

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 4326/2015
MA 1816/2016

Reserved on: 19.09.2016
Pronounced on: 23.09.2016

Hon'ble Mr. P.K. Basu, Member (A)

B. Ravichandran
Aged 59 years
S/o Shri D. Balakrishnan
R/o 6-2-C, Floor 5, Sector-13
R.K. Puram, New Delhi ... Applicant

(Through Shri Rajesh Kumar, Advocate)

Versus

1. Union of India through
its Secretary
Ministry of Urban Development
Maulana Azad Rd., Rajpath Area
Central Secretariat,
New Delhi-110001
2. Directorate of Estates
Through Director of Estates
Ministry of Urban Development
Government of India
Nirman Bhawan,
New Delhi-110001 ... Respondents

(Through Shri Amit Kumar, Advocate)

ORDER

The applicant who was an officer of Principal Commissioner rank in the Customs, Central Excise and Service Tax, was offered appointment to the post of Member (Technical), Custom, Excise and Service Tax Appellate Tribunal (CESTAT) in the pay scale of Rs.75500-80000 vide office order dated 28.05.2015. He accepted the offer of appointment and assumed charge of the post on 6.07.2015. His pay was fixed at Rs.80,000/-.

2. The applicant is entitled to Type-VII accommodation and he applied for accommodation under general pool on 6.07.2015. Vide allotment letter dated 10.08.2015, Type VI-A house bearing address 6-2-C, Floor – 5, Sector-13, R.K. Puram, New Delhi was allotted to the applicant. He took technical possession of the flat on 11.08.2015 and physical possession of the flat was taken by him on 27.08.2015. Vide letter dated 4.11.2015, the applicant was informed by the Assistant Director of Estates that he was not entitled to residential accommodation out of general pool in Delhi and that since the allotment was made inadvertently, it was cancelled with immediate effect. The applicant made a representation to Assistant Director of Estates on 4.11.2015 followed by another representation dated 5.11.2015. The Assistant Director of Estates rejected the representation dated 4.11.2015 vide letter dated 13.11.2015 and directed the applicant to vacate the accommodation immediately to avoid payment of damage charges or any litigation proceeding. Being aggrieved by this order, the applicant has filed the instant OA seeking the following reliefs:

- (a) To quash the order of cancellation being F.No.8/5647/2015-TS dated 4.11.2015.
- (b) To pass such other orders as this Hon'ble Tribunal may deem just and necessary.
- (c) To award the costs of the case.
- (d) Quash and set aside the O.M. No.12035/2/2015-Pol.II dated 5.03.2015 (Annexure A-3).

3. The learned counsel for the applicant submitted that vide OM dated 5.03.2015, the Directorate of Estates have created Chairmen/

Members (CM) pool for exclusive allotment of General Pool Residential Accommodation (GPRA) to Chairmen and Members of various eligible quasi-judicial bodies such as Commissions, Tribunals etc. and houses of Chairmen and Members have been earmarked in Commonwealth Games Village Complex, New Delhi with effect from 1.04.2015. As a result, with effect from 01.04.2015 i.e. before the date of application by the applicant for accommodation under GPRA, a separate pool had been created and as per clause (iii) of OM dated 5.03.2015, Chairmen and Members of quasi-judicial bodies will not be eligible for residential accommodation from general pool in Delhi. It is in the light of this provision that the applicant was issued letter dated 13.11.2015, rejecting his representation and directing him to vacate the accommodation immediately.

4. Learned counsel for the applicant, however, contends that the OM dated 5.03.2015 contains the following provisions as well:

"xi) The Chairmen/ Members appointed after retirement in the eligible quasi-judicial bodies are eligible to apply under Chairmen/ Members Pool.

xxxx xxxx xxxx xxxx

xiii) Those who have been appointed in any Authority, Commission, Tribunal etc. during service on deputation shall continue to be eligible for General Pool accommodation and are not eligible for accommodation from Chairmen/ Members Pool (CM)."

