

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA 1935/2001

New Delhi, this the 3rd day of April, 2002

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

Shri H.C.Singh (Ex. Scientist, CMRI, Dhanbad)
S/o Late Shri Ram Lakhan Singh
R/o Flat No.902, Block No.16,
East End Apartments, A-5, Chilla
Delhi - 110 096.

...Applicant .

(By Advocate Shri L.K.Singh)

V E R S U S

1. Council of Scientific & Industrial Research
through its Director General
Rafi Marg, New Delhi - 110 001.
2. Central Mining Research Institute
through its Director
Barwa Road, Dhanbad - 826 001.

...Respondents

(By Advocate Shri Kapil Sharma)

O R D E R (ORAL)

By Hon'ble Shri Govindan S.Tampi,

In this OA, the applicant seeks quashing and setting aside of the order dated 10-3-2000 passed by the respondents rejecting his request for waiver of penal licence fee in respect of the official accommodation held by him after his date of superannuation.

2. Heard Shri L.K.Singh, ld. counsel for the applicant and Shri Kapil Sharma, ld. counsel for the respondents.

3. The applicant, who was a Scientist attached to the Central Mining Research Institute, Dhanbad, a constitute unit of CSIR retired on 31-1-1994. In addition to his normal duty as Scientist, he had been handling the Court cases for the Institute and litigations in various places including the Administrative Tribunal, Principal Bench, Regional Bench at Patna, Central Govt.

Industrial Tribunal at Dhanbad and High Courts of Patna and Ranchi and Hon'ble Supreme Court of India. At the time of his superannuation, the respondents desired to avail themselves of the services of the individual for conducting few cases, which he agreed to do on the specific condition that he be allowed to retain in the accommodation on the same terms and conditions as was in force while he in service alongwith payment of TA & DA charges. These were reproduced in the letter of the recommendations from CMRI to CSIR. On this assurance, he continued to undertake the services which he was attending and there had been no indication that this arrangement would be disturbed, till he received a letter dated 13-3-95, indicating that he has been holding on to the residential accommodation in an unauthorised manner and that he was liable to pay penal charges for the said unauthorised accommodation. Immediately thereafter, he vacated the premises and represented against the above. The same, however, has not met with any fruitful results and while releasing his terminal benefits, an amount of Rs. 18,281/- has been withheld, which has led to this OA.

4. Arguing for the applicant Shri L.K.Singh, Id. counsel, points out that correspondence from the Institute where he was working and superannuated from and the CSIR would make it clear that the applicant had agreed to perform the duties, which the Institute found necessary to be performed after retirement only on the specific condition that he be permitted to retain in the govt. accommodation, under the same terms and conditions, which he was subjected to till his date of superannuation. Having agreed to the same

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and having endorsed the same in the letter to the CSIR, the respondents had gone back on the words in law. The action of the respondents, therefore, was illegal, improper and deserved to be interfered with in the interest of justice, pleads Shri Singh.

5. Refuting very strongly the pleas raised by the applicant, Shri Kapil Sharma, Id. counsel for the respondents states that the applicant's OA is mis-conceived and without any basis, as there has been no understanding that he would be permitted to retain in the accommodation, as he is still in the service. Respondent No.2 could not have made any such assurance, as he has no power to do so. They could have only made a recommendation and if the recommendation was not agreed to by the CSIR, the controlling Council, they could only take action, as permitted. That is exactly what they have done. There is no reason why they should have made an exception in the case of the applicant and acted beyond what is permitted by the Rules. OA according to him, has no merit and should fail, pleads Shri Sharma.

6. I have carefully considered the matter. The facts are not disputed. The applicant who had retired on superannuation in 1994 continued to perform services for the respondents as per their desire as they felt that he was capable for doing so. From the letter dated 7-2-94 issued by CMRI to the Joint Secretary (Admn) before the retirement on superannuation of the individual concerned, it is clear that they were intending to utilise the services of the individual for conducting specifically the Court cases. The letter goes on to state:-

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"In view of the above, the Director, CMRS strongly recommend for retention of Sri Singh at CMRS in one capacity of the other till pending court cases and complaint cases are over, of course on the terms and conditions as deemed fit by the competent authority at the level of CSIR Hqrs. As regards Sri Singh, he is agreeable to continue looking after the pending court cases and complaint cases provided the facilities in respect of official residence, entitlement of TA/DA etc. as on 31-1-94 (i.e. the date of retirement on superannuation), remain undisturbed."

This makes it clear that the respondent-2 had held out to the applicant a promise that they would be considering his case for the accommodation, subject to which, he may perform services. Nothing has been brought on record to show that at any time till March, 1995 when the impugned communication was issued, the applicant was told that the concerned Institute did not have power to make any exception to the rules or to extend the facilities which he had enjoyed earlier or that their move to have the services of the applicant continued on the above conditions, did not find favour with CSIR. It is true that under normal circumstances, a person who is retiring from service on superannuation would be entitled to keep the accommodation only for the period of first two months on the normal rent and next two months on the double rent, whereafter he becomes unauthorised occupant unless his accommodation is extended and will be liable to pay the market rent. In this case, there is no indication that any action was taken at the end of the permissible period, either on the normal rent period or on double ^{two} rent to inform the applicant that he cannot continue in the accommodation. Respondents have issued a notice to the applicant stating that he is continuing in the

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accommodation as unauthorised occupant and for that he would be liable to pay the penal rent only on 13-3-1995. That being the case, the applicant was under the belief that he was an authorised occupant of the accommodation and, therefore, he could not be faulted for having felt that he is entitled for the retention of the quarter under the normal terms. As pointed out earlier, since the applicant's services were in the interest of organisation, who themselves wanted him to continue, it should have been treated only as authorised occupation under the normal rent. In that scenario, the respondents were not at all justified for having initiated the impugned proceedings and held back the amount, which is calculated at the double rent or penal rent and recovered it from the applicant's terminal benefits. The same has to be quashed and set aside. Consequently, he would be entitled for the return of the amount, unduly held back from his retiral benefits, under the garb of penal rent, with interest. It alone would be just.

7. In the above view of the matter, the OA succeeds and is accordingly allowed. The respondents are directed to release the applicant the amount of Rs. 18,281/- withheld from his DCRG within two months from the date of receipt of a copy of this order. He shall also be entitled for interest @ 9 % p.a. on the amount from the date of getting its being withheld to the date of its ultimate disbursement. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

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