

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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O.A. NO: 118/92

199

T.A. NO:

DATE OF DECISION 5.11.92

BHAGAT RAM DOGRA

Petitioner

SHRI SHANKARNARAYAN

Advocate for the Petitioners

Versus

COLLECTOR OF CENTRAL EXCISE,
Bombay-1, Central Excise Bldg,
Maharashi Karve road, Bombay-20

Respondent

Shri P.M. Pradhan

Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Mr.~~ USHA SAVARA, MEMBER (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Usha Savara
(USHA SAVARA) 5.11.92
M/A

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

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ORIGINAL APPLICATION NO: 48/92

Shri Bhagat Ram Dogra,
Inspector, C.Ex. Divn. G-II,
Bombay -I Collectorate,
and others.

.... Applicants

V/s

Collector of Central Excise, Bombay-I,
Central Excise Building, Maharshi
Karve Road, Bombay - 400020.

.... Respondents

CORAM : HON'BLE USHA SAVARA, MEMBER (A)

Appearance :

Shri Shankarnarayan, Adv.
for the applicant.

Shri P.M.Pradhan, Adv.
for the respondents

JUDGEMENT

DATED: 5.11.92

(PER : USHA SAVARA, M/A)

This application has been filed by 11 Central Excise officers in the pay scale of Rs.1500 to Rs.2800 assailing letter F.No.1/Admin(II)1/91 dated 18.1.1991 issued by the Deputy Collector (P and V) Central Excise, Bombay- 400001, Collectorate, regarding application for allotment/renewal of residential quarters and preparation of waiting/seniority list thereof. On 28.4.1992 The Central Excise Executive Officer's Union filed an M.P. praying that they be added as applicant No. 12 as the members of the Union were similarly situated and there was no conflict of interest between the applicants and the petitioners. The M.P. was allowed as there was no objection from the respondents, and the petitioner's prayer was accepted. As the Circular dated 18.1.1991 was contrary to the Presidential Notification dated 8.9.1964, an interim order was passed restraining the respondents from making any allotment of Type -III 'C' quarters on the basis of priority indicated in circular dated 18.1.1991.

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2. Shri Shaakarnarayan, learned counsel for the applicant/

(that the Ministry of Finance had formulated the allotment rules, for residential quarters for its employees in pursuance of the provision of Rule 45 of the Fundamental Rules and Rule 317 of the Supplementary Rules and the rules were called "The Department of Revenue and Company Law Allotment Rules, 1964, (hereafter called the said rules) (Ex.A). After the Fourth Pay Commission's recommendations became effective from 1.1.1986, the applicants became entitled to Type-III accommodation having regard to the pay scale drawn i.e. less than Rs.2800 p.m. but not less than Rs.1500 p.m. by virtue of S.R.317-P-3 of the said rules. S.R.317-P-3 provides the guidelines for the purpose of determining seniority for the allotment of residential quarters which is the date of reaching the qualifying limit of pay prescribed for each class of residence under the rules. The proviso to the rule lays down how seniority shall be determined if two or more officers have the same seniority.

~~The learned counsel~~ submitted that for the last 2-3 years, the respondents have been flouting the statutory guidelines, arbitrarily and without any authority of law, making irregular allotment of residential quarters. The respondent No.2 has been taking seniority in the total service as the criteria for applicants, who were entitled to Type I/A, Type -II B, Type -III/C type accommodation instead of seniority in the qualifying grade as provided in the statutory guidelines.

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A representation made on 22.8.1990 (Ex.B) by the applicants through their Union asking the respondents to follow the allotment rules has not even elicited reply. Thereafter, respondent: No.2 issued the impugned circular dated 18.1.1991 providing guidelines for preparation of waiting list/seniority list for allotment/renewal of residential quarters for the year 1991-92(Ex.E) . These guidelines are contrary to the statutory guidelines provided under the G.S.R. 1336 dated 8.9.1964 (Ex.A)

3. It is further submitted that by these guidelines the respondents have adopted two different criteria to decide the date of priority for allotment of residential quarters. For Type - I/A, Type - II/B and Type - III/C the criteria is the date of appointment in the service, but for Type IV/D and V/E, the criteria remains the date of crossing the particular pay scale in the qualifying grade and emoluments drawn on 1.1.1991 (para 5 of Ex.'C'). The result of this change in criteria was that many employees, who were entitled to residential quarters according to their seniority in the qualifying grade and pay scales as per rules, were superseded by their juniors in their grade as they had been appointed in the service earlier. It was also clarified that the Department of Customs is also covered by the Allotment Rules of 1964, as it also falls under the Ministry of finance. No different criteria has been adopted by Customs, and they have followed the correct allotment rules for fixing seniority of TYPE-III/C quarters as per S.R.317-P-8 mentioned earlier.

4. The learned counsel assailed the letter dated 18.1.1991 on the ground of being ultra vires of the statutory guidelines contained in the G.S.R.-1336 dated 8.9.1964 particularly in respect of Type -III/C quarters. The fundamental Rules and Supplementary Rules, it is argued, are statutory rules, and are mandatory in nature, and cannot be modified, amended or deleted by administrative instructions, hence the instructions contained in circular dated 18.1.1991, being inconsistent with the statutory rules with regard to the allotment of residential quarters in Type-III/C are null and void. These instructions are also arbitrary and discriminatory and in violation of article 14 of the Constitution as it adopts two different criteria for fixing the date of priority for allotment of residential quarters.

