

(1990) 03 MAD CK 0038
In the Madras High Court

Gurbans Singh, Assistant Collector Customs	APPELLANT
Vs	
The Deputy Director (P) and Another	RESPONDENT

Date of Decision : 19-03-1990

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(1)(a), 19, 29, 3(1)
Constitution of India, 1950 — Article 226, 227

Citation : (1990) 2 MLJ 217

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Judgement

K.M. Natarajan, J.—This writ petition is filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified

mandamus, calling for the records from the file of the second respondent in connection with his order in No. A(1)26/5/8 AEM (M) 6039, dt. 23-

8-1988, quash the same and to direct the second respondent to allot the petitioner at least Type-C quarters or at least Hostel accommodation in

lieu of Type-D quarter under the Petitioner's occupation, subject to the provisions of allotment of Government Residence (General Pool in

Madras) Rules, 1963.

2. It is seen from the affidavit filed in support of the Petition that the Petitioner is working as Assistant Collector of Customs at Air Cargo Complex,

Meenambakkam, Madras. In pursuance of his application for allotment of residential quarters, the second respondent passed orders on 4-8-1987

allotting him Quarter No. 5, Block No. 26, Type D at Besant Nagar and forwarded the same to him. In pursuance of the said order, he occupied

the "D" type quarter after fulfilling the terms and conditions mentioned in the allotment order.

3. To his surprise, he received another order from the second respondent in No. A(1) 26/5/D/BN/9578, dt. 30-9-1987 stating that as per the emoluments drawn by him, he is entitled to Type C accommodation only, and not Type D accommodation and the 2nd respondent directed him to vacate the D Type Quarter allotted to him already immediately not later than 15 days from 30-9-1987. Thereafter he made a written representation on 17-10-1987 putting forth his difficulties in complying with the order dt. 30-9-1987 and narrating his grievance. He received another order in reply to the written representation from the second respondent dt. 18-1-1988 allotting him the Hostel Accommodation at No. 328, Besant Nagar. According to the Petitioner he was not even allotted "C Type Quarter, and Hostel accommodation means only a transit allotment only for occupation of single person. Thereupon he preferred an appeal to the first respondent against the said order, on 4-2-1988. The Petitioner has not received any intimation regarding the disposal of the appeal. The second respondent passed another order dt. 12-8-88 wherein it is stated that the Directorate of Estate has decided to cancel the allotment of D type ""accommodation and the Petitioner was directed to hand over possession of D Type accommodation on or before 15-9-1988. It is against the said order, the present writ petition is filed.

4. The second respondent filed a counter-affidavit for himself and on behalf of the first respondent. It is mainly submitted that the writ petition is not maintainable before the High Court under Article 226 of the Constitution of India. It is stated that the service conditions of the Central Government servant, inclusive of the dispute presently raised by the Petitioner, are vested under the appellate jurisdiction of the Central Administrative Tribunal, Madras, by virtue of the Administrative Tribunal's Act 1985. In addition, to justify the order of cancellation, it was submitted that as per rules, the Petitioner is entitled only to Type-C (Type-III) accommodation and not Type-D accommodation and by oversight he was allotted Type-D quarter. It is submitted that the Petitioner is by far junior to get Type-C (Type III) accommodation in his turn, since his date of priority is 16-12-1985 and the running date of priority for Type-C (Type-III) accommodation in January, 1988, was 8-10-1982. The Directorate of Estates after considering his case decided and directed the second respondent to cancel the allotment of Type-D Accommodation after giving reasonable

opportunity to vacate the premises. Accordingly the Type-D quarter allotted to the Petitioner was cancelled with effect from 15-9-1988 by giving

him one month time. The petitioner has also accepted the Hostel Accommodation allotted to him in January, 1988. But his request was not

acceded to, as the case was not covered under the Allotment Rules as per S.R.317-B-10. The petitioner was given sufficient opportunity before

even the cancellation was done.

