

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.210/00154/2019

Date of Decision: 31st July, 2019

CORAM: R.VIJAYKUMAR, MEMBER (A)

S.M.Misra, Ex-Member, Authority of Advance Ruling Mumbai
 Flat No.16, 8th Floor, Bhulabhai Desai Road, Mumbai 400 026
 Off. Add.: Authority for Advance Rulings, 5th Floor,
 Hoest House, V.K. Shah Marg, Nariman Point,
 Mumbai 400 021.

.. ***Applicant***

(By Advocate Shri Rajendra)

VERSUS

1. Secretary, Ministry of Urban and Housing Development,
 Maulana Azad Road, Rajpath Road Area,
 Central Secretariat, Near Udyog Bhawan Metro Station,
 Rajpath Area, Central Secretariat, New Delhi, Delhi 110 001.
2. Directorate of Estate, Old CGO Building, 3rd Floor,
 101, Maharishi Karvey Road, Marine Drive, Mumbai 400 020.

3. Estate Manager, Old CGO Building, 3rd Floor,
 101, Maharishi Karvey Road, Marine Drive,
 Mumbai 400 020.

... ***Respondents***

***(By Advocate Shri Rishi Kumar proxy counsel
 for Shri B.K.Ashok)***

ORDER (Oral)

This OA has been filed on 18.02.2019
 under Section 19 of the Administrative
 Tribunals Act, 1985 seeking the following
 reliefs:

“8.1. The applicant prays that the respondents be
 directed to allow the applicant to retain the quarter at
 normal rent till six months from his retirement;

8.2. The applicant prays that the Respondents be
 directed not to harass the applicant for vacation of
 quarter till the final outcome of this application;

8.3. The Hon'ble Tribunal may pass any order or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. The applicant superannuated from the post of Member, Authority for Advance Rulings, Mumbai and was occupying Government accommodation Type VI allotted to him at Mumbai. The applicant superannuated on 21.11.2018 and he was directed by the respondents Nos.2 and 3 to vacate the quarters by 21.02.2019 on completion of three months from his superannuation or else to pay market rent for the period beyond that. The applicant contends that he is entitled to retain the quarters for six months on normal rent and for this purpose, he refers to Rule 40(1)(ii) which reads as under:

(ii)	Retirement, voluntary retirement, retirement on medical grounds, terminal leave or compulsory retirement [under FR 56(j)], retirement on deputation from ineligible organizations during the initial constitution of such organization, technical resignation, death of allottee on re-employment (irrespective of retention availed on retirement) and death of an allottee who is not a regular Government servant or deputation outside India.	six months on normal licence fee
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3. The learned counsel for the applicant contends that Rules would prevail over the Office Memoranda that may have been issued by the respondents and in the circumstances, the respondents should have applied the Rule in question rather than to various orders that they may have issued.

4. The respondents have filed their reply stating that the applicant was allotted GPRA accommodation at Mumbai on reappointment as Member and after superannuation, the allotment of quarters was canceled with effect from 21.02.2019 in terms of the provisions of the respondents OM No.12035/28/96-Pol. II (Vol. II) dated 08.12.2016 (Annexure R-3) read with OM No.12035/28/96-Pol.II (Vol.III) dated 25.04.2018 (Annexure R-4) in the second mentioned letter, the period of six months was reduced to three months on completion of tenure of reappointment by the ACC. Rejoinder has been filed by the applicant.

5. During arguments, the learned counsel for the applicant reiterated his pleadings and was asked to argue on the issue of

jurisdiction of this Tribunal and also on the substantive claim on merits.

6. On the substantive aspect, the learned counsel for the applicant took the Tribunal through the provisions of two OMs relied upon by the respondents and questioned their relevance since they appeared to relate to allotments in Delhi only and therefore, could not apply to the allotments made in Mumbai. Moreover, as already urged in the pleadings, these OMs cannot supersede the Rules which have been framed and duly gazetted by the Government. Therefore, reliance of the respondents on these OMs over the provisions of the Rule was not in consonance with the law.

7. On the aspect of jurisdiction, the learned counsel for the applicant refers to certain decisions taken by the Hon'ble High Court of Delhi in **Ran Singh Kohar Vs. Union of India and others in WP (C) No.7885/2014 decided on 17.11.2014** in which it was held that there was a duty cast on the allottee to prove that he could continue in the quarters beyond 01.06.1986 up to 03.05.2011

which was the disputed period of authorized or unauthorized occupation and held that such occupation was unauthorized and therefore, upheld the order.

