

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

O.A. No.3248 of 2016

Orders reserved on : 30.10.2018

Orders pronounced on : 16.11.2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Aniruddha Kumar

Age: 55 years,

Designation: Joint Secretary, Ministry of Power

S/o Late Sh. P.C. Agrawal,

Presently residing at D-II/4, Shahjahan Road, New Delhi.

....Applicant

(By Adv. : Shri Nsihant Kumar for Shri R.K. Handoo)

VERSUS

1. Director of Estates,
Ministry of Urban Development,
Government of India,
Nirman Bhawan, Maulana Azad Road,
New Delhi-110011.
2. Deputy Director of Estates,
Type Special Section,
Government of India,
Nirman Bhawan, Maulana Azad Road,
New Delhi-110011.
3. Assistant Director of Estates,
Type Special Section,
Government of India,
Nirman Bhawan, Maulana Azad Road,
New Delhi-110011.

.....Respondents

(By Adv. : Shri Ashok Kumar)

ORDER

By filing this OA, the applicant is seeking the following reliefs:-

- a) Quash the orders of the respondent No.9/4786/2016-TS dated 6/9/2016 and No:9/373/2016 TS/2016 dated 9/9/2016 passed by respondent No. 3&4 directing the applicant to surrender the allotment within 15 days failing which to pay the damages.
- b) Direct the respondent not to block the forwarding the application on-line.
- c) Pass any order, which Hon'ble Tribunal may deem fit and proper in the circumstances and in the interests of Justice."

2. Facts, in brief, as stated by the applicant, are that he is a Member of Indian Revenue Service of 1987 Batch in the Income Tax Department since then and was promoted on 30.1.2015 as Principal Commissioner of Income Tax in the Pay Grade of Rs.67,000-79,000/- (Annexure A-2).

2.1 On account of the efficiency and clear antecedents of the applicant and having made mark in the tough competition, the applicant was selected as Joint Secretary to Govt. of India under the Central Staffing Scheme, which the applicant joined on 24.9.2015 (Annexure A-3).

2.2 Pursuant to joining as Joint Secretary in the Ministry of Power in the Govt. of India, the Central Government issued an order dated 9.10.2015 duly notified in the Gazette Part-I of Government of India appointing the applicant as Joint Secretary in the Ministry of Power in the grade of Rs.10,000/- for a period of five years with effect from the date of joining, i.e., 24.9.2015 (Annexure A-4).

2.3 The applicant averred that Pay Band of the Post of Joint Secretary is PB-4 (Rs.37400 – Rs.67000/-) with Grade Pay of Rs.10000, lower than the Pay Band of applicant as Principal Commissioner where he was in the Pay Band of Rs.67,000-79,000/-.

2.4 Consequent upon the joining as Joint Secretary, the Govt. of India in accordance with the Rules passed an order dated 13.11.2015 (Annexure A-5) whereby the pay of the applicant as Joint Secretary in the Ministry of Power was fixed at Rs.70620 (Rs.60620 + Rs.10,000) with effect from the afternoon of 24.09.2015 thereby protecting the higher pay of the applicant, i.e., the pay the applicant was drawing in his cadre since 30.01.2015.

2.5 The applicant being a Central Government employee and posted in Delhi is entitled to Government accommodation in the General Pool in terms of Allotment of Government Residences (General Pool in Delhi) Rules, 1963 and GIST instructions thereof issued by the respondent Directorate of Estate in this regard.

2.6 As per rules, the applicant filled in the application form on-line for allotment of the residence in terms of Rules, which was duly considered by the respondent Estates Department and applicant was allotted on 10.8.2016 (Annexure A-6), House No.352121 Type-VI-A at New Moti Bagh in Block No.9,

Quarter No.D-1 on first floor. The applicant took possession of the said premises on 30.8.2016 (Annexure A-7).

2.7 The applicant left for abroad on official trip on 6.9.2016 and returned on 11.9.2016, resuming his duties on 12.9.2016 when the letter dated 6.9.2016 issued by respondent – Directorate of Estate was served to the applicant and before the applicant could react to the said letter, another letter dated 9.9.2016 was served on 15.9.2016 asking the applicant to surrender the allotted quarter on the plea of wrong allotment of the accommodation and directed the applicant to surrender the same allotment within 15 days or to pay damages at the rate of license fee for the said violation.

2.8 Feeling aggrieved by the aforesaid communications dated 6.9.2016 and 9.9.2016 (Annexure A-1 Colly.), the applicant has filed this OA seeking the reliefs as quote above.