5. It is needless to incorporate all the contentions raised by the respondents, in view of the fact that the limited question to be considered in this writ

petition is-about the maintainability of the writ petition in view of the constitution of the Central Administrative Tribunal, Since the respondents

contended that the writ petition is not maintainable before this Court in view of the constitution of the Central Administrative Tribunal by virtue of

the Administrative Tribunal's Act, 1985, both parties argued on the maintainability of the Petition.

6. As regards the maintainability of the writ petition before this Court, it is submitted by the learned Counsel for the respondents that admittedly the

petitioner is working as Assistant Collector of Customs, at Air Cargo Complex, Meenambakkam, Madras, that he is a Central Government

Employee, that the service conditions of the Central Government servant inclusive of the dispute presently raised by the Petitioner are vested under

the Appellate jurisdiction of the Central Administrative Tribunal, Madras by virtue of the Administrative Tribunal's Act, 1985. On the other hand,

the learned Counsel for the Petitioner submitted that since this is only a dispute due to the allotment of residential accommodation, it would not

come under the service conditions and hence this court has ample jurisdiction to entertain the writ petition. In this connection, my attention was

drawn to some case-laws on the subject by both the parties and the relevant portions of the Act. Section 3-C of the Central Administrative

Tribunals Act 1985 read as follows:

Service matters""', in relation to a person means of 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

an Corporation (or Society) owned or controlled by the Government as respects-

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever.

The Central Administrative Tribunal, New Delhi (FS) in *Rasila Ram v. Union of India* (ND) (1989) 10. ATC(FB) 737 while construing Section

3(a)(v) of the Administrative Tribunals Act, 1985, in respect of eviction of employee from Government accommodation held:

An allotment of houses, the amount of lease payable and the conditions under which allotment in favour of Government servants may be cancelled

are all service matters connected with the service condition laid down under various rules, eviction of a Government employee from such a house

cannot be separate and should logically be included under the definition of "service matters" and therefore, within the jurisdiction of the Tribunal.

it was further held;

The eviction proceedings against Central Government employee under the Public Premises Act fall within the purview of the Central Administrative

Tribunal.

The aforesaid Full Bench relied on various decisions including the decision of the Delhi High Court reported in *Dharma Dev. v. Union of India*

(1982) 2 A.T.L.T.H.C. 172 wherein it was held:

The allotment of a Government Quarter is a matter relating to service matters and within the exclusive jurisdiction of the Administrative Tribunals.

7. On the other hand, the learned Counsel for the writ petitioner invited the attention of this Court to the decision of a Division Bench of this Court

in *W.A.Nos. 824 to 843 and 846 to 864 of 1989 The Chairman, Railway Recruitment Board, Poes Garden, Madras-86 v. V. Charulatha and*

Ors. and submitted that in view of the ratio laid down in the said decision, the writ is maintainable. On going through the above judgment I find that

the said decision is not helpful to the case of the writ petitioner as in the above quoted writ appeals the question arose was whether, even though

the jurisdiction of the High Court was ousted u/s 14(1)(a) of the Act with

reference to matters stated therein, the matters involved in the writ petitions, which arose at the "pre-recruitment stage", fell outside the jurisdiction of the tribunal and the High Court has the jurisdiction to go into the questions raised in exercise of the writ jurisdiction. The Bench held that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India to deal with the service matters with effect from 1-11-1985 is excluded only in case of employee already in service of the Government local authority etc., are concerned, provided they relate to matters which strictly fall within Section 14 read with Section 3(1) of the Act and not in other cases, and it is only an "aggrieved person" as contemplated by Section 19 of the Act who is required to approach the Tribunal only for adjudication and trial of such disputes and complaints etc. In all other cases, the jurisdiction of "the High Court under Article 226/227 of the Constitution remains intact even after 1-11-1985 and consequently it was held that the learned single Judge was right in rejecting the preliminary objection and holding that the question raised in the writ petitions, which arose at the pre-recruitment stage by persons not already "in service" could be gone into by the High Court in exercise of the writ jurisdiction. Accordingly the Division Bench upheld the judgment under appeal. The Division Bench also held, ""The use of the expression "recruitment and matters concerning recruitment", in our opinion, would imply that the "in-service" candidates can raise disputes before the Tribunal even in respect of matters relating to recruitment, but ""no"" person who is not"" "in service" can approach the tribunal for redressal of any grievance. Various clauses of Section 3(1)(supra) unmistakably show that the types of disputes referred therein can only be raised by persons "in service" as they relate to none else."" It was also held that a person who is not in service cannot be said to be ""a person aggrieved"" within the meaning of Section 19 of the Act. The said decision is not at all helpful. It is of no assistance to the writ petitioner in deciding the maintainability of the Writ Petition in this case, as even in that case, the First Bench observed that Section 3(a) is also of a very wide-ranging amplitude and specifically defines ""service matters"" in relation to a person as concerning all matters pertaining to the conditions of his service in connection with the affairs of the Union or of any State, local or other authority within the territory of

