



CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 1319/92
T.A. No.

198

DATE OF DECISION 28-2-1994

Dr. D. M. Kamble Petitioner

Shri B. Dattamoorthy Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri R. K. Shetty, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M. R. Kolhatkar, Member (A)

The Hon'ble ~~Mr.~~ Smt. Lakshmi Swaminathan, Member (J)

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?

M. R. Kolhatkar

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION No. 1319/92

Dr. D.M. Kamble

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Applicant

Vs.

Union of India,
through Director General/
Joint Secretary,
Govt., of India,
Ministry of Labour, D.G.E & T.,
Sham Shakti Bhavan,
Rafi Marg, New Delhi - 110 001.

Director,
Advanced Training Institute,
V.N.Purav Marg, Sion,
Bombay - 400 022.

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Respondents.

Coram : Hon'ble Shri M.R.Kolhatkar, Member(A)
Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Appearance:

Shri B.Dattamoorthy, counsel
for the Applicant.

Shri R.K.Shetty, counsel
for the Respondents.

JUDGEMENT :

DATED : 28 - 2 - 1994

I Per : Hon'ble Shri M.R.Kolhatkar, Member(A) I

1. The Applicant is the Chief Medical Officer Advanced Training Institute, Dispensary, Sion, Bombay. It is a matter of record that he was allotted Type III quarter by order Dated 9-8-1991 (Exhibit R1). The Applicant applied for allotment of Type V Quarter vide his application Dated 11-12-1992 (Exhibit D) addressed to D.G.E.T. New Delhi. The eligibility for Type V(A) quarter is pay-scale of Rs. 3600-4500 and it is not in dispute that he became eligible in terms of his pay viz. Rs. 3,825 P.M. as on 1-2-91. (The Applicant had earlier claimed eligibility for Type V(B) quarter with pay range Rs. 4500 - 5900/- by addition of Non-practising allowance of Rs. 950/- but during the course of arguments, it was conceded that NPA is not included for purposes of pay in this context and the point was not pressed). It is also not in dispute that allotment of quarters in question is governed by revised quarter allotment rules promulgated on 23.2.1982 by Ministry

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of Labour (vide Exhibit R 9). These rules contain an 'interpretation clause' and a 'relaxation clause' viz, clause 18 and clause 19 respectively. The relaxation clause is as below :-

"The power to relax all or any of the provisions of the rules in the case of any officer or residence, or class of Officers, or type of residences shall vest in the Ministry of Labour in consultation with their Integrated Finance and their decision shall be final."

2. The covering letter dated 23-2-1982 does not recite that any previous instructions in clarification have been superseded and both the Applicant as well as Respondent freely referred to orders of Government prior to 23-2-1982 and it has to be assumed that such instructions not in consistent with revised rules hold the field.

3. The original relief claimed by the Applicant was to direct the Respondent to allow Type V quarter to the Applicant on the basis of his salary and essentiality.

4. On 1-1-1993, the Tribunal directed that if any allotment is made for the quarter in question, it will be subject to the order to be passed. The interim relief has been continued from time to time.

5. A special feature of O.A. is that pleadings have been detailed and long drawn out comprising not only written statement and rejoinder but also Sur-rejoinder, additional rejoinder, reply to additional rejoinder, an affidavit by the Applicant and a reply to the affidavit by the respondents. As a result, it has come out ^{that} the Applicant received a reply Dated 24-12-1992 to his representation Dated 11-12-1992 as below :

"I am directed to refer to your letter No. nil Dated 11-12-1992 as the above noted subject and to say that the Director of the Institute also comes under essential staff for allotment under Quarter allotment Rules and he is

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in the higher pay scale i.e. Rs. 4100-5300/-. It has, therefore, been decided that Type V quarter which is to be vacated by the former Director Advanced Training Institute (ATI) will be allotted to the present Director ATI Shri Pramod Chandra". It appears that he occupied the same on or after 2-1-1993 (Exhibit F).

6. The Applicant, has impugned this reply received by him after the filing of the original application.

7. It is not in dispute that there are 55 residential quarters in the Institute of which 54 belong to Type I to Type IV. Respondents in para 8 of their written statement take the stand that there is no Type V quarter as such but the remaining quarter is a quarter called "Principal's Bungalow" and for this purpose rely on letter Dated 2-2-1990 from CPWD (R3), Property Tax Receipt from B.M.C. (R4) and the original map of CPWD. In our view, these documents are not conclusive as to the nomenclature of the quarter for which reliance has to be placed on classification is given in FR's/SR's and in the Revised Allotment Rules. Applicant has produced copy of allotment order in favour of former Director Dated 10-9-1986 which refers to the quarter as Type V. Respondents call this a clerical mistake but we do not accept this contention. We, therefore, hold that the quarter in question is Type V quarter.

