

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1474/2001

New Delhi, this the 10th day of January, 2002

Hon'ble Shri Govindan S.Tampi, Member (A)

Rajendra Singh
S/o Late Shri Ghazi Ram
R/o Flat No.1059, Pkt.GH.13.
Paschim Vihar, New Delhi - 110 087.

(Retd. Field Officer, Indian Agricultural
Research Institute, New Delhi)

...Applicant

(By Advocate Shri C.B.Pillai)

V E R S U S

1. The Director General
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi.
2. The Director
Indian Agricultural Statistics
Research Institute
Library Avenue, New Delhi.

...Respondents

(By Advocate Ms. Anuradha Priyadarshini)

O R D E R (ORAL)

By Hon'ble Shri Govindan S.Tampi, Member (A)

Reliefs sought for by the applicant Shri
Rajendra Singh are as follows :-

8 (i) adjust Rs.9062/- only towards damage
charges for the period from 1-10-1988 to 3-6-1991 for
the residence allotted to the applicant i.e. market
rent @ 4.66 of license fee as originally intimated to
him ;

(ii) refund the excess amount of Rs.31,982/-
illegally withheld by them from the DA on pension of
the applicant, with interest at the rate of 18 % with
effect from 3-6-1991 till the date of actual payment ;

(iii) allow costs and

(iv) grant other reliefs deemed fit.

2. Shri C.B.Pillai and Ms. Anuradha Priyadarshini, learned counsel represented the applicant and the respondents respectively during the oral submissions before me today.

3. The applicant who retired on 31-7-1988 from Indian Agricultural Statistics Research Institute (IASRI), a unit under Indian Council of Agricultural Research (ICAR), had overstayed in the residential quarters allotted to him on payment of standard rent of Rs. 115/- pm from 1-10-1988 to 30-6-1991. On being advised by the respondents by their memoranda dated 28-10-1988, 26-12-1988 and 19-1-1989, either to vacate the premises or pay market rent @ 4.66 times of the licence fees, in terms of Rule 23 of IASRI (Allotment of Residence) Rules, 1981, the applicant started paying @ Rs. 536/- a month plus Rs.15/- towards water charges. Subsequently in March, 1990, when he was directed to pay damage rent @ Rs.1322/- a month, the applicant represented against it. Rent of Rs. 551/- paid by him for month of February, 1990 was returned with the directions that damage charges for unauthorised occupation or overstay revised by the Ministry of Works and Housing (Directorate of Estate) have become applicable to ICAR/Institute, mutatis mutandis from 1-9-1987 and that the applicant was liable to pay rent @ Rs. 1322 + Rs. 15/- for the period of overstay.

4. Ministry's OM dated 27-8-1987 fixing the damage rent @ of Rs. 20/- Per Sq. Mt. of living area in respect of General Pool accommodation was to be adopted by other Ministries/Departments with prospective effect and all pending cases were to be disposed of at pre-revised rates. It was also communicated that suitable amendments were to be carried out in the Allotment of Govt. Residences (General Pool) in Delhi Rules, 1963 to replace the words "market licence fees" by the word "damages" and that similar amendments were to be carried in other Rules also. It meant that IASRI, Allotment of Residence Rules, 1988 had also to be amended, which was not done on time. In the applicant's earlier OA 2652/92, the respondents have denied that this amendments had been made in the light of OM dated 27-8-1987, but in the subsequent Civil Suit, they indicated that it was only done in accordance with the OM. ICAR had on 20-7-1988 only forwarded a copy of the Ministry's OM dated 27-8-1987. The same and IASRI's endorsement on 20-10-1987 did not amount to any amendment. Infact the said amendment was introduced only by IASRI Revised (Allotment of Residences) Rules, 1992. The applicant's having vacated the accommodation where he was over-staying on 3-6-1991, the revised rates could not have been made applicable in his case. While defending their action in OA 2652/92, the respondents had filed IASRI (Allotment of Residences) Rules 1981 with an endorsement pasted on Rule 23, which was infact not an amendment. The amendments had taken effect only in 1992. While disposing of the earlier OA, the Tribunal did not record any finding, but held that there was

