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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
BOMBAY - 400001

QA No. 555/91

1. Shri Surendra Prasad
2. Smt. Aruna Saxena

..Applicants

V/s.

Union of India & Ors.

..Respondents

Coram: Hon. Shri M Y Priolkar, Member (A)

ORAL JUDGMENT:
(Per: M Y Priolkar, Member(A))

DATED: 4.11.1993

Although a number of reliefs had been sought when this QA was filed by the two applicants (husband and wife) in 1991, the learned counsel for the applicants to day stated that the only relief which the applicants are pressing now is relief (i) in para 8 of the O.A. viz., if the applicant no.2 is required to stay in the campus of her office, she should be given accommodation which is due to her. By the interim order of this Tribunal dated 23.10.1992 it was directed that since the new building of the Institute where a quarter for the Warden i.e., applicant no.2 was to be provided by the respondents was not ready for occupation and no time schedule could be given by the respondents for its completion, as an interim measure the applicants' application for accommodation from the General Pool should be forwarded to the Estate Manager and if a quarter is allotted by the Estate Manager, the applicants should be permitted to stay outside the present premises. In pursuance of this interim order, the applicant no.1 is stated to have been allotted a quarter of his entitlement i.e., of Type D from the General Pool of the Estate Manager in which the applicants have been staying since then.

2. The learned counsel for the respondents contended that in the order dated 29th October 1960 creating the post of Warden, it is mentioned that one of the amenities would be free furnished quarter including free water and electricity. Admittedly, when the post was offered to the applicant no.2, nothing was mentioned about the requirement of either staying in the quarter on the campus or that there was the amenity of free furnished quarter attached to the office. It cannot, therefore, be considered that living in the quarter in the campus was a condition of service prescribed for applicant no.2. In any case, amenity means a facility or a perquisite and under the orders creating the post, it is implicit that the ~~free~~ furnished quarter mentioned therein would be atleast of the same size which is prescribed in the relevant rules for Central Government employees drawing similar emoluments. The relevant rule is admittedly F.R. 315 under which, as explained in the rejoinder of the applicant to the written reply of the respondents, the entitlement of the applicant no.2 was for C Type quarter which means a quarter of a minimum of 572 sq.ft. and a maximum of 767 sq. ft. As already stated above, the applicants are already living in a Government quarter of D Type allotted to applicant no.1 which has admittedly more than 750 sq. ft. area. In these circumstances, it is not fair on the part of the respondents now to insist that the applicant no.2 should stay in the quarter meant for the Warden in the building under construction, the area of which is stated to be only 440 sq.ft. Even this quarter is not yet ready for occupation and the respondents cannot still given any fixed time schedule within which the building would be ready for occupation.

3. The learned counsel for the applicants also relies in this connection on a judgment of the Calcutta High Court in the case of SANKAR V. DURGAPUR PROJECTS LTD. 1988 AIR CAL.137 in which it has been held that compelling a person to live with his family in one small room is violative of his fundamental right envisaged under Articles 21 and 43 of the Constitution.

4. In view of the above, I am of the opinion that the applicant no.2 cannot be compelled to live in the quarter meant for the Warden in the new building under construction of the Institute even after it is ready for occupation, unless, the respondents are in a position to allot to her residential accommodation of an area equivalent to her entitlement under the relevant rules of the Government viz., the entitlement specified under S.R. 317. If the quarter is of considerably smaller area, the respondents shall have no right to compel the applicant no.2 to live in such a small quarter leaving the much bigger quarter she is presently occupying from the General Pool accommodation. With these observations this O.A. is disposed of finally with no order as to costs.

M.Y. Priolkar
(M.Y. Priolkar)
Member (A)