CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 159/2015

New Delhi this the 30th day of November, 2015

Hon'ble Mr. A.K.Bhardwaj, Member (Judicial)

Anil Kumar, aged 41 years,
S/o Late Sh. Kishan Lal,
Working as Driver-II in President's Secretariat,
Rashtrapati Bhawan, New Delhi-4
r/o Quarter No.16-Reading Line,
New Delhi. ... Applicant

(By Advocate Shri Yogesh Sharma)

VERSUS

1. The Secretary,
President's Secretariat,
Rashtrapati Bhawan, New Delhi.

2. The Under Secretary (EBA),
President Secretariat,
Rashtrapathi Bhawan, New Delhi. ... Respondents

(By Advocate Shri Sanjay K.Shandilya)

O R D E R

The prayer made in the present OA filed under Section 19 of the Administrative Tribunals Act, 1985 read thus:-

> ''(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 2.1.2015 and order dated 20.06.2014, declaring to the effect that the same are illegal, unjust, arbitrary and against the principle of natural justice and consequently, pass an order of allowing the applicant to retain the quarter in question.
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> (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant with the costs of litigation."

Learned counsel for the respondents opposed the Original Application raising the plea of maintainability. According to him, in

view of the law declared by Hon'ble Supreme Court in **Union of India** Vs. **Rasila Ram & Ors** (2001) 10 SCC 623), there being remedy available under Public Premises Act, 1971 to question the decision of Estate Officer, the Tribunal has no jurisdiction to entertain an OA against the orders passed under the Act. The learned counsel for the applicant opposed the plea and submitted that the prayer in the OA is not against any order passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, but is against the order dated 02.01.2015 whereby the allotment of quarter No.16- Reading Lane, New Delhi in the name of the applicant stands cancelled.

2. I heard counsel for parties on the maintainability of OA and perused the record. It is true that in the case of **Rasila Ram** (ibid), the view taken by Hon'ble Supreme Court was that the jurisdiction of the Tribunal against the decisions taken under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is debarred for the reason that the remedy against such orders stand provided in the Act itself, but in **Smt.Babli and Anr.** Vs. **Govt of NCT of Delhi and Ors** (95 (2002) DLT 44 (DB) as well as also in **Union of India & Ors** Vs. **Dr. Jagdish Saran** (123(2005) DLT 626(DB), Hon'ble Delhi High Court ruled that where the Government accommodation is not condition of service, the allotment or cancellation of the accommodation cannot be treated as service matter and the Tribunal

would have no jurisdiction in such matter. Para 3 to 10 of the judgment in **Smt. Babli and Another Vs. Govt. of NCT of Delhi and Ors** (ibid) read thus:-

> "3. Learned counsel for petitioner, Mr. Bisaria has taken us through these provisions and the Allotment of Government Residences (General Pool in Delhi) Rules of 1963, in a bid to persuade us that petitioner's claim for regularisation of allotment or fresh allotment related to their service condition thus vesting jurisdiction in Tribunal to entertain and examine it. He placed whole hog reliance in this regard on Section 3 (Q)(V) of the Act and Supplementary General Pool Rules. He interpreted expression "any other matter whatsoever" occurring in Section 3 (Q)(V) to include everything connected with the service of an employee including claim to residential accommodation. According to time once an employee did not charge HRA, his claim for residential accommodation would in lieu thereof would partake the character of a service condition. He also referred to the other set of Rules to claim that these entitled government employees to residential accommodation and constituted a service condition to that extent which was cognizable by Tribunal under the Act.
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> 4. Section 3 (Q) (V) which is material for our purposes in reproduced for proper appreciation of the issue involved:
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> > "(q) "service matters" in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the Control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects-
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> > (i) .....
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> > (ii) .....
> >
> > (iii) .....

(iv) .....

(v) any other matter whatsoever"

5. It must be clarified at the very outset that claim to allotment of Govt. residential accommodation does not become condition of service unless the relevant service Rules provide so. No such rule was shown or pressed in service in the present case which provided for petitioners entitlement to residential accommodation. The expression "any other matter" occurring in Sub Clause V could not be also interpreted so liberally and loosely as to include any matter whatsoever whether or not it was related to employees service condition. The words "any matter" would be read esjuda generis and in the context of provisions of Rule 3(Q). Otherwise any contrary interpretation placed on it would lead to absurd results and would make Tribunal a forum for all matters including private matters of an employee. That indeed cannot be the intent and purpose of this Rule which defines the service Matters for purposes of giving jurisdiction to Tribunal. The employee's non charging of HRA would be inconsequential in this regard and would not convert his claim for residential accommodation to service condition.