3. This case was came up for hearing on 23.9.2016, this Tribunal stayed the impugned order dated 6.9.2016 for a period of two weeks initially and the same is continuing till today.

4. The respondents have filed their reply in which they have stated that the applicant submitted an application no.628753 (DE-2 form) dated 29.07.2016 for allotment of Govt. accommodation during the waiting list of July 2016. In

his application furnished the pay details on HAG2 Band (Annexure R-1).

4.1 They further stated that allotment of Govt. accommodation is made on the basis of application as forwarded by his Administrative Ministry. The proper check as regards to the rank and pay plus the eligibility is the responsibility of his Administrative Ministry.

4.2 The request of allotment of the applicant was processed on the basis that applicant is drawing HAG2 (Addl. Secretary Grade) rank. The applicant was allotted Govt. accommodation No.C-II/B-1, Block-9, New Moti Bagh, New Delhi on 10.8.2016.

4.3 Subsequent to allotment, it was noticed that applicant at the time of submission of DE-2 form was working as Joint Secretary in the Grade Pay of Rs.10,000/- and as such his position in waiting list of C-II flats would have been much lower and he would not have been allotted C-II flats on 10.8.2016.

4.4 Since Govt. accommodation No.C-II.B-1, Block-9, New Moti Bagh, New Delhi allotted to the applicant on 10.8.2016 was based on wrong details furnished by the allottee, the answering respondent had written a letter dated 6.9.2016 to the applicant for surrendering the said premises within 15 days and on 9.9.2016 to the Ministry of Power to surrender

the allotment within 15 days, failing which the allottee will be liable to pay the damages rate of licence fee for the violation.

4.5 The respondents further reiterated that the applicant at present is not holding the rank of Additional Secretary at the Centre and is not eligible based on the particulars to be allotted the instant Government accommodation which is the cause of the litigation. It is, however, stated that submission of correct information is the responsibility of the applicant and verifying the details of DE-2 form of the applicant before accepting it online was the responsibility of the concerned Administrative Department. It does not confer any right to the allottee to claim for any wrong details provided while filling up the DE and based on which the allotment is made. Later on, if any discrepancy is found in the eligibility of the allottee, the allotment will be cancelled by the Directorate who is vested with the powers to deal with such cases as and when it is brought to the notice.

4.6 They further stated that the consideration for allotment of said Govt. accommodations were made on the basis of the application as forwarded by their respective Administrative departments and a proper check as regards to the rank and pay plus the eligibility as Additional Secretary was therefore not done by them.

5. In the rejoinder filed by the applicant, besides refuting the contentions of the counter affidavit filed by the

respondents, the applicant stated that it is not denied that he is in the pay scale of Rs.67,000 - 79,000/- since 31.1.2015 on deputation to Ministry of Power with his pay was protected by Govt. of India and is thus entitled to the allotted accommodation. However, it is contended erroneously that as the applicant is holding the rank of Joint Secretary, hence, allegedly not entitled to the said accommodation.

5.1 The applicant further reiterated that the applicant is drawing emoluments of the rank of Additional Secretary and continues to draw the same even in the present office, which has not been refuted by the respondents in the counter. The applicant further submitted that the Principal Commissioners of Income Tax in the pay grade of Rs.67000/- to Rs.79000/-, as like the applicant similarly situated have been allotted Type VI accommodation in the same place by the respondent.

6. The respondents have also filed their Sub-Rejoinder in which it is stated that the applicant was posted as Joint Secretary having Grade Pay of Rs.10,000/- though eligible for Type 6A (C-II) accommodation but he is junior to the Additional Secretary Grade Officers (HAG2 Rs.67,000-79,000) and he would have not been allotted the GPRA if he would have had correct information regarding his pay. The applicant has been allotted the GPRA on the assumption that he is the officer of the rank of Additional Secretary Grade and hence, the GPRA was cancelled as per para 4 of O.M.

No.1/Computer Cell/2015 dated 27.01.2015 and SR 317-B-21 (Annexure R-1 and R-2 respectively).

7. The applicant has also filed Sur-Rejoinder to the Additional rejoinder filed by the respondents in which the applicant submitted that respondents have admitted that the applicant's pay as Principal Commissioner, Income Tax makes him eligible for Type 6A(C-II) accommodation but as per the respondents, the applicant is not entitled to the said accommodation as he holding the post of Joint Secretary in the Ministry of Power, hence, as per respondents, he was allegedly wrongly given the allotment.