5. The learned counsel for the applicant contends that the applicant has not been appointed as Member after retirement.

Moreover, it is contended that clause (xiii) specifically states that those who have been appointed during service on deputation shall continue to be eligible for General Pool accommodation and are not eligible for accommodation from Chairmen/Members Pool. The learned counsel drew my attention to the provisions of CESTAT Members (Recruitment and Conditions of Service) Rules 1987 and specifically to Rule 9, which reads as follows:

"9. Reversion or Termination of the Service of members –

- (1) In the case of a person appointed as a technical or a judicial member from any post under the Union or a State, unless such a person is confirmed, the Central Government may at any time revert him to his parent post without assigning any reason, after giving him one month's notice of such reversion and in case a technical or a judicial member wishes to revert to his parent post, he shall be required to give one month's notice to the Central Government."

It is contended that according to this provision, till a person is confirmed as a technical or a judicial member, the Government may at any time revert him to his parent post without assigning any reason, after giving him one month's notice. It is contended that this clearly shows that a serving officer who is appointed as a technical or a judicial member in CESTAT could go back to his parent post either on his own choice or could be reverted.

6. It is argued that above quoted clause (xiii) would apply squarely in the case of the applicant and merely because office order dated 28.05.2015 of Department of Revenue appointing the applicant along with others as Member (Technical) in CESTAT does not mention the word 'deputation', the applicant cannot be deprived of the benefit of clause (xiii).

7. The learned counsel for the applicant also alleged that OM dated 5.03.2015 has created a class under a class, discriminating the applicant/ members of quasi-judicial bodies to apply under general pool as per their entitlement violating Article 14 of the Constitution of India. In fact, it is stated that OM dated 5.03.2015 is itself contrary to allotment rules i.e. Government Residences (General Pool in Delhi) Rules 1963. It is further argued that the respondents cannot restrict the eligibility of Chairmen/ Members of the quasi-judicial bodies for residential accommodation in general pool to a particular place i.e. Commonwealth Games Village Complex, New Delhi by issuing executive instructions and without any authority in law.

8. The learned counsel for the applicant relied on the following judgments:

- (i) **Ashok Kumar Ratilal Patel Vs. Union of India and another**, (2012) 7 SCC 757 – Para 17 of the judgment reads as follows:

“17. Going by the principles as referred to above, we are constrained to state that the High Court failed to appreciate the difference between “transfer on deputation” and “appointment on deputation” and erred in holding that the appellant has no right to claim entitlement to the post of Director. As the appellant was selected after due selection and was offered appointment on deputation, and, in absence of any valid ground shown by the respondents, we hold that the appellant has a right to join the post and the respondents were bound to accept his joining.”

It is argued that the Hon’ble Supreme Court has clearly held that no distinction can be made between “transfer on deputation” and “appointment on deputation” and, therefore, the appellant in that case had a right to revert to his original post.

- (ii) **State of Rajasthan and another Vs. S.N. Tiwari and others**, (2009) 4 SCC 700 – Para 14 of the judgment is as follows:

“14. It is not the case of the State that any competent authority terminated the lien of the respondent in the parent department. There is no material made available by the State to show that the respondent had been confirmed in any permanent post and that he was holding that appointment in a substantive capacity on permanent basis. On the other hand, even while working as homeopathic doctor in ESI Corporation, the respondent employee obtained directions as against the State and Directorate of Economics and Statistics Department to determine the yearwise vacancies and to make promotions from the post of Statistical Inspector to Statistical Assistant in accordance with the Rules. That order attained its finality. The same would demonstrate that the respondent employee always had a lien in the Department of Economics and Statistics.”

The contention of the learned counsel for the applicant is that in the light of this judgment, it is clear that an employee continues to hold lien in his cadre post till any competent authority terminates his lien in the parent department.

- (iii) **Rashmi Metaliks Limited and another Vs. Kolkata Metropolitan Development Authority and others**, (2013) 10 SCC 95 – Para 15 and 16 of the judgment read as follows:

“15. The impugned judgment is indubitably a cryptic one and does not contain the reasons on which the decision is predicated. Since reasons are not contained in the impugned Judgment itself, it must be set aside on the short ground that a party cannot be permitted to travel beyond the stand adopted and expressed by it in its earlier decision.