6. As regards pool Rules, they only regulate the allotment of Govt. accommodation and do not confer any right as such on an employee to claim it.

7. All this notwithstanding, we find that Tribunal had held petitioners OAs not maintainable upon reliance on the Supreme Court Judgment in Rasila Ram case (supra) which laid down:-

> "Once a government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of Eviction Act, and appropriate orders are passed there under, the remedy to such occupants lies as provided under the said Act. By no stretch of imagination the expression any other matter in Section 13(q)(v) of the Administrative Tribunal Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the PPE Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal over an order passed by the

competent authority under the Eviction Act must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside.

8. We have gone through that judgment which proceeds on the premises that once eviction action was initiated for his unauthorised occupation of premises under the relevant Act, Tribunal could not assume jurisdiction in the matter by reference to Sec. 3(Q)(V) by treating it as "any other matter". That conclusively settles the issue once for all and it need be hardly expressed that law laid down by Supreme Court was binding on all including Tribunal and therefore its impugned orders could not be faulted for that. This is so for the added reason that Eviction Act provided its own safeguards and remedies and where an employee felt aggrieved of any orders passed under this Act, he was to seek appropriate remedy provided therein instead of approaching the Tribunal with his grievance in this regard.

9. In the present case also eviction proceedings stood initiated against petitioners who had all the options to avail of the safeguards and remedies provided under the relevant Act. The question of Tribunal assuming jurisdiction therefore did not arise.

10. We, accordingly, hold that CAT had no jurisdiction to entertain OAs claiming allotment or regularisation of Govt. accommodation unless such claim was shown to be a condition of service. Nor could it assume jurisdiction where eviction action was taken against an employee for his alleged unauthorised occupation of the premises under the Eviction Act. These petitions are accordingly dismissed and Tribunal order affirmed."

The view taken in **UOI & Ors** Vs. **Dr. Jagdish Saran** (ibid) read as follows:-

"5. Aggrieved, the petitioner-Union of India has filed the present Writ Petition. The learned counsel for the petitioner has submitted that the respondent was allotted D-II accommodation in Kaka Nagar vide offer of allotment dated 4.6.1991, which is after the cut off date of 1.4.1991 mentioned by the Supreme Court in its order and, therefore, the order passed by the learned Tribunal is factually and legally incorrect. Learned counsel for the

petitioner has also relied upon the judgment of a Division Bench of this Court in the case of Babli and Anr. v. Govt. of NCT of Delhi and Ors. in which it has been held that disputes in respect of government residential accommodation cannot become subject matter of an application before Central Administration Tribunal unless the right to allotment or claim is shown to be a 'condition of service'. Relying upon this judgment it is submitted that the learned Tribunal did not have jurisdiction to direct refund of Rs. 38,596/- charged towards damages for illegal occupation of the accommodation as the dispute was not in respect of 'condition of service'.

6. The learned counsel for the respondent, however, submitted that the Urban Development Minister had ordered for allotment of ad hoc allotment of D-II type flat to the petitioner on 22.10.1990, i.e., prior to 1.4.1991 and, therefore, the respondent herein is not liable to pay any damages in terms of the judgment in the case of Shiv Sagar Tiwari (supra). It is submitted that the offer of allotment dated 4.6.1991 does not make any difference and is not relevant.

7. We do not think that the learned Tribunal had jurisdiction to entertain and decide the original application filed by the respondent herein. The allotment of the D-II type flat at Kaka Nagar under the discretionary quota cannot be regarded as a matter connected with or relating to 'condition of service' as defined under Section 3(q) of the Administrative Tribunal's Act, 1985. The discretionary allotment of accommodation made in favor of the respondent herein was de hors and not under any service regulation or rules. The said allotment cannot be construed and regarded as a matter relating to 'condition of a service'. Service matters as defined under Section 3(q) of the Administrative Tribunal's Act, 1985 means all matters relating to 'conditions of service of an employee'. It is only in respect of these matters that the learned Tribunal has jurisdiction. Learned Tribunal cannot decide and adjudicate disputes that are not relating to 'conditions of service' between Government and its employees. The Supreme Court in the case of Union of India v. Rasila Ram and Ors. has examined Section 3(q) including sub-clause (v) of the Administrative Tribunal's Act, 1985 with reference to proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and has held as under:-

> "By no stretch of imagination the expression, 'any other matter,' in Section 3(q)(v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed

> by the competent authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal, over an order passed by the competent authority under the Eviction Act, must be held to be invalid and without jurisdiction."