prima facie no justification withholding the DA admissible on the applicant's pension beyond Rs. 41044/-, claimed by them as licence fee. Further, the amount of Rs. 41044/- itself included an amount of Rs. 6764/-, shown as expenditure incurred in filing the Court case for eviction. This was impermissible as while allowing the present respondents to file the Civil Suit, the Court had awarded cost of Rs. 2000/- in favour of the present applicant. Respondents were holding back Rs. 40,144/- ^{while} _h they are in law entitled for only Rs. 9062/- out of it and should have returned Rs. 31,982/- (being Rs. 25218/- illegally held back as damage rent + Rs. 6674/- held back as Court charges also incorrect. Hence this OA.

5. The grounds raised in this OA are as below :-

(a) market rent chargeable from the applicant for the period of over stay was only Rs. 536/- per month as indicated by the respondents' own letters of 28-10-1988, December 1988 and 19-1-1989.

(b) as Ministry of Urban Development's OM dated 27-8-1987 with regard to the revision in the case of damage rent had been adopted only when IASRI Revised (Allotment of Residences) Rules, 1992 were promulgated and, therefore, it could not have been retrospectively given effect to.

(c) ICAR endorsement of 20-7-1988 and IASRI dated 20-10-1989 did not anywhere state that the revised damage charges will be applicable to IASRI accommodation.

(d) Rule 23 of IASRI was amended only with the promulgation of IASRI Revised (Allotment of Residences) Rules, 1992. The Rules applicable to General Pool Accommodation cannot be given effect to IASRI accommodation as they deal with different situation. Withholding of Rs. 31,982/- from the applicant's DA on pension towards the damage rent was improper and holding back Rs. 6764/- out of that was still more incorrect.

The application should, therefore, succeed with full relief and cost to the applicant is what Shri C.B.Pillai, learned counsel for the applicant reiterates.

6. Fervently rebutting the points raised by the applicant, Ms. Anuradha Priyadarshini, learned counsel for the respondents point out that the OA was totally misconceived and wrong. The recovery/holding back of Rs. 41044/- included damage charges @ Rs. 1322.40/- p.m. from 1-10-1988 to 31-3-1991 and damage charges from 1-4-1991 to 31-5-1991 @ Rs. 40/- per sq.mtr. in terms of the Govt. of India, Directorate of Estate OM No.18011/8/89-Pol.000 dated 1-4-1991 for the period of overstay and unauthorised occupation of the premises by the applicant and as the recovery has been legally and correctly ordered, the same cannot at all be assailed. The Rule 23 of the Allotment of Residences Rules of the respondents provided that for unauthorised occupation of residential accomodation, the damage charges will be payable at the rates fixed by the Ministry of Urban Development (Directorate of

Estates)/ICAR from time to time. Respondents have only given effect to the directions contained in the Rules. Provisions of the Rules have been correctly interpreted and given effect to and the applicant has not been put to any unreasonable or unconscionable loss as is attempted to be made out. The respondents have not committed any perjury as far as averments are concerned and all averments to the contrary are improper. Ms. Anuradha Priyadarshini, ld. counsel

Further

referred to the OM No.18011/8/89-Pol.000 dated 1-4-1991 enhancing the damage rent from Rs. 20 to Rs.40/- Sq. Mtr. communicated under the letter dated 16-11-1992 of ICAR and circulated by IASRI on 3-1-1993. In view of the same. In view of the same, the respondents could not have recovered any lesser amount from the applicant. Having overstayed in the accommodation allotted to the applicant cannot escape the liability for paying the charges for such overstay and unauthorised occupation. In the above circumstances, the Tribunal may not interfere in the manner and may dismiss the misconceived OA, *pleads as learned*

