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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ **W.P. (C) No. 9523/2007**

SHANKER RAJU

..... Petitioner

Through: Mr. P.P. Khurana, Senior Advocate with
Mr. Sachin Chauhan and Ms. Seema Pandey,
Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. B.V. Niren with Ms. Akriti
Gandotra, Advocate

CORAM: JUSTICE S. MURALIDHAR

1. Whether the Reporters of local papers may
be allowed to see the judgment? No
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the
Digest? Yes

ORDER

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27.04.2010

1. The refusal by the Government of India to allot to the petitioner, who is a Member of the Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi, a C-I type official accommodation to which he is entitled has compelled him to file this petition for relief.

2. The Petitioner was appointed as Member (Judicial) at the CAT, Principal Bench, New Delhi on 10th December 2000. In 2001 he was allotted a C-II Type accommodation. It was his understanding, and

perhaps correctly, that in terms of the applicable rules and terms and conditions of the service, he was entitled to a C-I type accommodation. This is because the status of a Member, CAT was at the time of his appointment equivalent to the Secretary to the Government of India and he was drawing a pay-scale of Rs.22,400-26,000/-with the basic pay of Rs.23,600/-. He accordingly, submitted an application on 28th February 2003 for allotment of a C-1 type accommodation. This request was not acted upon.

3. Section 10 of the Administrative Tribunals Act 1985 ('Act') states that the salaries and allowances and other terms and conditions of service, including pension, gratuity and other retirement benefits of the Chairman, Vice-Chairman and other Members of CAT was to be prescribed by the Central Government. Section 10 and its proviso read as under:

“10. Salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairman and other Members – The salaries and allowances payable to, and other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman, Vice-Chairman and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, Vice-Chairman or other Member shall be varied to his disadvantage after his appointment.”

4. In terms of the above provision, the central government has made the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules 1985 ('COS Rules'). The monthly pay of a Member in terms of Rule 3 was in the scale of Rs. 22,400-600-26000. Rule 12 relating to accommodation reads as under:

“12. Accommodation – (1) Every person appointed to the Tribunal as a Chairman, Vice-Chairman or a Member shall be entitled to the use of an official residence from the general pool accommodation of the type admissible to an officer to the rank of a Secretary to the Government of India stationed at Delhi on the payment of the licence fee at the rates prescribed by the Central Government from time to time.

(2) When a Chairman, a Vice-Chairman or a Member is not provided with or does not avail himself of the general pool accommodation referred to in sub-rule (1) he may be paid every month an allowance of an amount equal to fifteen percent of his pay.

(3) Where the Chairman, a Vice-Chairman or a Member occupies an official residence beyond the permissible period he shall be liable to pay additional licence fee or penal rent, as the case may be, and liable to eviction in accordance with the rules applicable to Secretary to the Government of India belonging to the Indian Administrative Service.”

5. The Directorate of Estates, Ministry of Urban Development & Poverty Alleviation ('MOUD'), Government of India issued an Office Memorandum ('OM') dated 27th April 2004. In para 3 (b) of the said

OM the manner in which the applicable rules were to be implemented in respect of allotment of Type VI-B/VI-A (CI/CII) were detailed. It was stated that on account of the shortage of General Pool residential accommodation of Type VI-B and above, it had not been possible to provide “entitled type of accommodation to the eligible officers.” It was, accordingly, decided that the Secretary to the Government of India and Officers in the rank or pay of Secretaries would be considered for allotment of accommodation “with reference to the earliest date since which they started drawing the fixed emolument of Rs.26,000/- per month i.e. date of priority.” In case the dates of priority were the same, the *inter se* seniority of the Secretaries in the waiting list would be determined with reference to their original seniority in the civil list and so on. As regards the Members of the Tribunals it was clarified as under:

“(iii) Whereas Secretary and equivalent officers would be considered for allotment with reference to the earliest date since which they started drawing the fixed emolument of Rs. 26,000/- per month. Chairman and Members of various Commissioners, Tribunals and other similar bodies, who also have the fixed pay of Rs. 26,000/- per month, would be considered for allotment of accommodation with reference to the dates on which they joined as Chairmen/Members of the Commission(s) etc.

(iv) Secretary and equivalent officers and Chairmen/Members of various Commissions, etc., shall be allotted CII ground floor accommodation in Central localities on immediate basis.

(v) Allotment of CI and/or CII accommodation to Secretaries/ equivalent officers and Chairmen/Members of various Commissioners, etc shall be made in the ratio of 1:1.

(vi) The normal waiting list for CII ground floor accommodation will operate only after the waiting lists of Secretary/ equivalent officers and Chairmen/Members of various Commissions, etc. are exhausted.”