8. This Court in the case of Babli (supra) has referred to the aforesaid decision has laid down as under:-

> "5. It must be clarified at the very outset that claim to allotment of Government residential accommodation does not become condition of service unless the relevant Service Rules provide so. No such rule was shown or pressed in service in the present case which provided for petitioners entitlement to residential accommodation. The expression 'any other matter' occurring in Sub-clause V(sic) could not be also interpreted so liberally and loosely as to include any matter whatsoever whether or not it was related to employees service condition. The words 'any matter' would be read esjuda generis and in the context of provisions of Rule 3(Q)(sic). Otherwise any contrary interpretation placed on it would lead to absurd results and would make Tribunal a Forum for all matters including private matters of an employee. That indeed cannot be the intent and purpose of this Rule (sic) which defines the service matters for purposes of giving jurisdiction to Tribunal. An employee's non-charging of HRA would be inconsequential in this regard and would not convert his claim for residential accommodation to service condition.
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> 6. As regards pool Rules, they only regulate the allotment of Government accommodation and do not confer any right as such on an employee to claim it."

9. In view of the aforesaid, out of turn allotment under discretionary quota to a government servant de hors the Rules cannot be regarded as a matter relating to 'conditions of service'. The respondent has not been able to point out any service rule under which he was entitled to said accommodation under the discretionary quota. On the other hand, in the judgment of the Supreme Court in the case of Shiv Sagar Tiwari (supra) it has been held that the discretionary allotments made represent a scenario of what has come to be known as a Housing Scam. While

> dealing with the issue of damages to be charged from the out of turn allottees on account of their illegal occupation, the Supreme Court held that discretionary allotments de hors the rules to an ineligible person, entitles the government to charge damages. The recovery of damages from the respondent herein is, therefore, made as per the directions given by the Supreme Court and not on account of 'conditions of service', and it is difficult to construe and regard a direction given by the Supreme Court as a matter relating to condition of service between the petitioner and the respondent herein.
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> 10. In view of the above, we hold that the learned Tribunal did not have jurisdiction to entertain the original application filed by the respondent herein and the impugned order is illegal and void abinito.
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> 11. In view of above findings, we are not required to examine and go into the merits of the controversy. However, from the records placed before us, it is apparent that the allotment letter or the letter of offer in respect of flat No. D-II/64, Kaka Nagar, New Delhi on ad hoc basis is dated 4.6.1991, which is after the cut off date of 1.4.1991 specified by the Supreme Court in the case of Shiv Sagar Tiwari (supra). The respondent herein occupied the flat only after the allotment letter dated 4.6.1991 was issued and the date of the letter of offer of allotment should be treated as the date of out of turn allotment. Thus as per the directions given by the Supreme Court quoted above the respondent herein was liable to pay damages. No other contention was raised and argued before us."

In the present case, in Rule 2 of the Rules for allotment of Residential Accommodation in the President Estate, it has been specifically provided that provisions of accommodation is not part of the terms and conditions of service of officers and staff, but is a facility provided for more efficient discharge of duties. The Rule as reproduced in para 1.4 of the reply read thus:-

> "**Rule 2**. The provisions of accommodation is not part of the terms and conditions of service of officers and staff, but is a facility provided for more efficient discharge of duties, entirely at the discretion of the President exercised through the authorities designated by him in this regard. Accommodation allotted may be required to be vacated at any time at the pleasure of the President."

3. In view of the aforementioned, the accommodation being not conditions of service of officers and staff of the President Secretariat, in terms of the law declared by Hon'ble Delhi High Court in **Smt. Babli and Another Vs. Govt. of NCT of Delhi and Ors** and **UOI & Ors** Vs. **Dr. Jagdish Saran.** The OA is found not maintainable and accordingly returned for want of jurisdiction. The applicant would be at liberty to seek his remedy before the appropriate forum.

(A.K.Bhardwaj)
Member (J)

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