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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: O.A.No.61/92

Transfer Application No:
~~XXXXXXXXXXXXXXXXXXXX~~

DATE OF DECISION 5.3.93

R. M. More Petitioner

S P Kulkarni

Advocate for the Petitioners

Versus

U.O.I. & 3 ors.

Respondent

Mr. V M Bendre for Mr. P M Pradhan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri

Ms. Usha Savara, Member (A)

The Hon'ble Shri

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 ?

U. Savara
5.3.93 M(A)

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

O A NO. 61/92

Rupchand Mango More

Applicant

V/s

Union of India
through Director General
Department of Posts
Ministry of Communications
New Delhi 1 & 3 ors.

Respondents

Coram: Hon. Ms. Usha Savara, Member(A)

APPEARANCE:

Mr. S P Kulkarni
Counsel
for the applicant

Mr. V M Bendre
for Mr. P M Pradhan
Counsel
for the respondent

JUDGMENT:
(Per: Ms. Usha Savara, Member[A])

DATED: 5.3.93

This application has been filed praying for a direction to the respondents to pay HRA at Rs.450 per month and 10% of pay in lieu of rent free quarter from 19.12.1988 to 5.5.90 by ordering merger of SPM's residential quarter of Shahad PO from 2.9.87.

2. The applicant has impugned letter dated 26.4.91 by which his representation for considering the merger of quarter into office accommodation from 2.9.87 i.e., the date on which he was promoted in supervisory post of officiating SPM, Shahad on purely temporary and ad hoc basis was rejected by the respondent. The applicant's case, in brief, is that he was promoted to the post

of officiating Sub-Post Master on 2.9.87, and this promotion was temporary, ad hoc, and liable to be terminated at any time. There was a quarter attached for the residence of SPM. He did not occupy the quarter as there was direct risk to health due to injurious pollution created by emission of unburnt sulphuric acid fumes in the "Century Rayon" factory, which is in close proximity to the Post Office. Many workers working in the close proximity of the plant have suffered physically. This fact was known to the higher authorities, and therefore, the quarter was merged with the office accommodation after due approval of the Directorate, New Delhi, on 29.6.90. The authorities were satisfied that the quarters are not necessary at the post office, and therefore, they carried out the merger, but fixed the date of merger as 29.6.90 arbitrarily. Since the proposal for merger was taken up in 1987, the effect should have been given retrospectively from 2.9.87, i.e., when the applicant took over. Due to this, the applicant has been deprived of HRA. It is also the applicant's case, that he has been discriminated against insofar as the merger of Post Master's quarters at Ulhasnagar 2 was given effect retrospectively.

3. Mr. Kulkarni, learned counsel for the applicant, argued at length that as the promotion was temporary and ad hoc and liable to be terminated at any time, therefore it was not possible to shift the family and stay in the quarters at Shahad. He had informed the respondents immediately that he was not occupying the quarter. Secondly, because of the heavy pollution in the area, it was not possible to live there. The quarter was also very small, and not as per standard of a quarter for the SPM and the respondents could not compel him to reside in that. The rules regarding non-admissibility of HRA to incumbents of the post of SPM's quarters who do not occupy the quarters are not applicable to the applicant because of the peculiar circumstances of this case.

4. Reply has been filed on behalf of the respondents. Shri Bendre, appearing for Shri P M Pradhan, vehemently contested the applicant's claim. It was submitted that the applicant took charge of the office, as well as the residential accommodation on his promotion. The charge of pollution is denied. It is admitted that the applicant moved the matter of expansion of office as the area was inadequate but he did not represent to the authorities that he was not occupying the quarter and was, therefore, entitled to HRA. The merger was made, not because of pollution, but because of shortage of office space due to expansion and increasing work-load. The merger was approved by the Directorate, New Delhi, but the actual date of implementation was decided by local authorities.

5. So far as Ulhasnagar Post Office is concerned, the premises were lying vacant, as the staircase leading to the quarter had been demolished. The applicant's case is not that it was physically impossible to use the residence. If he was not occupying the quarter, he should have raised the issue before the competent authority at the appropriate time. He has never made any representation on this point before the competent authority till 18.7.90 (Ex. 'C'). The respondents rely on the case of PRABHAKAR S. BAPAT V. U.O.I. & ORS., 1991(2) ATJ decided on 22.6.91, whereas Shri Kulkarni relies upon the case of P.P.THOMAS V. U.O.I. & ORS., 1990(14)ATC 244.

6. I have heard both the learned counsel. The applicant's claim that he made representation even prior to 18.7.90 is not substantiated. The so called representations are actually reports on the merger of SPM's quarter and to use the space as recreation room (8.6.88, 10.7.88). There is not a whisper in the application about his asking the competent authority i.e., the SSP to cancel the allotment of the quarter. Supplementary Rule 312 provides that the incumbent of a post to which a quarter has been allotted under Rule 311 shall be considered in occupation of the quarter during the period of incumbency unless the allotment

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is changed or suspended under the rules. Even if the letter dated 8.6.88, 10.7.8 be treated as his representations, one cannot help but observe that there is no request for cancellation of allotment of the quarter, and the letters are not even addressed to the competent authority. Even in the case of P.P. THOMAS, it is clearly stated that eventhough an allotment was made, it should have been withdrawn on the representation of the applicant. In the case before us, the applicant has not even made a single representation. This case, therefore, does not help the applicant. On the other hand, the case cited by the respondents is on all fours with the case before me. In that case also, the applicant had stated that he was under no obligation to occupy a quarter which was below that of his entitlement. It was held that this reasoning would have some relevance, if it were a question of allotment of a quarter. However, when a quarter is allotted to a post and this decision is within the competence of the administration to make, then the applicant may not refuse to occupy it without bringing into operation Rule 4 of the OM dated 27.11.75 under S.R. 312 thereby causing the incumbent to lose his eligibility of HRA. Whether the respondents acted arbitrarily in fixing the date of merger as 29.6.90 is of no relevance. The matter is within the administrative domain of the competent authority, and I find no circumstance of arbitrariness or mala fide justifying any interference in it.

7. In the result, I do not find that the applicant has made out any satisfactory case for granting him the relief he has prayed for. The respondent's action appears to be in conformity with the relevant rules. I see no reason to interfere with the impugned order. The application is accordingly, rejected. There shall be no order as to costs.

Usha Savara
8.3.93.
(Usha Savara)
Member(A)