6. No response was forthcoming from the Respondent central government to the application made by the Petitioner on 28th February 2003. On 10th December 2005 the Petitioner was reappointed as Member (Judicial) for another term of five years with continuity of service. In para 3 of the said order of appointment it was stated as under:

“3. The salary and allowances payable to Shri Shanker Raju as Judicial Member in the Central Administrative Tribunal and the conditions of service by which he will be governed, shall be in accordance with the provisions of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules 1985 as amended from time to time.”

A letter was accordingly sent on 6th January 2006 to the Directorate of Estates requesting for allotment of C-I Type accommodation for the Petitioner. The Petitioner sent a further request on 30th January 2006.

7. In December 2006, the Petitioner began drawing a fixed pay of Rs. 26,000/- per month which brought him on par with a Secretary to the Government of India drawing an identical fixed pay. The petitioner was therefore, at least from that date, entitled to a C-I type accommodation even according to the OM dated 27th April 2004. With no response forthcoming to his requests, the Petitioner filed O.A. No. 631 of 2007 on 19th April 2007 before the CAT. By an order dated 30th April 2007 the CAT restrained the Respondents from formally allotting Quarter No.C-1/77, Bapa Nagar, New Delhi which was stated to be vacant at that point in time. Thereafter by a final order dated 24th May 2007 the Respondents were directed by the CAT to allot the said accommodation to the Petitioner.

8. Aggrieved by the above order, the Union of India filed a Writ Petition (Civil) No. 4557 of 2007 in this Court. On 11th June 2007 this Court stayed the order dated 30th April 2007 passed by the CAT. While the aforesaid writ petition was pending, the Petitioner was allotted another C-II type accommodation at Bapa Nagar, New Delhi. By a judgment dated 13th December 2007 this Court allowed the writ petition on the ground that the CAT has no jurisdiction to decide service conditions of its own Members who were being holders of civil posts. The Petitioner was however given liberty to approach the appropriate forum for the redressal of his grievance. Accordingly, on 17th December 2007 the present writ petition was filed by him.

9. Meanwhile on 11th September 2007, another OM was issued by the Directorate of Estates, MOUD whereby quotas were fixed for C-I type accommodation in the following manner:

“(i) 50% of all vacancies to be allotted to Secretaries to Government of India.

(ii) 25% to Officers equivalent to Secretaries serving in various Departments/Offices.

(iii) 25% to Chairmen/Members of various Commissions/Tribunals.”

Further in para 2 of the said OM it was stated as under:

“2. The inter-se seniority within the Secretaries and officers equivalent to Secretary's category would continue to be on the basis of date of the scale of Rs.26,000/- having been fixed in Delhi, i.e. Government of India. For Chairmen and Members of various Commissions and Tribunals, the inter-se seniority would be based on Warrant of Precedence.”

10. In response to the present writ petition it is stated by the Union of India that the Petitioner was drawing a salary of Rs. 26,000/- in the pay scale of Rs. 22,400-26,000/- and a fixed pay in the pay scale of the Secretary to the Government of India. It is contended that for the Chairmen and Members of the various Commissions/Tribunals the *inter se* seniority would be based on the occurrence of the vacancy in the office as notified in the Warrant of Precedence. It is reiterated that in the C-I category only 25% of the available houses would go to the Chairmen/Members of the various Commissions/Tribunals whereas the remaining 50% would go to those holding the post of Secretary to

the Government of India and 25% to officers equivalent to Secretaries. It was contended that:

“the Petitioner is trying to override the legitimate competing interest of persons of equivalent entitlement as per their positions/ pay or persons senior in rank, all of whom have also been patiently waiting in turn for allotment of accommodation in terms of their service conditions and entitlement.”

According to the Respondents, the Petitioner had been given the rank and status of Secretary to Government of India and he figured at Serial No. 18 in the waiting list (List-C) prepared as per the Warrant of Precedence.

11. It may be mentioned here that the clarification had been issued on 3rd August 2008 by the CAT to the Directorate of Estates that the Petitioner is getting the fixed salary of Rs.26,000/- in the pay scale of Rs. 22,400-26,000/- from December 2006 which is the maximum in the above scale.

12. The other development is that the Act was amended in 2007 and with effect from 19th February 2007 Section 8 (3) of the Act was amended to provide that “the conditions of service of the Chairman and Members of the CAT shall be the same as that applicable to judges of the High Court.” Section 10 A which was also introduced with effect from the same date reads as under:

“10-A Saving terms and conditions of service of Vice-Chairman: The Chairman, Vice-Chairman and Member of a Tribunal appointed before the commencement of the Administrative Tribunals (Amendment) Act, 2006 shall continue to be governed by the provisions of the Act, and the rules made thereunder as if the Administrative Tribunals (Amendment) Act 2006 had not come into force.