8. The learned counsel for the applicant also referred to the judgment of the Hon'ble High Court of Allahabad in **Union of India Through the Gen Mgr. N.C.R. & Ors, Writ A No.20681 of 2009 decided on 18.04.2014** where an order of this Tribunal in Allahabad Bench had been challenged on the penal rent to be charged to the allottee and whereas the Tribunal had directed payment of damage rent until vacation of premises, the Hon'ble Court allowed the writ filed by the petitioner. In both the cases above, the learned counsel states that the matter had been considered by the Tribunal and then was taken to the respective Hon'ble High Courts and have been decided and therefore, the issue of jurisdiction was not in question and the Tribunal did exercise jurisdiction in such matters. He also refers to the case of **Kamla Singh Vs. Municipal Corporation of Delhi (North), OA No.337/2013 pronounced on**

07.05.2013 decided by the Principal Bench of this Tribunal on unauthorized occupation of a municipal flat in which a Single Member Bench has considered the previous judgment of the Hon'ble High Court in **Smt. Babli and Anr. Vs. Government of NCT of Delhi and others reported in 2002 (95) DLT 144 : 2001 (60) DRJ 788 decided on 31.08.2001** and in that case, where damage rent had been levied from the date of retirement from 30.06.1997 to date of eviction on 14.05.2007, the Tribunal had held that it possesses the necessary jurisdiction since the impugned orders were not issued in exercise of power under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The Tribunal recorded in that case as below:

"15. The purport of the judgments cited by the learned counsel for the respondents is that if allotment of residence is not a condition of service of an employee, the CAT has no jurisdiction in terms of Section 3(q)(v) of the Administrative Tribunals Act. It is not disputed that the allotment and occupation of the said staff quarter to the applicant was as per Rules, and hence, it cannot be said that allotment of residence to the applicant is not a service condition of the applicant. It is also not the case of the respondents that the impugned order issued in exercise of view of the matter, the aforesaid judgments are not applicable to the facts of the case, and accordingly, this Tribunal has jurisdiction to entertain the present OA."

9. The learned counsel for the applicant also relied on the decision of the Principal Bench of this Tribunal in **Mahender Singh Bisht (OA No.3064/2018, decided on 19.09.2018)** where the Tribunal decided not to take up the matter which had already being proceeded under the PPE Act since in terms of the rulings of the Hon'ble Apex Court in **Union of India Vs. Rasila Ram & Ors. reported in JT 2000 (10) SC 503**, the Tribunal could not have jurisdiction in such matters.

10. However, the learned counsel for the applicant argues that this does not rule out Tribunal jurisdiction in the cases falling outside the provisions of the PPE Act. The learned counsel also refers to the decision of this Bench in **OA No.624/2018 (Rajendra Vs. Secretary, M/o Urban and Housing Development & Ors) decided on 10.06.2019** by a Division Bench in which it was held that the provisions of the GSR 598(E) dated 16.06.2017 which were the prevailing Rules in question could not be superseded by OMs, circulars and executive instructions issued

by the respondents. However, perusal of the orders does not reveal any reference to the case of **Smt. Babli and Anr.** supra decided by the Hon'ble High Court of Delhi. However, the learned counsel argues that in a very large number of cases, this Tribunal has exercised jurisdiction in such matters.

11. The learned counsel for the respondents was inquired on his views on the aspect of jurisdiction and he has no submissions to make in the matter beyond reiterating his pleadings.

12. The matter has been carefully considered. The pleadings have been seen and the rulings of the Hon'ble Apex Court and of various Courts and the Tribunals have been considered.

13. Reference is made to the orders of the Hon'ble High Court of Delhi in **Smt. Babli** supra in which the petitioners were persons who were the legal heirs of retired or dead employees and who had subsequently secured Government service and after holding on to the premises originally allotted to the retired/dead employees, they had now asked

for regularization. They had urged that Section 3(q)(v) of the Administrative Tribunals Act, 1985 which referred to "any other matters whatsoever" included everything connected with the service of the employee including the claim to residential accommodation as a service matter. The Hon'ble Court in its judgment has recorded the following observations:-

"4. Section 3 (q) (v) which is material for our purposes in reproduced for proper appreciation of the issue involved:

"(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-

(i)

(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."

