

- 28 -

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1903/99

Hon'ble Shri S.A.T.Rizvi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 29th day of March, 2001

Shri B.N.Dhaundaiyal
(Ex. Member(A), CAT)
s/o Shri P.A.Dhaundaiyal
r/o C-I/26, Pandara Park
New Delhi - 110 003. ... Applicant

(By Advocate: Dr. J.C.Madan)

Vs.

1. Union of India through
Secretary
Ministry of Urban Affairs &
Employment
Nirman Bhawan
New Delhi.
2. Director of Estates
Ministry of Urban Affairs &
Employment
Nirman Bhawan
New Delhi. ... Respondents

(By Advocate: Shri D.S.Mahendru)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, an Ex-Member of Central Administrative Tribunal, has assailed an action of the respondents through letter dated 1.6.1999, Annexure-A1, whereby an amount of Rs.28,126/- has been found outstanding on account of retention of Government accommodation for a longer period than the prescribed one for the period 18.8.1995 to 29.9.1995 as the damages rent of licence fee. The Tribunal vide order dated 14.9.1999 stayed the recovery of damages and thereafter vide order dated 21.8.2000 passed by the learned Single Judge the matter has been referred to the reference to the Division Bench on the following reference:

- 2 - ~ 29 -

The limited issue for consideration is whether the appointment of a retired Govt. officer as a Member/Vice Chairman/Chairman of this Tribunal could be said to be a fresh appointment and if so, whether one and the same person could avail of the facility of residence in Govt. accommodation separately in their respective capacities as a retired Government servant and as a Member/VC/Chairman and thereafter as a retired Member/VC/Chairman of the Tribunal in accordance with the Rules and Regulations normally applicable to a retired Govt. servant."

2. The applicant retired as a Government servant on 28.2.1991. The applicant was allotted a Government accommodation to his entitlement category during his tenure as Government servant and retained it for a period of four months from the date of his retirement, i.e., 1.3.1991 to which he was entitled as per the extant rules. The applicant was selected and appointed as Member of the Central Administrative Tribunal on 17.4.1991. As per the extant rules of Central Administrative Tribunal, the applicant was also entitled for the Government accommodation as such he was allotted the same Government accommodation at C-I/26, Pandara Park, New Delhi w.e.f. 17.4.1991. On demitting the office as Member of the CAT on 2.2.1995, according to the applicant, he was authorised to stay in the Government accommodation initially for a period of four months from the date of retirement at normal licence fee and subsequently for another four months on medical grounds at double the rate of normal licence fee. As per the applicant, the entitlement of stay in the Government accommodation had expired on 2.10.1995. The applicant has also submitted his medical certificates to the respondents. The applicant made representation on 25.7.1995 to allow him to stay in the Government accommodation as per the

Rules and entitlement upto 2.10.1995. The respondents did not accede to his request on the ground that the earlier grace period of one and half month from 1.3.1991 to 16.4.1991 was to be deducted from subsequent total permissible period of eight months. The applicant filed OA 1503/95 where vide order dated 24.1.1997 the following directions were issued:

"2. Both counsel agree that this O.A. may be disposed of with a direction to respondents that in the event the relief prayed for by applicant, has been granted to Hon'ble Shri N.V.Krishnan, Acting Chairman, Central Administrative Tribunal (Retired), as applicant's counsel claims it has, the same may be extended to applicant also. We direct accordingly and call upon respondents to issue necessary orders in this regard within four weeks of receipt of a copy of this order.

3. This O.A. stands disposed of. No costs."

3. Respondent No.2, vide impugned letter dated 1.6.1999 clubbed the grace period of one and half month to the total permissible period available to the applicant as Government servant and also of the view that this period from 18.8.1995 to 29.9.1995 falls beyond the period of eight months as such the applicant was directed to clear the outstanding dues of Rs.28,126/-.

