

Unreportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 2844 of 2003

Reserved on : October 08, 2007
Pronounced on : January 11, 2008

Union of India & Anr.

.....Petitioners

!

through :

Mr. R. V. Sinha, Advocate

VERSUS

\$ Shanti Prasad Pant & Anr.

.....Respondents

!

through :

Mr. B. Krishan, Advocate

CORAM :-

*** THE HON'BLE MR. JUSTICE A.K.SIKRI**

THE HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The Union of India by means of this writ petition filed under Article 226 of the Constitution of India assails the judgment dated 1.5.2002 passed by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi in O.A No. 2804/2001. That O.A was filed by the two respondents herein for regularization of the residential accommodation originally allotted to the respondent No.2, father of the respondent No.1. The Tribunal has partly acceded to the plea of the respondents in the said O.A by directing the petitioners to provide alternate accommodation of the same type the respondent No.1 is entitled to, i.e. Type-B accommodation, in place of the accommodation he is sharing with his father, who was earlier allotted the said accommodation, which allocation had lapsed on his retirement. It is also directed that till such time the appropriate type becomes available, the respondent No.1 be permitted to occupy the present premises, but at the higher rent as is due for a Type-C accommodation. The factual matrix involved goes somewhat like

this :

2. *The respondent No.2 herein was working in the Office of General Manager, Central Telegraph Office, New Delhi and retired from service as Senior Supervisor on 31.7.2000. While in employment he was allotted P&T Pool Quarter No. MPJ-535, Sarojini Nagar, New Delhi. The respondent No.1, who is the son of respondent No.2, is working as an LTC in the Air Headquarters, Ministry of Defence, New Delhi. He joined the said service while respondent No.2 was still in the employment of the Government. The respondent No.1 had been sharing the aforesaid accommodation with the respondent No.2 and was also not drawing the House Rent Allowance (HRA). After the retirement of the respondent No.2 from service on 31.7.2000, vide request letter dated 17.8.2000 the respondent No.1 sought regularization of the aforesaid accommodation stating, inter alia, that in other similar cases such regularization was done. The request of the respondent No.1 was, however, rejected by the petitioners vide communication dated 13.11.2000. The respondents filed OA No. 77/2001, which was disposed of on 10.11.2001 with a direction to the petitioners to reconsider the plea in view of the similar benefits granted in a few other cases and the Tribunal's decision. The respondents' representation was, however, rejected once again on 26.7.2001, whereafter they filed the aforesaid OA.*
3. *We may point out at this stage that the accommodation which was allotted to the respondent No.2 while in service is Type-C accommodation, whereas the petitioner is entitled to Type-B accommodation keeping in view his status in service. The reason given by the petitioners in not regularizing the accommodation allotted in the name of the respondent No.1 was that the accommodation in question is Type-C quarter and the respondent No.1 is only entitled to Type-B quarter. It was further mentioned that the respondent No.1 is working with the Ministry of Defence, whereas the respondent No.2 was an employee in the Post & Telegraph Ministry and was allotted the accommodation from P&T pool. The respondents though admitted that in terms of OM No. 12035/4/98-Pol-II the exchange of pool accommodation is permissible only in those*

cases where the successor is entitled for General Pool accommodation, whereas in the present case, father of the respondent No.1 was holding a Departmental Pool accommodation and not a General Pool accommodation. The Tribunal, however, did not accept this contention on the ground that in number of cases exchange on similar ground from General Pool to Departmental Pool and back was done and, therefore, it was a normal and permissible practice. Insofar as entitlement of the respondent No.1 to an inferior accommodation is concerned, the Tribunal directed, as pointed out above, the petitioners to allot respondent No.1 appropriate type of accommodation to which the respondent No.1 is entitled to and until that time he be allowed to retain the accommodation in question by paying higher rent as is due for a Type-C accommodation. It is clear from the above that the only consideration which prevailed with the Tribunal was that such an exchange, even between General Pool and Departmental Pool, was allowed on many occasions earlier.

4. *This approach of the learned Tribunal is clearly untenable in law. The Tribunal has referred to certain cases which were decided in the 1980s or early 1990s showing that such exchange of pool accommodation was permissible. What was necessary was to see the effect of OM No. 12035/4/98 P-I-II, which now governs the field.*

5. *A Division Bench of this Court in the case of Smt. Babli & Anr. v. Govt. of NCT of Delhi & Ors., 93 (2002) DLT 144, considered this very aspect of the matter, namely, regularization of allotment, referring to the definition of service matter as contained in Section 3(q) of the Administrative Tribunal Act. The Court opined that claim to allotment of Government residential accommodation does not become condition of service unless the relevant service rules provided so. In that case as no such rule was shown or pressed in service, the Court held that the CAT had no jurisdiction to entertain the OA claiming allotment or regularization of the Government accommodation unless such claim was shown to be a condition of service.*

In the present case, as mentioned above, the OM specifically states that exchange of

accommodation is permissible only in case both the accommodations are General Pool accommodations and not when a person, like the respondent No.2 herein, was holding a Departmental Pool accommodation.

6. *Same view is taken by another Division Bench of this Court in Union of India & Ors. v. Dr. Jagdish Saran , 123 (2005) DLT 626, holding that out of turn allotment under discretionary quota, de hors rules, was not a matter related to condition of service. In coming to this conclusion, the Court referred to the Supreme Court judgment in the case of Shiv Sagar Tiwari v. Union of India, (1997) 1 SCC 444 as well as the aforesaid judgment in the case of Smt. Babli (supra).*

7. *A Single Judge of this Court in the case of Ajay Kumar Bhatnagar & Anr. v. Union of India & Ors., 123 (2005) DLT 242, also considered the effect of O.M. dated 20.9.1999. The Court held that after coming into operation of the said O.M., the cases were to be governed by that O.M. only and not the earlier policy or practice and if there was even infraction of earlier policies, that would not come to the rescue of the person.*

In the present case, if one has to apply the rigors of the O.M., the respondent No.1 was not entitled to the exchange. Moreover, allowing him to continue to occupy Type-C accommodation even when he was not entitled to the higher accommodation would clearly be impermissible.

8. *In view of the aforesaid discussion, this writ petition warrants to be allowed and the O.A. filed by the respondents herein dismissed. It is ordered accordingly. No costs.*

(A.K. SIKRI)
JUDGE

(VIPIN SANGHI)
JUDGE

January 11, 2008
nsk