India or under the control of Government or other authority, as the case may be and that a bare look at the provisions of Section 14 of the Act

discloses that the jurisdiction of the Tribunal is rather wide and takes the place of courts, excepting the Supreme Court. It is seen from the affidavit

filed by the writ petitioner that he had applied for allotment of residential accommodation available for Central Government Officers in July, 1987

to the second respondent and the application was made in the prescribed form supplied by the office of the second respondent furnishing correct

particulars called for, so far as they were applicable to him. He was originally allotted D type Accommodation. It is also contended in ground No.

(e) that the second respondent does not appear to have adopted any rule or any guideline with regard to allotment of Government Residence

(General Pool) in Madras. It is very clearly stated in the counter affidavit filed by the second respondent that the petitioner was entitled only to

Type-C (Type-III) and not Type-D accommodation, as notified by the Government by its order dated: 8-9-1987 and according to the Revised

Classification and entitlement for accommodation. The type-C accommodation has been fixed only on the basis of his salary. Hence, it cannot be

said that the allotment has nothing to do with the service conditions. I am entirely in agreement with the view expressed by the Central

Administrative Tribunal, New Delhi, (FB) in the Rasila Ram case, quoted supra, that the relief prayed for by the Petitioner would squarely fall

under the definition of service matters in Section 3(1)(v) and that the Central Administrative Tribunal alone is competent to entertain the said

petition.

8. The next question that arises for consideration is whether the petition can be returned to the Tribunal by this Court for disposal according to law

or it is to be dismissed. In this connection, the learned Counsel for the respondent drew the attention of this Court to the decision in *M. Rachaiah v.*

Southern Railways and Ors. 1987 (1) S.LJ 249 where the Central Administrative Tribunal, Bangalore Bench, held that the High Court cannot

transfer any proceeding which was not pending before it on the day when the Act came into force. It is not in dispute that the Administrative

Tribunals Act, 1985, came into force on 31-10-1985. This petition was filed in 1988. To the same effect, it was held by the Kerala High Court in

H. Saleem v. The Deputy Collector (P&E) Cochin and Ors. 1988 (3) SLJ 197 that there is no provision for transfer of original petition to the

Central Administrative Tribunal as Section 29 applies only to cases pending at the commencement of the Act and consequently, the petition was

dismissed, with the observation that this will not preclude the petitioner from moving the Tribunal under the Administrative Tribunal Act, 1985. In

W.M.P. No : 21364 of 1988 in W.P. No : 14259 of 1988 this Court while upholding the objection as to the maintainability of the writ petition on

the ground that the matter relates to services as contemplated u/s 3(1) of the Administrative Tribunals Act, did not pass any interim order and

dismissed the WMP. Admittedly, the writ petition in the instant case was filed after the Administrative Tribunals Act came into force, and after it

was constituted, the only course open to this Court is to dismiss the petition and not to transfer the Petition for disposal by the Administrative

Tribunal. In view of my finding that the writ petition itself is not maintainable and only the Central Administrative Tribunal has got jurisdiction over

the matter, it is liable to be dismissed on the ground that it is not maintainable before this Court.

9. In the result, the writ petition is dismissed. However, this will not preclude the Petitioner from moving the Tribunal under the Central

Administrative Tribunals Act, 1985 and the Petitioner is at liberty to move the Tribunal for appropriate relief. However, there will be no order as to

costs.