4. The applicant has assailed the impugned order on the ground that action of the respondents by deducting the earlier period w.e.f. 1.3.1991 to 16.4.1991 from the total permissible period of eight months is not legal as the appointment of the applicant was a fresh appointment and he was not re-employed in the Government service. As such by virtue of his being a fresh appointee he is also

entitled for a grace period of eight months from the date of retirement to stay in the Government accommodation, which include, four months of normal licence and four months on medical ground on payment of double the rate of licence fee. According to him the previous period of 1.6.1991 to 16.4.1991 should not have been reckoned as part of the total grace period of eight months as the previous one and half of period was availed as a retired Government servant and his subsequent appointment was a fresh one, and if he fulfilled the conditions laid down, he is entitled to have the fresh grace period of eight months w.e.f 2.2.1995 to 2.10.1995. As such the recovery is not permissible under the rules. As regards the application of Judgment in case of Ex. Vice-Chairman of the Tribunal Shri N.V.Krishnan, he availed the facility for three months as a retired Government servant before being appointed as Vice-Chairman of the Tribunal and his grace period is of w.e.f. 9.2.1996 for one months on account of normal licence fee and four months on payment of twice the normal licence fee including his previous grace period would not be applicable in the case of the applicant as the respondents had failed to produce any such rules and instructions applicable to a case where retired Government servant had been appointed a fresh.

5. The respondents, on the other hand, in their reply took a preliminary objection that the applicant had concealed the material facts and shown his address in the title of the case as of New Delhi wherein in the verification column the same has been shown to be of UP as such the Allahabad Bench of the

Tribunal has jurisdiction to entertain this case and the same is not maintainable in view of Section 25 of the Administrative Tribunals Act, 1985. On merits it is contended that the applicant had availed the grace period in his previous Government service, from 1.3.1991 to 16.4.1991 and the same quarter was regularised in his name w.e.f. 17.4.1991 to 2.2.1995. The allotment of the quarter was cancelled on 18.4.1995 and he was allowed a grace period on medical grounds on payment of double the rate of licence fee from 18.4.1995 to 17.8.1995. The applicant vacated the aforesaid quarter on 29.9.1995 as such he is liable to pay the damage rent w.e.f 18.8.1995 to 29.9.1995 as damage charges. It is further objected that in view of the Apex Court's decision in Rasila Ram's case, the Tribunal has no jurisdiction to entertain the application as an application under the provisions of Public Premises Act, 1971 has already been filed in the Court of Estate Officer on 25.6.1999 and the same is under process. According to the respondents whatever has been granted to Vice-Chairman, Shri N.V.Krishnan, the same was considered for the applicant also. It is further contended that Quarter No.C-I/26, Pandara Park, New Delhi was never allotted a fresh to the applicant but regularised on his being appointed as a Member, CAT other wise, he was entitled to C-II Type accommodation. The respondents had resorted to SR 317 (B) (11), SR 317 (B) (22) and OM dated 9.7.1986 to contend that the grace period consists of period w.e.f 1.3.1991 to 16.4.1991 and 2.2.1995 to 17.8.1995, the claim of the applicant is not legally sustainable.

6. In his rejoinder the applicant is reiterated the contentions taken by him in the OA and contended that the grace period should have been continued till 1.7.1991 and is entitled to a Govt. accommodation as a Member of the CAT as a fresh appointee and should not be linked with the that as Secretary to the Govt. of India and nor the grace period which he availed during the period from 1.3.1991 to 16.4.1991 on account of his previous appointment could be ignored and he is entitled for a fresh grace period of four months w.e.f. 2.2.1995 to 1.6.1995 and further a grace period on medical grounds on double the licence fee w.e.f. 2.6.1995 to 2.10.1995.