7.1 The applicant has downloaded the priority for allotment of house for Type-6A, General Pool, published on the website of respondent as on 1.10.2017 (Annexure R-2) which at Sl.No.62,65,66,113 & 114 are officers of same service, viz., IRS who are promoted to post of Principal Commissioner after the applicant.

8. During the course of hearing, the main contention of the learned counsel for the applicant is that the applicant has not given any wrong information in the online application form submitted by him while applying for Govt. accommodation, as is evident from the online application, the applicant has also mentioned his designation as Joint Secretary to which post he was appointed and joined on deputation basis under the Central Staffing Scheme on 24.9.2015, although the applicant

was holding the post of Principal Commissioner of Income Tax in the pay grade of Rs.67000 to 79000 as he was promoted on the said post in his parent cadre on 30.1.2015, and by virtue of OM dated 28.8.2009, pay protection was done in his case. As such the mention of the pay grade of Rs.67000 to 79000 in the online application form is factually right notion and not a wrong information and, therefore, the allotment of the said Govt. accommodation has been rightly done by taking into consideration the said information by the respondents. As such the impugned letters are liable to be quashed by this Tribunal as the information submitted in the application form is factually correct.

9. During the course of hearing, learned counsel for the respondents referred to the Applications for General Pool Residential Accommodation (Online Submission) submitted by the applicant on 30.6.2016 and 29.7.2016 in which the Pay details are different as in one Pay/Band/Scale is mentioned as PB4: 37400-67000, Present Grade Pay (Rs.): 10000 and Present Basic Pay (Rs.) 70620 as also the date from which continuously drawing present grade pay/pay scale as 29.08.2007 and in another subsequent application, it is mentioned that Pay Band/Scale : HAG2: 67000-79000, Present Grade Pay (Rs.): 0 and Present Basic Pay (Rs.): 72740 as also the date from which continuously drawing grade pay/pay scale as 30.01.2015. However, the applicant was

actually on deputation in Ministry of Power under the Central Staffing Scheme and working as Joint Secretary and the pay band of the said post is Rs.37400-67000 + Grade Pay Rs.10000. As such as per his entitlement and priority, he would not have been allotted the said accommodation as there was a long waiting list for the said type of accommodation, if the said pay scale + grade pay was taken into consideration for allotment of the said accommodation. However, since the applicant has mentioned his Pay Band/Scale : HAG2: 67000-79000, Present Grade Pay (Rs.): 0 and Present Basic Pay (Rs.): 72740 in his online application dated 29.7.2016 (Annexure R1), the respondent – Directorate of Estate took into the same into consideration and allotted the said accommodation which was wrongly allotted to the applicant and when it came to the knowledge of the respondents, they have rightly issued letters dated 6.9.2016 and 9.9.2016, which are impugned by the applicant in this OA.

9.1 Counsel further submitted that the impugned letters have been issued in accordance with the provisions as contained in OM dated 27.1.2015 as also SR 317-B-21 (Annexure R-1 and R-2 respectively with Sub-rejoinder filed by the respondents.

10. After giving the thoughtful consideration to the rival contentions of the parties and also carefully perusing the

material placed on record, this Court observes that the entire action of the respondents in this case is based on the submission that the applicant of this OA has furnished false information while submitting his application for allotment of Govt. accommodation. In the counter affidavit in caption preliminary submissions in para 2, they have stated as follows:-

“2. That applicant at the time of submitting application for allotment was posted in Ministry of Power which has not been impleaded as party. The DE-2 form filled in by applicant was verified and forwarded by Ministry of Power. The correctness of factual position mentioned in the DE-2 form could be verified on oath only by forwarding authority i.e. Ministry of Power. Hence, Ministry of Power is also a necessary party.”

A plain reading of the above preliminary submission shows that the information given by the applicant was found correct by the department in which he was posted so it is not correct to accuse the applicant for any irregularity in filling up his form. Further this Court finds that Directorate of Estate received application No.623937 for General Pool Residential Accommodation (Online Submission) (page 51 of the paperbook) and second application No.628753 (page 52 of the paperbook). They have themselves admitted that the method of calculation of pay given by the applicant in his second application was based on the factual position that he has

been continuously drawing the emoluments in the Pay Band Rs.67000-79000 since 31.1.2015. Hence, there is no reason to find that the applicant had made any wrong statement. This fact has been made by the applicant in his reply dated 20.9.2016 that "allotment is made as per allotment of Government Residences (General Pool in Delhi) Rules, 1963. Your attention is invited to Rule 2 (f), (i) and (o) of SR 317-B-5 of said rules which would reveal that I have been continuously drawing emoluments fixed in HAG since 30/01/2015, hence there is no scope of mistake in allotment to me."