8. Respondents have then taken the stand that the quarter in question is "earmarked" for Principal/Director. For this purpose, apart from relying on the nomenclature, they have given the list of Principals/Directors of ATI who occupied the so-called Directors' Bungalow from 1962 up to date. (vide Annexer R 8) This again is not conclusive because Respondents have not been able to show a rule under which a particular quarter viz Type E or Type V stands earmarked in favour of Principal/Director. On the other hand, Applicant in his additional rejoinder Dated 1-3-1993 states that in other ATI's at Ludhiana, Calcutta and Madras, Directors are not staying on the premises of ATI although the same allotment

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rules are applicable to them. There has been no contradiction of this statement by the Respondents.

9. Applicant has contended that the rules envisage a decision by Quarter Allotment Committee vide Rule 17, that the allotment of Type V quarter was made to ^{the} present Director Pramod Chandra without following provisions of Rule 17 and that in any case, in accordance with Circular Dated 7th April 1970, (vide Exhibit C), the present Director is not in "essential category" since Vice-Principal/Deputy Director has already been allotted a quarter.

10. We, therefore, extract below, Rule 8 of rules Dated 23-2-1992 : Allotment to Essential Staff :-

"The following staff have been declared as 'Essential Staff' and over-riding priority may be accorded to them in the matter of allotment of residence of the type of which they are entitled. In the event of the post declared essential remaining vacant, the residence reserved for the incumbent may be temporarily allotted to some other officer eligible for that type with the condition that the same will have to be vacated when the incumbent resumes duty.

1. Director of the Institute.
2. Principal of the Institute.
3. Medical Officer.
4. Compounder.
5. Dresser.
6. Ward Boy.
7. Hostel Superintendent.
8. Driver (One only).
9. Superintendent VRC (Provided the VRC office is situated at the Campus.)"

11. The circular Dated 7.4.1970 reads as below :-

"I am directed to say that in accordance with the provision of rule or the Rules for allotment of residences certain categories of staff had been declared as essential staff and are entitled to over-riding priority in the matter of allotment of quarters. The question as to whether so many categories of staff should continue to be termed as essential staff has been under consideration of the Govt. for sometimes. Based on experience gathered over a period of years and considering especially the changed circumstances it has now been decided that only the following categories of staff

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would hereafter be treated as essential staff.

1. ~~Principal~~ ^{Deputy} Central Training Institute or Vice-Principal Central Training Institute. If the Principal is staying the Vice-Principal would not be treated as essential staff and vice-versa.
2. Medical Officer.
3. Compounder (4) Dresser.
5. Hostel Superintendent (And Asstt. Hostel Superintendent in so far as Calcutta Unit is concerned).
6. Driver (one only) (7) Power House Attendant (one only)
8. Superintendent, V.R.C. or any other Officer of the V.R.C.

Rules 8 of quarter allotment rules is therefore amended as mentioned above. This order takes effect from the date of its issue."

12. The respondents reply that allotment rules Dated 23rd February 1982 do not include the post of Vice-Principal and the post of Vice-Principal does not exist at ATI, Sion. This appears to be mere quibbling since Deputy Director is equivalent to Vice-Principal. It has, not been denied that Deputy Director is occupying a quarter on the campus. It has also not been asserted that circular Dated 7-4-1970 has been superseded. As pointed out by us, there is no recital in rules regarding Supersession of earlier instructions. The so-called revised rules appear to be merely rules as compiled in February 1982 and do not have the effect of superseding earlier instructions which have been promulgated under Government auspices.

13. Regarding the failure to call a meeting of the Quarter allotment Committee, Respondents contend that Petitioner who is an essential Staff was allotted the present Type III quarter without the quarter allotment Committee. This argument can hardly be accepted. It is further stated that since Principal/Director is a member of the essential Staff and moreover the Director being the Head of the Institute and also the quarter in question is earmarked as Principal/Director's Bungalow, the allotment is not to be approved by the quarter allotment Committee. No authority of rules, however, is cited for these statements.

14. Though not pleaded, we have considered the

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possibility that the Government letter Dated 24-12-1992 was issued in relaxation of rules. However, we have already quoted the relaxation rule and the said letter does not incorporate the most essential requirement viz consultation with integrated finance. Hence, we are driven to the conclusion that the said letter is without authority of rules. At the late stage, Respondents have made a feeble attempt to raise a preliminary objection viz that the question of allotment of quarter is not a service matter Under Section 3(a) of the A.T. Act, 1985 and consequently, the Tribunal has no jurisdiction to entertain and adjudicate upon the O.A. which is liable to be dismissed with cost. In our view this objection is not tenable. The position is well settled that allotment or cancellation of grant quarters to a Government servant is a service matter vide a catena of cases a few of which are listed below :-

- i. Bipin Bihari Vs. Union of India (1987) 5 A.T.C. 55.
- ii. Surdeo Singh Vs. Union Territory of Chandigarh (1986) 2 SLJ (C.A.T.) 69.
- iii. K.K. Khanna Vs. Meera Saxena (1989) 9 ATC 378.