7. We have carefully gone through the rival contentions of the parties and perused the material on records.

8. As the first issue to be considered by us is a reference made to us by the learned Single Judge regarding the issue whether the appointment of a retired Government servant, who joined as a Member/Vice-Chairman/Chairman in the Central Administrative Tribunal could be said to be a fresh appointment and if so, whether one and the same person could avail of the facility of residence in Government accommodation separately in their respective capacities as a retired Government servant and as a Member/VC/Chairman and thereafter as a retired Member/VC/Chairman of this Tribunal in accordance with the Rules and Regulations normally applicable to a retired Govt. servant. The applicant has contended

that the appointment of a retired Government servant as a Member of the Tribunal would have to be treated as a fresh appointment and not as a re-employment as treated by the respondents. The applicant has drawn our attention to Section-6 of the Administrative Tribunals Act, 1985 (hereinafter called as 'the Act') which inter-alia provides under sub-rule 3-A as to appointment of an Administrative Member on certain pre-conditions. Drawing our attention to Section-8 of the Act, it is contended that a Member shall hold the office for a period of five years from the date on which he enters upon his office, but shall also be eligible for re-appointment for another term of five years. Further he drawn our attention to the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1985 (hereinafter called as 'the Rules'), it is contended that as per Rule-3 of the Rules on appointment as a Member on his retirement from the Central Government, and has become entitled to receive any retiral benefits by way of pension or gratuity, employer's contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay shall be reduced by the gross amount of pension or pension equivalent to service gratuity or employer's contribution to Contributory Provident Fund or any other form of retirement benefits, if any, but excluding pension equivalent to retirement gratuity, drawn or to be drawn by him. As per Rule-5 of the Rules it is incumbent before seeking appointment as Member in the Tribunal, shall seek retirement from his previous Government service and shall be entitled to the leave as permissible to other Government

employees. Drawing our attention to the other provisions of this Act, it is contended that Leave Travel Concession, facility of conveyance and travelling allowances are admissible as admissible to the other Government servants. As regards the accommodation provided under Rule-12 of the Rules that a Member on appointment is entitled to the house of official residence from the general pool on the licence fee at the rate prescribed by the Central Government and on occupying the residence beyond the permissible period he shall be liable to pay penal rent and liable for eviction in accordance with the rules applicable to Secretary to the Government of India belonging to the Indian Administrative Service. In Rule-16 of the Rules, which is a residuary provision, which has been provided that the conditions of service of a Member where no express/extra provision is available in the Rules shall be determined by the rules and orders for the time being applicable to a Secretary to the Government of India belonging to the Indian Administrative Service. In this back ground, it is contended that in case of a re-employment, a retired Government servant is only entitled for an honorarium and other conditions of service akin to other Government servants would not have any application. It is also stressed that as itself in the Act and the Rules *ibid*, the word appointed as mentioned, the induction of a Member in the Tribunal is to be treated as a fresh appointment. Drawing our attention to the various conditions of service, where the provisions applicable to other Government servants have been made applicable to the Members, it is contended that the Rules and

Regulations for a Government servant are made applicable on a Member appointed in the Tribunal as such the Member in the Tribunal is at par with a Government servant appointed afresh and would be extended the facility as provided to the other Government servants. On the other hand, the respondents have failed to show any rules, instructions or orders which apply to case of a fresh appointment of retired Government officers to this Tribunal in the matter of allotment of Government accommodation. The respondents are also failed to show that the appointment of a Member in the Tribunal would be a re-employment rather than a fresh employment.

9. We have carefully considered the contentions taken by the rival parties and we are of the considered view that appointment of a Member to the Tribunal under the Administrative Tribunals Act, 1985 is not a re-employment but a fresh appointment. The Member of the Tribunal is entitled for a salary and their retiral benefits on account of previous employment are affected and accordingly the same are deductible from the salary drawn as a Member. The Member of the Tribunal is also made entitled for other conditions of service like leave, LTC, conveyance allowances, TA and other facilities at par with a serving Government official. In this view of the matter and particularly when the Member of Tribunal is given entitlement to all the conditions of service as applicable to a serving Government official, this appointment is to be treated as a fresh appointment hence we answer our reference accordingly.