Provided that, however, such Chairman and the Members appointed before the coming into force of Administrative Tribunals (Amendment) Act 2006, may on completion of their term of attainment of the age of sixty five or sixty two years, as the case may be, whichever is earlier may, if eligible in terms of Section 8 as amended by the Administrative Tribunals (Amendment) Act, 2006 be considered for a fresh appointment in accordance with the selection procedure laid down for such appointments subject to the condition that the total term in office of the Chairman shall not exceed five years and that of the Members, ten years.”

13. It is therefore clear that a Member of the CAT appointed before the commencement of the Amendment Act of 2007 “shall continue to be governed by the provisions of the Act, and the rules made thereunder as if the Amendment Act had not come into force.” In other words, as far as the Petitioner is concerned, he was re-appointed on 10th December 2005 prior to coming into force of the Amendment Act on 19th February 2007 and therefore, continued to be governed by the unamended Act and the Rules thereunder.

14. Once the above position is clear, the contention that the Petitioner should await his turn along with judges of the High Court as far as accommodation is concerned is not legally tenable. His turn will have to be considered only in accordance with Section 10 of the Act read with Rule 12 of the COS Rules as were in force on the date of his re-appointment, as further clarified by the OM dated 27th April 2004.

15. Mr. P.P.Khurana, learned Senior Counsel for the Petitioner drew attention to 'List C' which is a list of Chairmen and Members of various Commissions/Tribunals and other officers awaiting allotment of C-I Type houses as of February 2008. In the said list, the Petitioner's name figures at Serial No. 18. His date of priority is indicated as 6th December 2006 which is the date on which he began drawing the fixed monthly pay of Rs. 26,000. His date of retirement is given as 10th December 2010. Barring five persons above him all others have by now retired. Therefore, it is inconceivable that in terms of the said waiting list the Petitioner's turn has not matured by now. He ought to have been allotted a vacant C-I type house by now. The only possible explanation is the restriction of the quota for the Members of Tribunals in the C-I type accommodation to 25% brought about by the OM dated 11th September 2007. It is the validity of the said OM that will therefore have to be examined next.

16. It needs to be recalled that as on the date of the re-appointment of the Petitioner it was the OM dated 27th April 2004 that was in force.

The said OM superseded OM's dated 16th January 2003 and 2nd May 2003. The OM dated 27th April 2004 provided a 1:1 quota i.e. 50% each to the Secretaries and equivalent officers and 50% to the Chairmen and Members of the Tribunals. This quota has been reduced by the subsequent OM dated 11th September 2007 to 25% which clearly places the Chairmen and Members of the Tribunals including the CAT appointed earlier to the said OM at a disadvantage. The proviso to Section 10 mandates that the terms and conditions of service of Members cannot be varied to their disadvantage after their appointment. Clearly therefore vis-à-vis such Members, including the Petitioner, the OM dated 11th September 2007 is contrary to and violative of the Proviso to Section 10 of the Act. Consequently, as far as the Petitioner is concerned, there is no question of his being Petitioner governed by the OM dated 11th September 2007.

17. Mr. Khurana, learned Senior counsel for the Petitioner points out that on the strength of the OM dated 11th September 2007, all the eligible Secretaries to the Government of India who have been drawing a fixed pay of Rs.26,000 even later than 6th December 2006 have got their C-I type accommodation. In any event, this Court is of the considered view that the C List drawn up as of February 2008 by applying the OM dated 27th April 2004 will have to be followed in case of the Petitioner. Keeping in view the 50% quota, the Petitioner as a member of the CAT cannot be made to wait in a queue along with Secretaries but in the separate queue for Chairmen/Members of Tribunals which already is reflected in the above C List.

18. Viewed from any angle, there is no legal justification in the Respondents continuing to deny the Petitioner a C-I type accommodation.

19. Recently in *Mukesh Kumar Gupta v. Union of India 2010 II AD (Delhi) 241* this Court had the occasion to emphasise the importance of according to the members of the CAT their entitlements consistent with the dignity and status of their office. They perform an important judicial function and have to be accorded a higher priority of treatment than officers of government of an equivalent rank. In fact, this is acknowledged by the subsequent Amendment of 2007 which accords them the same status as that of the Judges of the High Court. It is neither fair nor reasonable for the Respondents to deny the entitlement of the Petitioner to a C-I type accommodation.

20. Consequently, a mandamus is issued to the Respondents to allot to the Petitioner a C-I Type accommodation within four weeks from the date, when an accommodation of that type falls vacant immediately hereafter. The writ petition is, accordingly, allowed with costs of Rs. 5,000/- which will be paid by the Respondents to the Petitioner within four weeks.

S. MURALIDHAR, J.

APRIL 27, 2010
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