also be entitled for any HRA.

20. In the light of our above discussion, we make the following orders and directions:-

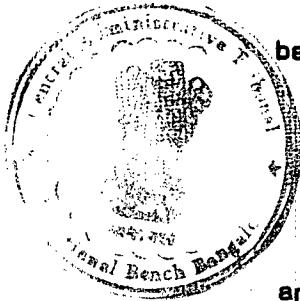
(i). We dismiss this application, in so far as it claims HRA for the period from 1.5.1986 to 30.4.1987.

(ii) We declare that the applicant is entitled for payment of HRA for the period from 1.5.1987 to 30.10.1987, in accordance with the Rules regulating the same. We direct the respondents to make payment of HRA, due to the applicant, for the aforesaid period only, with all such expeditation as is possible, in the circumstances of the case.

(iii) We dismiss this application, in so far as it challenges the orders of Government/ Director, compelling him to occupy Government quarters Type-III, allotted to him at Hesaraghatta Farm. But, not-

withstanding the same, we grant time to the applicant to occupy the said quarters from 1.5.1988 or from such other earlier date as may be decided by him.

21. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.



an.

Sd/-
VICE-CHAIRMAN 14/12/1987

Sd/-
MEMBER (A) 14/12/87

- True Copy -

R.A. Venkatesh
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

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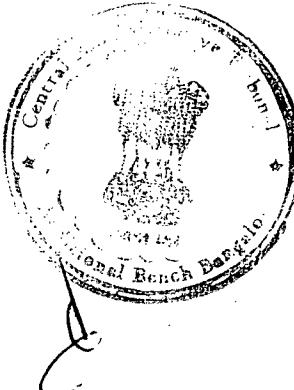
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Bench Bench

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VICE-CHAIRMAN 14/12/1987

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MEMBER (A) 14.12.87

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