Counsel

7. I have carefully deliberated upon the rival contentions and examined the facts brought on record. Undisputed facts in this case are that the applicant had, following his retirement on superannuation, overstayed in his accommodation from 1-10-1988 to 30-6-1991 and had also paid @ 4.66 times the licence fee of Rs. 115/- i.e. Rs. 536/- for the period of over stay as directed by the respondents themselves in their letters dated 28-10-1988, 26-12-1988 and 19-1-1989. It is only in March, 1990, *law*

the respondents have taken a different stand and directed the applicant to pay damage rent @ 1322/- pm on the basis of the revision effected by the Ministry of Housing and Urban Development w.e.f. 1-9-1987 and subsequently enhanced it from 1-4-1991 on the basis of another letter again of the Ministry of the same date. Allotment of residential accomodation by IASRI is governed by the provisions of IASRI (Allotment of Residences) Rules, 1981 as amended. When specific Rules are present controlling the allotment of accommodation in the respondents' organisation's instructions, ~~on~~² allotment of general pool accomodation would not be applicable to them unless they are incorporated by amending the relevant Rules. Rule 23 of the IASRI (Allotment of Residences) Rules, 1981 dealing with overstay reads as under "Where after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these Rules, the residence remains or has remained in occupation of the officer to whom it was allotted or of any person claiming through him, such officer shall be liable to pay damage for use and occupation of the residence, services, furniture and garden charges, equal to the market licence fee as may be determined by the authority from time". It is keeping in mind the above, the applicant was directed by the respondents' letter dated 28-10-1988, 26-12-1988 and 19-1-1989 to pay market licence fee @ 4.66 times of the normal rent (of Rs. 115/-) i.e. Rs. 536/- pm, which he was paying. Though the rates had been changed apparently by the Ministry of Urban Development in respect of General Pool Accomodation @ Rs. 20/- per sq. mtr., the following amendments were

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made only in 1992, when IASRI Revised (Allotment of Residences) Rules, 1992 were promulgated "For unauthorised occupation of residential accomodation, the damage charges will be payable at the rate fixed by the Ministry of Urban Development (Directorate of Estate)/ICAR from time to time. Its having come into force only in 1992, it cannot be invoked to deal with the case of the applicant who had vacated the premises on 3-6-1991. The Revised Rules nowhere state that they have any retrospective effect. Further, the enhancement of damage rent from Rs. 20/- to Rs. 40/- per sq. mtr. ordered under Govt. of India's OM No.18011/8189-Pol.III dated 1-4-1991 is found to have been communicated by ICAR's endorsement No. 21 (14)/91-Cdn dated 16-11-1992 and circulated under IASRI's endorsement No. 36 (6)/86. Govt/Maint(Pt) dated 7-1-1993. This also is not at all applicable in the case of the applicant. The applicant cannot be made to pay for the lapse or delay on the part of the respondents, in ~~not~~ sending the relevant rules or communicating the instructions. Therefore, directing the applicant to pay damage rent @ Rs. 1344/- from 1987 and raising the rent from Rs. 20/- to Rs. 40/- per sq. mtr. from 1-4-1991 was clearly illegal and cannot be sustained. Besides, recovery of an amount of Rs. 6764/- from the applicant on account of Court case was clearly improper as the Civil Court had granted a cost of Rs. 2000/- to the applicant in the said case appreciating his position. It is, therefore, very clear that the applicant has made out his case that holding back of his DA relief of Rs. 31,982/- (Rs. 41,044 - Rs. 9062/-) being the rent

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due @ 4.66 times the market rent. That being the case, he is also eligible to be granted some interest on the amount illegally held back.

8. In the above circumstances, the OA succeeds and is accordingly allowed. Respondents are directed to refund to the applicant, the amount of Rs.31,982/- illegally held back by them immediately and in any event within two months from the date of receipt of a copy of this order. They shall also pay the applicant interest on the amount at the token ^{at} rate of 2 % p.a. w.e.f. 3-6-1991 till the date of actual payment. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

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