5. Shri P.M.Pradhan, learned counsel for the respondents did not dispute the facts stated by the applicants, however, he contended that the earlier practice could not be followed by virtue of the implementation of the fourth Pay Commission's recommendations by which revised pay scales were introduced with effect from 1.1.1986. The classification of allotment of quarters was also revised, and it was very difficult to arrive at qualifying emoluments particularly for Type- B and Type-C quarters. In order to remove this difficulty, appropriate action was taken, and the action was neither arbitrary nor illegal. In order to overcome the difficulty, it was decided to adopt the practice followed by the Estate Manager for General Post Quarters. The statutory guidelines of 1964 cannot be static and require to be modified with reference to the pay scales that would be revised by the Pay Commission.

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In view of this, the letter dated 18.1.1991 is not arbitrary, discriminatory, malafide or without any authority. The learned counsel placed reliance upon the judgements in AIR 1985 SC 551 in the case of K. Nagaraj and others V/s State of Andhra Pradesh and other; and 1971(2), S.C..C 452 in the case of Suman Singh V/s State of Rajasthan and ors.

6. I have heard both the learned counsel and given my earnest consideration to the arguments raised by them. The facts are undisputed, and the legality and ~~truth~~ effect of letter dated 18.1.1991 is the only question in this case. It is not the case of the respondents that the Rules of 1964 do not apply to them. It is their contention that the rules had to be amended/modified only on account of implementation of the recommendation of the 4th Pay Commission. However, one of the direct consequences of the amendment/modification is that persons holding several years seniority in the relevant pay scale for Type III quarter, for instance, may be pushed down vis-a-vis/^a junior with longer service, merely because of later entry into the service. This is neither reasonable nor desirable. A natural corollary to the above is that persons, who were seniors and had not been able to get allotment, continued to remain deprived, while some of those persons, who had the benefit/^{of} lower type of quarter became eligible to higher type quarter only because they have entered the service at an earlier date. In the circumstances, can it be held that the criteria^g of seniority adopted by the respondents is constitutionally valid?.

7. There is no doubt that as a result of adoption of the criterion of total length of service rendered for determining seniority, number of junior employees would become eligible for allotment of Type-III quarters, thereby ousting

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the senior employees, who become eligible on the basis of entry into the relevant pay scales. This would frustrate the very object of framing scheme for allotment of quarters, namely, an equitable distribution thereof between the entitled employees. Prior to the issue of circular dated 18.1.1991, seniority was based on length of continuous service within the pay range, and among persons of equal seniority it was based on the employees' "higher emoluments". Such a classification of Government servant for differential treatment on the basis of rank and pay has been recognized to be a valid classification within the meaning of Article 14 and 16 of the Constitution vide M.C. Rajgopal V/s Superintendent of Police, Crime Branch, Madras, AIR 1965, Madras 103. In the case before me, persons belonging to an entirely junior class of service are sought to be given preference to those of a senior class in respect of quarters, which are meant primarily for Group 'B' only, on the basis of length of total service, most of which was rendered in Group 'C', that violates the principle of equality under Article 16. In my opinion, only the service rendered by them after entry into the pay range relevant for Type-III quarters could be reasonably taken into account.

8. In the circumstances, the criterion set out in circular dated 18.1.1991 is found to be invalid as it is in violation of Article 16 of the Constitution. It defeats the object of the scheme of allotment viz equitable distribution of quarters of Type I/A, Type II/B, and Type III/C. There is no quarrel with the criterion of "eligibility", which is the date of entry at the minimum of the pay range, but actual allotment depends upon seniority. The respondents must find a criterion applicable to all the employees equally within the appropriate pay range ; they cannot be permitted to adopt a

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criterion, which will apply to only some of the persons in the pay range and not to others, like total length of service rendered in different capacities.

9. Another ground on which the circular dated 18.1.1991 can be termed as null and void is that the respondents have amended/modified the statutory rules by issue of administrative instructions, which cannot be done, as held in the case of C.L.Verma V/s State of M.P. and ors. (1991)17 ATC 217. The rules and amendments made under the proviso to article 309 can be altered or repealed by the Legislature, in exercise of the powers conferred by the proviso to Article 309, read with Article 313 of the Constitution. The power conferred by the proviso to Article 309 is of a legislative character and is to be distinguished from an ordinary rule making power. There has been no valid exercise of legislative power in this case. There is only a departmental instruction seeking modification of a Fundamental Rule, which it is not competent to do. This is the ratio of the judgement in the case of K.Nagraj and others cited by the learned counsel for the respondents but which fails to support his case. It has been held by the Hon'ble Supreme Court in the case of Sant Ram Sharma V/s State of Rajasthan and another that the Government cannot amend or supercede statutory rules by administrative instructions. If the rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not-inconsistent with the rules already framed. The circular dated 18.1.1991 does not fill up any gap, but seeks to change the very criterion of seniority for allotment of quarters, which contravenes the rules, and therefore, for this reason also, the circular has to be struckdown.

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10. In the circumstances, the application is disposed of with the direction that the circular dated 18.1.1991 is quashed. The respondents shall prepare a fresh list of allotment of quarters in the light of the observations made in the body of the judgement. Any allotments made prior to 22.1.1992, i.e. the date on which interim relief was ordered may not be disturbed. The allotment list shall be finalised within a period of one month from the date of receipt of a copy of this order, and thereafter order of allotment shall be issued to the appropriate employees. The order of interim relief is made absolute. There will be no order as to costs.

U. Savara
5.11.92
(USHA SAVARA)
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