

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 13/1995  
T.A. No. OA 219/1995

DATE OF DECISION 22-1-1997

Lt.Col. S.S. Bhandari & Major S.P. Khandu **Petitioner**Shri B.B. Raval**Advocate for the Petitioner(s)****Versus**UOI & Ors.**Respondent**Shri B.K. Aggarwal**Advocate for the Respondent(s)****CORAM****The Hon'ble Mr. S. Lakshmi Swaminathan****The Hon'ble Mr.**

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

*Lakshmi Swaminathan*  
*Member (3)*

Central Administrative Tribunal,  
Principal Bench: New Delhi  
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OA No. 13/95  
with  
OA No. 219/95

New Delhi, this the 22th day of January, 1997

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

OA No. 13/95

Lt. Col. S.S. Bhandari,  
J-5/86, Rajouri Garden,  
New Delhi.

OA No. 219/95

Major S.P. Khenduri  
164, Krishi Apartments,  
D Block, Vikaspuri,  
New Delhi.

..Applicants

(By Shri B.B. Raval, Advocate)

- Versus -

Union of India through

1. Secretary,  
Ministry of Defence,  
New Delhi.

2. Estate Officer,  
Station Headquarters,  
Meerut Cantt,  
Meerut.

3. Controller of Defence Accounts (Pension),  
Draupadi Ghat,  
Allahabad- 211014.

.....Respondents

(By Shri B.K. Aggarwal, Advocate)

ORDER

Both these cases involve common questions of facts and law and are, therefore, being taken up together, but for the sake of convenience the facts in OA 13/95 are given as under:-

2. The applicant is aggrieved by orders No. 29/91 dated 5.2.1994 and 25.6.1994 issued by respondent 2 directing him to vacate the government quarter he was occupying while in service and charging him damage rent for the period from 11.11.93 to 30.2.94, respectively.

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3. In a connected case filed by Lt. Col. Komal Charan & Ors. (DA 1513/90) regarding the date of retirement of officers who are similarly situated as the applicant, the Tribunal had allowed the application and held that they shall retire at the age of 58 years instead of 55 years. The Union of India filed an appeal against this judgement in SLP (Civil) 11385-86 of 1991 where the Supreme Court, allowing the appeal held that the applicants must retire on reaching the age of 55 years, by order dated 14.5.1992. In the meantime, in another set of applications filed before this Tribunal (DA 1253/91, except in DA 1264/92 (Major K.L. Sharma Vs. UOI & Ors), certain stay orders were granted to the respondents not to give effect to the impugned order retiring the applicants on attaining the age of 55 years. However, in view of the Supreme Court's order dated 14.5.1992, the respondents filed miscellaneous applications for vacating the stay orders passed by the Tribunal on which the applicants also filed miscellaneous application to pay to the applicants pay and allowances for the period they had actually worked beyond the age of 55 years. Shri Raval, learned counsel submits that the Tribunal by order dated 31.3.1992 had directed the respondents to release the pay and allowances of the applicants from the dates they actually attained the age of 55 years till 14.5.1992, i.e. the date of the Supreme Court's order. The respondents were also directed to comply with these directions within a period of three months from the date of receipt of the order and they had also allowed the applications with further directions that the applicants should not be dispossessed of the government accommodation for a period of four months. Later in October, 1992, the respondents had filed miscellaneous application for extension of time by three

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months to comply with the judgement of the Tribunal, whereby the applicants had also prayed for similar extension of three months to vacate the government quarters.

4. In another set of applications (OA 1937/92 and 1940/92) filed by the applicants, the Tribunal had found that the OA as well as the ~~OA~~ <sup>Ministry's petition is</sup> were devoid of merits and dismissed the same by order dated 10.11.1993.

5. Shri Raval, learned counsel submits that even though the order dismissing the applications had been passed on 10.11.1993, on the analogy of the earlier orders passed by the Tribunal, the applicant in the present case should be entitled to retain the accommodation in his possession on normal licence fee for a period of four months or alternatively <sup>liable to pay only double</sup> be the licence fee in accordance with the rules. Therefore, since he had actually vacated the quarter on 13.2.1994, he submitted that the declaration of the applicant as an unauthorised occupant by the impugned order is illegal, as well as charging penal/damage rent for this period.

6. The respondents have filed their reply and I have also heard Shri B.K. Aggarwal, learned counsel. He submitted that the applicant was not entitled to retain the accommodation on normal rent after the expiry of three months from the date of retirement, which was with effect from 31.7.1992. The respondents have also submitted that there was no direction from the Tribunal not to charge any damage rent in accordance with law. They have also referred to the undertaking given by the applicant to the Hon'ble Additional District Judge that he would vacate the government accommodation by 31.1.1994 but the learned counsel submitted that the applicant had in

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fact continued to stay in the quarter till 13.2.1994. In the meantime, the judgement of the Supreme Court in Civil Appeal No. 2449-60/92 was delivered on 14.5.1992 holding that the retirement age of the applicant is 55 years and not 58 years. The Tribunal in its order dated 10.11.1993 had also vacated the interim order while dismissing the applications. Therefore, he submits that the respondents had correctly charged penal/damage rent in accordance with the rules for the period of stay beyond 10.11.1993 taking into account his date of retirement.

7. In the above facts and circumstances of the case and taking into account the orders of the Supreme Court dated 14.5.1992 (supra) and the order of the Tribunal dated 10.11.1993 (supra), I find that in the absence of any direction to the contrary permitting retention of the quarter on normal rent for a further period beyond 10.11.1993, the applicant cannot retain the accommodation on payment of normal licensee fee. The alternative argument advanced by Shri B.B.Raval, learned counsel, cannot also be accepted as this is not in accordance with the rules. The action of the respondents cannot be faulted as they have acted in accordance with the extant rules and in accordance with the court's orders referred to above. The impugned order has been passed after giving a reasonable opportunity to be heard to the applicant. The argument of the learned counsel for the applicant that on the analogy of the previous orders passed by the Tribunal giving the applicant some more time to vacate the premises should also be applied to the present case on the ground of equity and justice is without any force, as such a construction is unwarranted and contrary to the court's orders. Once the applicant has retired from service with effect from 31.5.1991 then he cannot continue to reside in the government

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accommodation on normal/double licence fee, but is liable to pay licence fee in accordance with the relevant rules for the overstay. The applicant has not, however, disputed the actual amount of penal rent charged. In the result, I find no merit in this application and it is accordingly dismissed. No costs.

8. For the reasons given above in OA 13/95, OA 219/95 (Major S.P. Khanduri vs. Union of India & Ors) is also dismissed. There shall be no order as to costs.

*Lakshmi Swaminathan*  
( Mrs. Lakshmi Swaminathan )  
Member (J)

/gtv/