

Central Administrative Tribunal  
Principal Bench, New Delhi

O.A. No.3185/2002

Monday, this the 20<sup>th</sup> day of December 2004

**Hon'ble Shri Justice V.S. Aggarwal, Chairman**  
**Hon'ble Shri S. K. Naik, Member (A)**

Dinesh Kumar Abrol  
S/o Shri Rudra Dutt Abrol  
R/o Q.No. TRSA-58, NPL Colony  
New Delhi-60

...Applicant

(By Advocate: Shri Vijay R. Datar)

Versus

1. The Union of India  
through Secretary  
Ministry of Science and Technology,  
Technology Bhavan,  
New Mehrauli Road, New Delhi-17
2. Council of Scientific & Industrial Research  
through its Director General  
Anusandhan Bhawan, Rafi Marg  
New Delhi-1
3. National Institute of Science & Technology  
and Development Studies (NISTADS)  
(A Constituent Institute of Council of  
Scientific and Industrial Research)  
Through its Director  
Dr. K.S. Krishnan Marg  
Pusa Road, New Delhi-12
4. National Physical Laboratory (NPL)  
(A Constituent Laboratory of  
Council of Scientific & Industrial Research)  
Through its Director  
Dr. K.S. Krishnan Marg  
Pusa Road, New Delhi-12

... Respondents

(By Advocate: Shri C. D. Singh)



## ORDER

Shri S. K. Naik, Member (A):

When this OA was earlier heard on 24.2.2004, the Tribunal had dismissed the same relying on the judgment of the Hon'ble Supreme Court in the case of **Union of India v. Rasila Ram & others**, JT 2000 (10) SC 503 and the judgment of the Delhi High Court in the case of **Smt. Babli & another, etc. v. Government of NCT of Delhi & others**, CWP No.4651 to 4653 of 2001, decided on 31.8.2001, holding that the Tribunal had no jurisdiction to entertain the same. Thereafter, the applicant had challenged the decision of this Tribunal before the Delhi High Court in CWP-13738/2004. The Delhi High Court vide its order dated 27.9.2004 held that:

*"Neither judgment divested the Tribunal from its jurisdiction to consider and decide Petitioner's case because he was not being proceeded under the Public Premises (Eviction of Unauthorized Occupants) Act nor was he claiming any allotment of accommodation de hors any allotment Rules. His case re-accommodated on the plea of discrimination inasmuch as he was aggrieved of his exclusion from the list in which other employees had been allowed to retain accommodation and challenging the validity of such allotment Rules. Therefore, he could not be thrown out and non-suited on the strength and analogy of the Supreme Court judgment in Rasila Ram's case or on the judgment of this Court in Smt. Babli's case."*

and, therefore, set aside the earlier order of the Tribunal and has remanded for consideration of the OA on merits.

2. In this background, we have heard the learned counsel for the parties.

3. Briefly stated, the applicant, Dinesh Kumar Abrol seeks setting aside of the order of 17.2.2001 whereby he has been held to be ineligible for Council accommodation and also the order dated 8.5.2002 by which retention permission has been disallowed and he has been directed to vacate the premises. It has been further prayed that Sub-Rules 7.1 & 7.2 of the CSIR (Residence Allotment) Rules, 1997 (hereinafter referred to as "the Rules") are arbitrary, vague, ultra

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vires and violative of provisions of the Constitution and should, therefore, be struck down.