10. As regards the issue whether a Member could avail of the facility of residence in a separate capacity as a retired Government servant or as Member of the Tribunal and also as a retired Member of the Tribunal, we are of the opinion that once the appointment is found to be a fresh appointment a retired Government servant would be entitled to avail the facility of Government accommodation in a separate capacity independently of his being a retired Government servant. The concessions given to a fresh appointee in the Government service would also be extended to him. This would also include the fresh grace period of four months for retaining the Government accommodation after retirement and also four months thereafter on payment of double the licence fee on medical grounds. A Member of this Tribunal would get a period of eight months from the date of retirement to retain the accommodation as the maximum period as per the rules in force made applicable to a person appointed under the Government servant. The period availed by him during his status as a retired Government servant prior to his appointment as a Member would not be added to reckon the grace period admissible to the applicant on his appointment as Member and thereafter on his retirement. We answer the second part of the reference accordingly.

11. Having regard to the observations made, the next issue for reconsideration is whether the respondents resort to recover a sum of Rs.28,126/- on account of damage rent of licence fee for the period 18.8.1995 to 29.9.1995 which had been claimed to have

been overstayed by the applicant beyond the maximum permissible period is legally correct or not. The respondents' counsel has taken a plea that the Tribunal vide order dated 24.1.1997 in OA No.1503/95 had directed to issue necessary orders by extending the relief granted to former Acting Chairman, CAT, Shri N.V.Krishnan. According to them, Shri Krishnan was retired on 9.2.1996 and was allowed one month's further retention on payment of normal licence fee and four months further on payment of twice the normal licence fee and as such he availed this facility for 8 months as he had already availed three months on his retirement from the Government service prior to his appointment as Vice Chairman, he was rightly granted one month's further retention of the accommodation on payment of normal licence fee. As we have already held that the appointment of the applicant as Member of this Tribunal was a fresh appointment there is no question of carrying forward the unavailed period of extension on payment of normal licence fee towards the period after the retirement as Member from the Tribunal. In other words, grace period of eight months was not included in the left over period in the previous employment as on being appointed fresh there is an entitlement of grant of period of eight months concessional period as prescribed under the Rules as a Member. Apart from this the respondents had utterly failed to show anything which could have permitted us to take a stand that the appointment was not a fresh one and also in absence of production of any such of rules which would have application on fresh appointment of retired Government officer, we are constrained to take the view that on fresh appointment

the rules regarding concessional period with reference to the Government accommodation would be applicable afresh. The period availed of in the previous employment would not be reckoned for the purpose of grant of concessional period of eight months after retirement as a Member from this Tribunal. As these issues were not involved in the case of Shri N.V.Krishnan the facts therein would not be applicable to the case of the applicant. Hence this plea of the respondents is rejected.

12. We also find from the reply of the respondents that the recovery of the amount of damage rent of licence fee w.e.f. 18.8.1995 to 29.9.1995 is also illegal on the ground that the applicant had retired from the Tribunal on 2.2.1995 and according to the rules applicable to a fresh appointment he is entitled for a grace period of eight months w.e.f. 2.2.1995 and as such he was legally entitled to retain the Government accommodation on payment of normal licence fee for a period of four months and further four months on payment of double the licence fee on medical grounds w.e.f. 2.6.1995 and this period would have ended on 2.10.1995. As the applicant had vacated the Government accommodation before this period, he is not liable to pay any damage rent of licence fee for this period which is an integral part of the permissible maximum limit to retain the Government accommodation as per the rules. The action of the respondents by clubbing the earlier grace period from 1.3.1991 to 16.4.1991 with reference to earlier employment of the applicant to reckon the grace period of eight months is not legally sustainable.