14. Going further, in the particular circumstances of the case where action had been initiated under the PPE Act and the Tribunal held that it has no jurisdiction based on **Rasila Ram** supra, the Hon'ble High Court upheld that view. Further, on the aspect of jurisdiction in respect of allotment or regularization of Government accommodation, it held as follows:-

"10. We, accordingly, hold that CAT had no jurisdiction to entertain OAs claiming allotment or regularization 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 unauthorized occupation of the premises under the Eviction Act. These petitions are accordingly dismissed and Tribunal order affirmed."

15. With regard to the applicant's reliance on the judgment of the Hon'ble High Court of Allahabad and Delhi in **Ran Singh Kohar** case, the fact that the Tribunal

exercised jurisdiction cannot validate the action of the Tribunal unless the Tribunal had specifically considered the matter and held that it possessed the necessary jurisdiction in such matters. Moreover, the specific judgment of the Hon'ble High Court of Delhi in **Smt. Babli** supra had not been noticed in these judgment nor was that aspect even discussed or considered.

16. In **Kamla Singh** supra relied by the applicant and dealt with the Principal Bench of this Tribunal in a Single Member Bench, the Bench had held that because the allotment and occupation of the said staff quarter was made as per the rules, it could not be argued that allotment of residence to the applicant was not a service condition. This statement is directly in contradiction to paragraph No.6 of the judgment of the Hon'ble High Court of Delhi which set out the principle that Rules only regulate allotment and do not conferred any right on the employees. We would prefer to rely on the primacy of the view of the Hon'ble High Court over that of a Single Member Bench of

this Tribunal in such matters.

17. The learned counsel for the applicant also relies on the case of **Mahender Singh Bisht** supra, but as mentioned above, that case related to a matter under the PPE Act and, therefore, the question of considering **Smt. Babli** supra did not arise especially on the aspect of jurisdiction of this Tribunal in relation to allotment of accommodation.

18. The learned counsel for the applicant also relied on the decision of this Bench in OA No.624/2018 but it is noticed from the judgment, relevant extracts of which were brought out in previous paragraphs, that no reference was made to the judgment of the Hon'ble High Court of Delhi in **Smt. Babli** supra.

19. In the circumstances, the views of the Hon'ble High Court of Delhi in **Smt. Babli** supra are quite categorical unless the applicant is able to demonstrate by reference to his service conditions that this includes the aspect of provision of accommodation. The judgment of the Hon'ble High Court of Delhi in **Smt. Babli & Anr**

supra has been followed not only by the Principal Bench of this Tribunal in several OAs including OA No.1569/2008 decided on 13.08.2009 but also by the Hon'ble High Court of Delhi in a later judgment in **Union of India & Ors Vs. Dr. Jagdish Saran** decided on 23.08.2005 on appeal from orders of the Tribunal in OA No.180/2003 dated 25.08.2003 and also by this Bench in previous orders. Notably, the decision finds place in the book, "The Guiding Principles in the Decisions on Service Law", 2nd Edition (2003), page 251 (Allotment, Cancellation of Accommodation) compiled by Smt. Lakshmi Swaminathan.

20. The learned counsel for the applicant submits at this stage, a copy of Office Memorandum No.11013/B/2/2016-Pol.I dated 26.09.2016 of the Ministry of Urban Development, Directorate of Estates in which it is declared to the Ministry of Finance that the staff of the Additional Bench for Authority for Advanced Rulings (Income Tax), Mumbai would be eligible for allotment on General Pool Residential Accommodation

(GPRA) at Mumbai on maturity on their turn in waiting list, subject to fulfillment of usual terms and conditions.

21. This piece of evidence has also been examined in the present juncture. The letter in question only confirms that the staff of the said office are entitled to General Pool Residential Accommodation (GPRA) but does not go any further. In other words, as is the practice for all other government officers in different cities, the staff of AAR are also made eligible to file their applications for allotment of accommodation. However, the availability of rules for allotment of General Pool Accommodation to Government servant cannot confer any right upon the applicant. The authority for inclusion of a particular right as a service condition cannot emanate in this manner from the Ministry of Urban Development who is not the Administrative Authority for the Authority for Advance Rulings (IT) and can only come from the Ministry of Finance which is the relevant Administrative Authority.

22. In the absence of any evidence in support of this aspect of whether the applicant's service rules make the contested issue a service condition, we are constrained to dismiss this OA on the point of jurisdiction of this Tribunal in dealing with such matters.

23. In the aforesaid terms, the OA is dismissed. No costs.

(R. Vijaykumar)
Member (Administrative)

*kmg**