4. The applicant was appointed as Scientist "C" by the Council of Scientific & Industrial Research (CSIR) and is presently posted in the National Institute of Science & Technology and Development Studies (NISTADS), which is a Constituent Institute of CSIR. He was allotted a three-room Scientist Apartment during 1998. This was not a regular accommodation conforming to his entitlement. He had, therefore, been applying for the allotment of residential accommodation as per his eligibility in terms of the Rules. However, rather than being allotted a regular accommodation as per his entitlement, the respondents informed him that as he already owns a house in Delhi, he will have to vacate the Council accommodation as per the provisions of the Rules *ibid*. While he was being asked to vacate the Council accommodation already allotted to him, the respondents held a meeting of the Allotment Committee on 30.5.2001 in which the Allotment Committee of its own initiative took up the issue of retention of Council accommodation by employees having their own house in Delhi and decided that respondent No.2, i.e., CSIR be approached and advised to suitably amend Rules 7.1 & 7.2 keeping in view the problems being faced by the Scientists in a city like Delhi where the municipal limits are very large as compared to the municipal limits of smaller cities. The Committee also suggested that the procedure being followed by the Government of India with regard to retention of Government accommodation should be followed by the CSIR. Contending that when the Allotment Committee itself was convinced of the merit of retention of Council accommodation by those of the Scientists who may be owning a house elsewhere in the city, the applicant felt aggrieved and represented before the respondents to allow him the retention of his Council quarter. All his representations, however, have been rejected by the respondents on the basis of the provisions in Rule 7.1 & 7.2 of the Rules *ibid*. Aggrieved thereagainst, the applicant has challenged primarily the vires of Rule 7.1 & 7.2 of the Rules *ibid*. He has also alleged discrimination as 30 other Scientists/employees have been allowed the retention of Council accommodation even though they are similarly placed as he is.

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5. It would be useful to extract the relevant rules for the proper appreciation of the case. The Rules setting out the relevant provisions are:

#### **"7.0 INELIGIBILITY TO COUNCIL RESIDENCE**

7.1 *An employee shall not be eligible for allotment of Council accommodation if he constructs or purchase a residence at the place of his posting by taking HBA (House Building Advance) from the Council within the municipal limits or within a radius of 8 Kms. of the Lab./Instt., whichever is more.*

7.2 *An employee shall not be entitled to retain Council residence under the circumstances mentioned below:*

- a) *When he owns a residence at the place of his posting in his name or in the name of his spouse either severally or jointly within the municipal limits or within a radius of 8 Kms. of the Lab./Instt., whichever is more and had been allotted residence in pursuance of any rules existing prior to these Allotment Rules coming into force he shall cease to be entitled to the residence on these Rules coming into force and shall have to vacate the residence within a period of two months of the notification of these rules.*
- b) *When an employee or his spouse, who has been allotted Council accommodation constructs or purchases or acquires without taking HBA from the Council or inherits a residence at the place of his posting within the municipal limits or within a radius of 8 Kms. of the Laboratory/Institute, whichever is more, he shall have to vacate the residence within two months of completion of such construction or purchase acquisition of inheritance as the case may be.*
- c) *When an employee constructs or purchases a residence at the place of his posting after taking HBA from the Council within the municipal limits or within a radius of 8 Kms. of the Laboratory/Institute, whichever is more, he shall have to vacate the Council accommodation within two months of completion of such construction or taking possession, as the case may be, failing which allotment shall be cancelled as per rules and he shall be liable for the consequences under these rules.*

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d) *Notwithstanding the provisions under rule 7.1 and 7.2, an employee shall become eligible for Council accommodation on payment of normal license fee, if the house owned by him or his spouse jointly or severally is transferred by way of sale to any person other than close relations.*

7.3 *If an employee decides to apply for or retain the Council residence despite the fact that his case is covered by the circumstances mentioned sub rule (a), (b) and (c) of Rule 7.2, he shall apply for retention or allotment of Council residence and if allowed to retain or allotted he shall be liable to pay license fee for the allotted residence as per Rule 7.5*

7.4 XXX XXX XXX XXX

7.5 XXX XXX XXX XXX

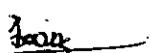
7.6 *The provisions of Rules 7.1, 7.2 and 7.3 shall not be applicable to the Head of the Laboratory/Institute, the senior most Scientist, Sr. COA, COA, A.O., Sr. F&AO, F&AO, SPO, Medical Officer, Nursing Sister/Security officer and any other staff declared as essential by the Head of the Laboratory/Institute, on the recommendation of the Allotment Committee."*