16. The following observations found in the celebrated decision in *Mohinder Singh Gill vs. The Chief Election Commissioner, New Delhi*, AIR 1978 SC 851 are relevant to this question :

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain

grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16):

"9.....Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

The learned counsel argued that when an order is made based on certain grounds, its validity cannot be supplemented by fresh reasons in the shape of affidavit or otherwise beyond the grounds mentioned as basis for passing the original order.

(iv) **Asha Sharma Vs. Chandigarh Administration and others**, (2011) 10 SCC 86 – Para 12 to 14 of the judgment read as follows:

"12. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as 'arbitrary'. Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind

are some of the prerequisites of proper decision making. The concept of transparency in the decision making process of the State has also become an essential part of our administrative law.

13. The Government is entitled to make pragmatic adjustments and policy decisions, which may be necessary or called for under the prevalent peculiar circumstances. The Court may not strike down a policy decision taken by the Government merely because it feels that another decision would have been more fair or wise, scientific or logical. The principle of reasonableness and non-arbitrariness in governmental action is the core of our constitutional scheme and structure. Its interpretation will always depend upon the facts and circumstances of a given case. Reference in this regard can also be made to *Netaji v. State of West Bengal* [(2000) 8 SCC 262].

14. Action by the State, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive action still such action, especially if it could potentially affect the rights of the parties, should be just, fair and transparent. Arbitrariness in State action, even where the rules vest discretion in an authority, has to be impermissible. The exercise of discretion, in line with principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. The standard of fairness is also dependent upon certainty in State action, that is, the class of persons, subject to regulation by the Allotment Rules, must be able to reasonably anticipate the order for the action that the State is likely to take in a given situation. Arbitrariness and discrimination have inbuilt elements of uncertainty as the decisions of the State would then differ from person to person and from situation to situation, even if the determinative factors of the situations in question were identical. This uncertainty must be avoided."

The Hon'ble Supreme Court has held as to what constitutes arbitrariness in State action and, according to the applicant, the action taken by the respondents in the instant case by creating a special pool for Chairmen/ Members of quasi-judicial bodies vide OM dated 5.03.2015 and abrupt cancellation of the applicant's allotment

after he had taken possession of the house through due process, is unjust and arbitrary.

9. The learned counsel for the respondents argued that the respondents have taken a decision as communicated vide OM dated 5.03.2015 namely that for Chairmen/ Members of quasi-judicial bodies, a separate pool will be maintained and the houses identified for this separate pool are all in Commonwealth Games Village Complex, New Delhi. It is stated that the Hon'ble Supreme Court of India in Civil Writ Petition No.120/2012, **Rajiv Garg Vs. Union of India**, while hearing a matter relating to uniform terms of appointments and other conditions of service including residential accommodation of Judges appointed as Chairpersons/ Members of Tribunals, recorded as follows:

"When the case was taken up on 4.12.2012, the learned Additional Solicitor General made a request for adjournment to enable the government to take a firm policy decision at the highest level on the issues raised in the writ petition. That order reads as follows:

"The learned Additional Solicitor General requests for eight weeks' time to enable the government to take a firm policy decision at the highest level on the issues raised in the writ petition including the one relating to the tenure and age of the Chairperson/Members of various Tribunals which were required to be manned by the sitting/ former Judges of this Court or the Chief Justice and/or Judges of the High Court and their conditions of service/ work and **facilities of accommodation etc.**

The request of the learned Additional Solicitor General is accepted and the case is adjourned.

For further consideration, the case be listed on 5.02.2013.

It is made clear that if by the next date of hearing an appropriate decision is not taken the Court will consider the desirability of staying appointments to various Tribunals in the country in which the sitting

or former Judges of this Court or sitting and former Chief Justices and Judges of the High Court are required to be appointed as Chairperson/Members."

10. It is the case of the respondents that the respondents had to take decision on several issues including facilities of accommodation etc. in compliance of above order of the Hon'ble Supreme Court and it is in pursuance of this that the Chairmen/Member pool was created in Commonwealth Games Village. It is the contention of the learned counsel for the respondents that since this has been created in pursuance of the directions of the Hon'ble Supreme Court, the respondents are in no position to alter it.