15. We, therefore, dispose of the O.A. by passing the following order.

O R D E R

The application is partly allowed. We hold that Government of India letter No.D-11014/7/87. T.A.-II of DGET, Ministry of Labour Dated 24-12-1992 is illegal, being ultra vires the Quarter Allotment Rules applicable to ATI Sion, Bombay. We direct the Respondents to pass a proper allotment order in terms of rules. We also direct that while doing so, eligibility of Applicant for allotment of Type V quarter in terms of Rules vis-a-vis other candidates should be duly considered. Action should be completed within a period of three months from the date of receipt of order. In order to avoid dislocation we direct that during the interregnum,

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present Director need not be disturbed in his occupation.

There would be no order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

C.P.No. 136/94 of 1319/92

Dr. D.M. Kamble

..Applicant

V/s

Union of India & Ors.

..Respondents

Coram: Hon. Shri B.S. Hegde, Member (J)

Hon. Shri P.P. Srivastava, Member (A)

Appearance:

Mr. B. Dattamurthi

Counsel for the applicant

Mr. J.G. Sawant

Counsel for the respondents

ORDER:

DATED: 24.3.95

(Per: B.S. Hegde, Member (J))

The applicant has filed a contempt petition no. 136/94 praying that the contemner be tried under the Contempt of Court Rules, 1986 for having committed contempt of this Hon. Tribunal wilfully and deliberately by flouting with malafide intention judgment/order dated 28.2.94 by ratifying the earlier status of self occupation and getting the said quarter allotted in his own favour by an irregularly constituted quarter allotment committee meeting. Against this the respondents have filed a reply to the Contempt Petition dated 21.2.95 refuting the contention of the applicant. The Tribunal vide its order dated 24.2.95 held that the allotment of the quarter was vitiated because the Director, Advanced Training Institute sat in the meeting as the Chairman when the allotment of the quarter was to be made and allotted the quarter to himself and had directed the respondents to reconstitute the Committee by excluding the person who has interest in having the quarter allotted to himself and allot the quarter in terms of the observations made in the judgment delivered

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in OA NO.1319/92 on 28.2.94 and that the fresh allotment shall be made within three weeks from to day in conformity with the observations made in the judgment dated 28.2.94. The Tribunal however stated that Prabodh Chandra shall not be allowed to continue to occupy the quarters persuant to the earlier allotment for more than three weeks from to day i.e., 24.2.95 and that period will expire on 17.3.95.

2. On behalf of the respondents the ld. counsel Shri J.G.Sawant submitted that there was no intentional disobedience on the part of the respondents to disregard the orders of the Tribunal and he stated that it was a mistake on the part of the respondent no.1, who happens to be the head of department and sat as a Chairman of the House Allotment Committee which was rectified subsequently persuant to the Tribunals order. The Quarter Allotment Committee was reconstituted vide order dated 8.3.95 under the Chairmanship of Shri K.Krishnamoorthy, Depty Secretary, DGE&T, Min. of Labour, New Delhi. The reconstituted committee considered the matter afresh on 14.3.95 keeping in view the direction of the Tribunal, minutes of the meeting annexed as Ex.CPR.VII. Accordingly, Type V quarter according to priority date i.e., the date from which they started drawing basic pay of Rs.3600. Accordingly, applications of 10 staff members which were submitted to the Quarter Allotment Committee on 19.5.94 were reconsidered by the review Quarter Allotment Committee in its meeting on 14.3.95 under the Chairmanship of Mr. K.Krishnamoorthy along with others and keeping in view all the directions of the Tribunal vide its order dated 28.2.94 and the orders on C.P. dated 24.2.95.

3. In the circumstances, we are of the view, that there is no wilful disobedience on the part of the respondents in carrying out the directions of the Tribunal and also the direction to reconstitute the Committee for allotment of quarter. The C.P. filed by the applicant does not survive and the same is discharged.


(P.P.Srivastava)
Member(A)


(B.S.Hegde)
Member(J)

In the circumstances, we are of the view, that
it is in the public interest to do all that can
be done to assist the investigation and
to prevent the occurrence of circumstances
which would give rise to the suspicion
of malice. It is the function of
the police to inquire into the
circumstances of the case and to
discover the truth. The
police are not the
adversaries of the
public, but the
protectors of the
public interest.