6. Learned counsel for the applicant has contended that Rule 7.1, which debars allotment of Council accommodation if an employee constructs or purchases a residence at the place of his posting within municipal limits or within a radius of 8 Kms. of the Laboratory/Institute, whichever is more and Rule 7.2 directing an employee to vacate the already allotted Council accommodation in case the employee subsequently acquires/owns a residential accommodation, is arbitrary and illegal, especially in its application to Delhi in view of its large size and the fact that the entire State of Delhi, being the National Capital Territory was a municipality. The learned counsel has further argued that the very fact that the Allotment Committee itself felt that the provision was rather harsh, unjustified and deserved to be amended, itself recommended its amendment. Learned counsel states that this goes to prove that these Rules were *ex facie* arbitrary and reflected complete non-application of mind. He contends that it is apparent from the bare perusal of the said Rules that the said Rules could not be applied in the case of NCT of Delhi since the comparative prescription between the relative distance of 8 Kms from the Institute/Laboratory or the municipal limits, whichever is more, has no relation within the

object sought to be achieved by the Rule or the comparison made. As such, the said Rule is arbitrary, vague, indeterminate and violative of Article 14 of the Constitution, the learned counsel contends.

7. The learned counsel, however, has focused his argument on the point of discrimination and has contended that the Allotment Committee has allowed as many as 30 employees belonging to different Institutions of the CSIR to retain their accommodation and the request of the applicant has been arbitrarily rejected. He further finds fault on the ground that while the Committee had allowed the retention of their accommodation by these specially chosen 30 employees, it has also placed an embargo that no new names may be added to the list subsequently. This, the learned counsel contends, is a clear discrimination. He has further contended that despite his representations and after issue of the Office Memorandum dated 20.11.2002, the respondents have allowed the retention of accommodation by Shri V.K. Gupta, who was identically situated as the applicant herein. That apart, at least 6 persons, who were included in the list of 30 persons granted permission for retention by the Allotment Committee on 30.5.2001, were included for grant of higher accommodation despite the fact that the Allotment Committee has expressly directed that they will not be considered for higher allotment until a final decision was taken on the amendment of the Rules *ibid*. He has also alleged that there were various other employees residing in the NPL colony and in the Maharani Bagh, who are ineligible not only in terms of Rule 7.1 & 7.2 but were in occupation of Government accommodation under the Estate Office quota. No action has been taken against them. The learned counsel has, therefore, vehemently argued that the denial of permission for the retention of the Council accommodation is completely discriminatory, arbitrary and illegal and deserves to be set aside.

8. On the other hand, the learned counsel appearing on behalf of the respondents has opposed the application. He has contended that there is no vested right for either the allotment or retention of a Council accommodation by any of its employees. It is a mere concession, which is extended to its employees. Even for the purpose of the grant



of such concession, the respondents have framed the rules, which are amended from time to time as per the availability of accommodation and the functional necessity of according priority to various employees to subserve the objective of the Institution/Laboratory. It is in this background that the earlier Rules of 1984 were amended during 1997. The rules have been framed to provide the maximum satisfaction to its employees on their merit as also to ensure that the functioning of the Institutions/Laboratories are facilitated by according suitable priority to certain functionaries whose presence may be necessary within the campus of such Institution. In this background of the matter, there is nothing wrong if Rule 7.1 & 7.2 debars the allotment of Council accommodation to any employee if he owns a residence at the place of his posting, as those, who do not own a house, have to look for accommodation by paying the market rent elsewhere, whereas those who own a house would continue to enjoy the benefit of leasing out their accommodation for rental purposes but continue to enjoy the Council accommodation putting their co-workers to disadvantage. Besides those who own a house are entitled to House Rent Allowance and, therefore, the provisions made in Rule 7.1 and 7.2 cannot be held to be either arbitrary or illegal.

9. Insofar as the point of discrimination is concerned, on which the learned counsel for applicant has advanced strenuous argument, the learned counsel for respondents has replied that as would be clear from a reading of Rule 7.3, if an employee desires to retain the Council accommodation despite the fact that he owns a residence in the place of his posting he shall have to apply for retention and only if he is allowed that he could do so on the payment of enhanced licence fee etc. Further, in accordance with the provisions of Rule 7.6, the rigors of Rule 7.1, 7.2 and 7.3 shall not be applicable to certain categories of essential staff on the basis of recommendations of the Allotment Committee.