11. In reply, the learned counsel for the applicant stated that in *Rajiv Garg (supra)*, the issue primarily related to tenure of the Chairman and Members of various Tribunals and their service conditions etc. The learned counsel also placed before us Bill No.VII of 2014, which the government had placed before the Parliament and stated that this Bill has no provision pertaining to residential accommodation of Chairman/Members of Tribunals. He further contended that the respondents are wrongly interpreting the expression "facilities of accommodation" whereas from the context, it is clear that it refers to accommodation to various quasi-judicial bodies and not residential accommodation for its Members.

12. I have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

13. First of all, clause (xi) and (xiii) of OM dated 5.03.2015 make it abundantly clear that the provision of Chairmen/ Member pool in

respect of applicant who is a serving officer and has been appointed as Member (Tech) in CESTAT, will not apply to him and he would be eligible for general pool residential accommodation in Delhi. The applicant was appointed while still in service and from a reading of Rule 9 of CESTAT Members (Recruitment and Conditions of Service) Rules 1987 and the judgment of the Hon'ble Supreme Court in **Ashok Kumar Ratilal Patel** (supra), it is beyond doubt that he will be treated as one who was not retired and has been appointed during service on deputation holding a lien on his cadre post even though the word 'deputation' has not been specifically mentioned in the order dated 28.05.2015. Therefore, clearly the impugned order dated 4.11.2015 is illegal and against the provisions of OM dated 5.03.2015 and has to go.

14. I now come to the question whether OM dated 5.03.2015 is indeed without any authority of law creating a class within a class and hence violative of Article 14 of the Constitution of India. The applicant has filed Annexure A-9, Classification of Residences in Allotment of Government Residences (General Pool in Delhi) Rules, 1963, according to which an officer would be entitled for allotment under GPRA. In the explanation, it is written that eligibility of an officer for government accommodation shall be determined as per the Grade Pay of such officer in his present post held in the Government of India. Clearly, the type of residence to which a person is entitled to, is only dependent on the Grade Pay and Basic Pay. There is no concept of earmarking areas in the city for allotment to a class or people. Though an individual is entitled to general pool accommodation under 1963 Rules, there is no provision

in the Rules to create such a class and it is settled principle that any executive instruction cannot overrule the provisions of any statutory Rules. Viewed from this angle, *prima facie*, it appears that OM dated 5.03.2015 cannot sustain. Having said that, I am also aware of the settled legal principle that no person can be a Judge in his own cause. Being a Member of the Central Administrative Tribunal, therefore, I should not adjudicate this matter i.e. whether the OM dated 5.03.2015 is *ultra vires* of Article 14 as a 'class' has been created within a class and is in contravention of the provisions of Government Residences (General Pool in Delhi) Rules 1963. Therefore, no order is being passed in this regard. It may, however, be added that it is sufficiently clear that Rajiv Garg (*supra*) did not deal with the issue of residential accommodation to Chairmen/Members of quasi-judicial bodies and the phrase "facilities of accommodation" used by the Hon'ble Supreme Court in its order dated 4.12.2012 should not have been interpreted by the respondents as liberty to introduce a separate 'pool' for them in a specific locality in Delhi *de hors* the 1963 Rules.

15. In view of above discussion, the impugned order dated 4.11.2015 is quashed and set aside. Respondents are directed to continue the allotment of quarter no. 6-2-C, Floor – 5, Sector-13, R.K. Puram, New Delhi to the applicant for the period of his tenure as Member (Technical) as per existing provisions of Government Residences (General Pool in Delhi) Rules 1963 including retention after completion of tenure for period specified under the said rules. On the question of validity of OM dated 05.03.2015, though no order is being passed, the respondents are directed to examine this issue

in the light of discussion above and, in case they hold that OM dated 5.03.2015 indeed needs to go, they shall then withdraw this OM, otherwise they would pass a reasoned and speaking order explaining why this memorandum should stay despite the prima facie finding noted above. A time-frame of 90 days from receipt of a certified copy of this order is fixed for respondents to take a decision/issuance of speaking order in regard to validity of OM dated 5.03.2015. No costs.

(P.K. Basu)
Member (A)

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