11. Further this Court has also seen the Annexure A/2, which is an order of the Government of India, Ministry of Finance, (Order No.15 of 2015) dated 30.1.2015 in which the name of the applicant is listed as one of those who have been promoted to the grade of Principal Commissioner of Income Tax in the HAG scale (Rs.67,000-79,000) with immediate effect. It is further relevant to mention here that Ministry of Finance had issued an OM dated 28.9.2009 on the subject of ***fixation of pay on deputation after the replacement of pre-revised S-30 scale by the new HAG scale – clarification regarding***, in which in para 3, the following is provided:-

3. PAY FIXATION OF GOVERNMENT SERVANTS WHO PROCEED ON DEPUTATION UNDER THE CENTRAL STAFFING SCHEME AFTER 01.01.2006

- (A) Fixation of pay of Government servants who are in the HAG scale in their parent cadre and go on deputation to a post in the grade pay of Rs.10000 in the pay band PB-4 under the Central Staffing Scheme will be done in the manner indicated below: -

Under the extant rules, Government servants are not permitted to go on deputation to a lower level post. The same is, however, permitted under the Central Staffing Scheme. Accordingly, in case a Government Servant in HAG scale goes on a deputation (under the Central Staffing Scheme) to a lower post in PB-4 with grade pay of Rs.10000, his basic pay in the deputation post will be fixed at a stage equal to his basic pay in his parent cadre. However, since the basic pay of Joint Secretaries/equivalent posts has two components, viz., grade pay (Rs.10000) and pay in the pay band, in such cases, the pay on deputation will be fixed by treating Rs.10000 from the basic pay as grade pay and the remaining amount as pay in the pay band. *To illustrate*, if a Government servant's basic pay in the cadre in HAG grade was Rs.73220, on his appointment on deputation basis as a Joint Secretary under the Central Staffing Scheme, his basic pay will continue to be Rs.73220, of which Rs.10000 will be treated as grade pay and the remaining Rs.63220 as pay in the pay band. Thereafter, he will continue to earn his annual increments, subject to his pay in the pay band not exceeding Rs.67000.

- (B) Fixation of pay of Government servants who are in the HAG scale in their parent cadre and go on deputation to a post in the grade pay of Rs.10000 in the pay band PB-4 under the Central Staffing Scheme and thereafter get appointed on deputation basis to posts in the HAG scale will be done in the manner indicated below: -

In such cases, on initial appointment to a post in the grade pay of Rs.10000 in PB-4, the pay of a Government servant will be fixed in the manner indicated in 3. (A) above. Subsequently, when the Government servant is appointed on deputation basis to a post in HAG scale under the Central Staffing Scheme, his pay in the pay band and grade pay will be consolidated and will become his basic pay in the HAG scale subject to a maximum of Rs.79000.

2. The term 'basic pay' in the revised pay structure is defined under Rule 3 (8) of CCS (RP) Rules, 2008.

3. The clarifications issued vide this Department's OM of even number dated 13th September, 2008 stand modified to the extent that they were applicable in the case of deputations relating to the revised pay structure of grade pay of Rs.12000 in the pay band PB-4 which has now been substituted by new HAG scale. In respect of all other grade pays/pay scales, the earlier clarifications continue to be valid.

12. Hence, this Court finds that the clarification given by the Government of India with regard to how deputationists have to be paid under the Central Staffing Scheme after 1.1.2006 vide OM dated 28.8.2009 itself shows that the applicant has not deliberately given any wrong information to the respondents while applying for allotment of accommodation. Nevertheless, if the respondents felt that the applicant has made a wrong declaration while applying for allotment of the said quarter, they should have issued to him a notice with regard to the same and sought reply. Not only have they failed to do so but they have also gone ahead to pass the final orders No.G.No.9/4786/2016-TS dated 6.9.2016 and No.F.No.9/373/2016-TS dated 9.9.2016 without giving the applicant any opportunity to redress their query. Hence, both the aforesaid impugned orders dated 6.9.2016 and 9.9.2016 are set aside. The respondents are further directed not to block the right of the applicant to forward his application online.

13. In the result, the present OA is allowed in above terms. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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