10. Contenting that 30 Scientists/employees, who have been allowed to retain the Council accommodation by the Allotment Committee was, therefore, quite in keeping with the provisions of the Rules. If his case has been found to be not deserving on merit under

the rules, the applicant cannot raise the question of discrimination. He has further contended that respondent No.3, i.e., the Director, NISTADS under whose direct supervision the applicant is working and who was a member of the Allotment Committee did not recommend the case of the applicant for retention of the Council accommodation as his services were not required beyond normal office hours and holidays, whereas in the case of 30 others, who were allowed to retain the accommodation, it was done on the ground that the Director, NPL had, in his comments, observed that the NPL was being benefited by the close proximity of these employees of the Laboratory and their services were often required and utilized beyond the normal office hours and holidays. He further contends that the applicant had not applied for retention of accommodation when the case of 30 employees against whom he is claiming discrimination was considered by the Allotment Committee. However, his representations had been dealt with from time to time and the same was finally considered by the Allotment Committee on 29.3.2003. However, the Committee, after discussion at length, felt that there are no reason to change its earlier recommendation and reiterated the decision taken at its meeting held on 2.4.2002, vide which the applicant along with another Dr. Subhan Khan had not been granted permission for retention under Rule 7.3 of the Rules, as the Director, NISTADS had categorically opined that "The research activities of NISTADS are such that the services of Group IV Scientists are not required beyond the normal office hours and on holidays". Thus, the representations of the applicant had received full consideration not once but repeatedly and rightly rejected on their merit.

11. Concluding his argument, learned counsel has submitted that since the applicant has taken benefit of the same rules for the allotment of the Council accommodation presently in his occupation, he cannot challenge the same rules. Besides, the rules are quite in keeping with the provisions of the Constitution and no employee can claim concession as a matter of right.

12. We have heard the learned counsel for the parties and carefully considered the arguments advanced by them. On the point of rules



being ultra vires, we find that the same has been challenged by the applicant after having taken advantage thereof since 1998 when he has been put to a disadvantage under the provisions of the same rules.

13. The rule merely says that those of the employees, who are in possession of Council accommodation, will have to vacate as and when they own or acquire a house within the municipal limit. It is not denied that the applicant owns a house within the municipal limit of Delhi. To contend that this information was available right from the beginning as he had informed the respondents with regard to the purchase of the flat, etc., will not, in our view, debar the respondents from implementing the provisions of the Rules. It is a fact well known that no governmental organization can provide 100% satisfaction to its employees insofar as the allotment of accommodation is concerned. Within the available resources, they can only endeavor to provide the maximum satisfaction. In that process, some employees would be allotted accommodation and there will be a large number of others who may either have to wait for their turn or have to arrange for alternate accommodation in the open market. If a rule has been made that those who own their accommodation within the municipal limits should vacate the Council premises, we find no arbitrariness or illegality therein as those who do not own such accommodation would obviously be waiting for their turn to be allotted such accommodation. Besides, as has been explained by the learned counsel for respondents, the allotment of accommodation is a welfare measure in the form of concession and the respondents are fully entitled to lay down their policy with regard to who would or could be given the priority. In that process, exceptions have been laid down in rule 7.3 and rule 7.6 and the competent authority with regard to special category can allow the retention of the Council accommodation to meet its functional necessities/objectives. When the Director of the Institute in which the applicant is working has himself stated that the category to which the applicant belongs is not required to remain beyond the office hours or on holidays for its research work and, therefore, has not recommended the retention of the Council accommodation, the entire case of the applicant falls to the ground. In that background, he would also not be entitled to challenge the Rules.



14. On the point of alleged discrimination, again we find that the permission for retention had been allowed to the 30 employees after due consideration of their request and the functional requirement of the Institute to which they belong under the provisions of the Rules and, therefore, they cannot be stated to be discriminatory. If a decision has been taken as per the provisions of a Rule, which may not serve the interests of certain employees, the argument of discrimination cannot be sustained.

15. With regard to the reference made to the leniency shown to Shri V.K. Gupta as alleged by the applicant, learned counsel for respondents has referred to the Rule in para 4.19 of their reply and has stated that vide letter dated 11.5.2003, respondent No.3 has been directed to make recovery of the full penal licence fee and it cannot be said that any leniency has been shown to him.

16. With the result and in view of the discussions above, we find that this is not a fit case for interference by this Tribunal as the applicant has failed to establish any case either on the ground of the Rules being ultra vires or on the ground of discrimination. With the result, there being no merit, OA is dismissed with no order as to costs.

Naik  
( S. K. Naik )  
Member (A)

Aggarwal  
( V. S. Aggarwal )  
Chairman

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