13. We also find from the record that the respondents relying upon OM dated 9.7.1986 which provides concessional period of retention to be allowed as remaining part of the permissible period after termination of re-employment is not applicable to the case of the applicant as the appointment of the applicant is fresh appointment as Member of this Tribunal. The employment of the applicant cannot be ~~terminated~~^{oh} as re-employment to the Tribunal as he has not been inducted in the same employment with the Government rather the appointment of the applicant is in a different set up unconnected with the previous employment as such the same is a fresh appointment.

14. The last plea of the respondents that in view of the ratio laid down by the Hon'ble Apex Court in Union of India Vs. Rasila Ram & Ors. (Civil Appeal Nos.1301004/1990) decided on 6.9.2000, wherein the Tribunal has been held to have no jurisdiction over an action taken under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter called as 'P.P.Act'). We have applied our mind to this contention of the respondents. We find from the counter reply that the proceedings under P.P.Act of 1971 had been processed against the applicant vide order dated 25.6.1999 whereas the letter issued for affecting the recovery is dated 1.6.1999. The ratio laid down by the Apex Court in Rasila Ram's case supra the following observations have been made:

"To attract the said provisions, it must be held that the premises was a public premises, as defined under the said Act, and the occupants must be held unauthorised occupants, as defined under

the said Act. Once, a Government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act. By no stretch of imagination the expression any other matter in section 13(q)(v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal over an order passed by the competent authority under the Eviction Act must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside. The appeals are accordingly allowed."

15. The pre-conditions for application of this ratio is that the occupant must be held unauthorised occupant and an order is passed by the Estate Officer then the remedy lies to the District Judge and not to the Tribunal. In the instant case nothing on record to show or to indicate that the letter dated 1.6.1999 had been issued by the Estate Officer in pursuance of the proceedings drawn against the applicant, whereby he had been declared unauthorised occupant. Rather the order passed on 1.6.1999 does not show any proceedings therein under the P.P.Act and admittedly in the counter reply the proceedings had yet to be started on 25.6.1999 and finalised. In this back ground the letter dated 1.6.1999 is not an order passed in pursuance of proceedings under the P.P.Act and as such the Tribunal has jurisdiction to entertain the grievance of the applicant.

15.1 It is clear to us that if a non-Government servant is appointed as a Member of C.A.T., he will be entitled to the same treatment under the rules as are applicable to Secretaries to Govt. of India. That is, such a person can retain the Govt. accommodation for a total period of 8 months. By not allowing the same facility to a Govt. servant who joins as a Member of C.A.T. after his retirement from Govt. service, as a fresh appointment altogether, will amount to hostile discrimination and according to us, the provisions of Article 14 of Constitution will be attracted. This is so because in that event it will amount to treating the equals as ~~as~~ ² unequally. On this ground also, the OA must succeed.

16. Whatsoever may be once it is found that the appointment of the applicant was fresh and he vacated the Government accommodation within the permissible maximum period of eight months from the date of his retirement, he cannot be treated as unauthorised occupant and no proceedings could have been drawn against him for either vacation/eviction of the Government accommodation or recovery under the P.P.Act.

17. As regards the objection to territorial jurisdiction is concerned, the application is well within the parameters of Rule 6 of the C.A.T. (Procedure) Rules, 1987. The applicant in the verification to O.A. has given his correct address. Apart from it, we feel that cause of action is also arisen at Delhi. Being a retired official, the applicant is legally entitled to pursue his remedy in the Principal Bench of this Tribunal.

18. Having regard to the above discussion and reasons stated, we allow this OA. The impugned letter dated 1.6.1999 is quashed and set aside. The respondents are directed to allow the grace period from 2.2.1995 to 29.9.1995 by treating the same as period of four months at normal rate of licence fee and the subsequent period from 2.6.1995 to 29.9.1995 on medical grounds at double the rate of normal licence fee. The respondents are further directed to recalculate the licence fee and intimate the applicant in writing. The aforesaid directions shall be complied with within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/

S. A. T. Rizvi

(S.A.T.RIZVI)
MEMBER(A)