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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 1043/2004

New Delhi this the 27th day of June, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Vijendra Kumar,
S/o Shri K.R. Sharma,
R/o A-32, Swati Apartments,
12, IP Extension, Patparganj,
Delhi-110092.

..... **Applicant.**

(By Advocate Shri A.K. Bhattacharya)

Versus

1. National Power Training Institute,
NPTI Complex, Sector-33,
Faridabad,
Through the Director General.
2. The Director (Finance & Administration),
National Power Training Institute,
NPTI Complex, Sector-33,
Faridabad.
3. Union of India, through
Ministry of Power,
Shram-Shakti Bhawan,
New Delhi-110001
(Through The Secretary) **Respondents.**

(By Advocate Shri K.L. Bhandula)

O R D E R (ORAL)

In this O.A, applicant has claimed the following reliefs:

- (i) call for all the records of the respondents pertaining to the allotment of the accommodation to the applicant and the records wherein a decision to stop the HRA and recovery of licence fee, water charges, were taken;
- (ii) declare the impugned order dated 24.3.2004 (Annexure-A Impugned) as arbitrary and quash the same with consequential reliefs;
- (iii) declare that the applicant is entitled for payment of HRA in the facts and circumstances of the case with consequential reliefs;
- (iv) order/direct the respondent No.3 to investigate into the illegal and arbitrary action of the respondents No.1 and 2 and their





other concerned officers in the matter of harassment of the applicant and to punish them in accordance with the law;

- (v) order exemplary cost against the respondents and in favour of the applicant;
- (vi) may also pass any further order (s), directions (s) as be deemed just and proper to meet the ends of justice"

However, when the matter came up for hearing, counsel for the applicant submitted that the only issue now remains is non-payment of HRA from 23.3.2004 to 15.6.2004.

2. It is submitted by the applicant that he was allotted a Type-III quarter in BTPS Staff Colony vide order dated 6.11.1992 even though he joined the services of Power Engineers Training Society now known as National Power Training Institute (NPTI). He was later allotted a higher type of accommodation bearing No. 27-C, (Type-C), 2nd Floor at new Township Colony, BPTS in September, 1997 which was later changed to Ground Floor bearing No.C-19, New Township Colony, BTPS.

3. Vide order dated 3.11.2000, BTPS informed NPTI that there were certain outstanding dues against the applicant, which should be recovered and for that reason his allotment needs to be cancelled. There was lot of correspondence and ultimately BTPS got the applicant evicted under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on 11.5.2002, which was taken by him at the higher level and ultimately a settlement was agreed to and the Ministry of Power advised the BTPS to allot a similar type of accommodation to the applicant, subject to the condition that the Quarter will be vacated as soon as the quarter is allotted to him at NPTI Campus, Faridabad and an undertaking was also taken from the applicant to this effect. It seems that thereafter there were certain issues as BTPS was claiming certain dues from the applicant, which were not deposited and as such no quarter was allotted to him by the BTPS. Therefore, he filed a writ petition No. 39/2004 challenging his eviction from the premises allotted to him at BTPS and seeking a direction to allot



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him an accommodation at BTPS. After hearing the parties, writ petition was dismissed vide order dated 13.1.2004.

4. It is stated by the applicant that he was on leave w.e.f. 2.12.2003 till 8.3.2004 but on 9.3.2004 when he joined his duties he was served with a memorandum dated 10.3.2004 whereby Quarter No. 406, Type-IV was allotted to him vide letter dated 19.12.2003 and calling upon him to explain as to why action should not be taken in terms of letter dated 10.3.2004 for not taking possession of the quarter. Letter of allotment dated 19.12.2003 was also annexed along with letter dated 10.3.2004.

5. It is stated by the applicant that he was never served the allotment letter nor the undertaking given by him on 8.8.2003 was relevant but in spite of that respondents issued letter dated 24.3.2004 informing him that recovery of licence fee and other charges will be effected from applicant w.e.f. 23.3.2004 and he will not be entitled to HRA from that date.

6. The main grievance of the applicant in this case is that since he never took charge of the allotted house, respondents could not have deducted his HRA from the salary as that would be arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution. He has relied on SR 317-B-12 and B-10 to state that in case residence is not accepted, at best his entitlement can be cancelled and he will not be eligible for another allotment for a period of one year from the date of allotment letter but HRA cannot be stopped. He has thus prayed that respondents should be directed to pay the HRA for 3 months, which has not been paid to him so far.

7. Respondents have explained that he was given accommodation in BTPS Staff colony because NPTI was not having its own colony at Faridabad or Delhi at that time i.e. in November, 1992. Subsequently, NPTI had its own residential colony at Faridabad. As such, the applicant should have shifted to NPTI colony but he continued in BTPS colony on one pretext or the other. BTPS required 10% of the basic pay to be recovered from the applicant which was not paid so the allotment of the quarter was cancelled, as the applicant was in default of





payment of water and electricity charges also. A proper order was passed on 12.4.2002 under sub-section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and another order dated 3.11.2002 assessing the damages @ Rs.76,488/- together with interest @ 12% per annum was passed. Applicant did not avail of the statutory remedies against the said orders and he was evicted from the accommodation in BTPS Staff Colony on 12.5.2002. The eviction was challenged by the applicant in the Hon'ble High Court of Delhi but writ petition was also dismissed vide judgment dated 13.1.2004. Applicant then took up the matter with the Ministry of Power where it was agreed to consider allotment of the quarter in BTPS colony, subject to certain conditions, namely, an undertaking to vacate the quarter at BTPS colony immediately after he was allotted a quarter as per his entitlement by NPTI, another undertaking to the effect that he will pay house rent to BTPS at the rate payable by NTPC executives and a written confirmation by the NPTI that rent, electricity and water charges at the same rates will be recovered from his salary and paid directly to BTPS.

8. In spite of his undertaking, applicant failed to clear the outstanding dues in spite of prolonged correspondence. Therefore, accommodation in BTPS Staff colony could not be provided to him but in the meantime accommodation of his entitlement became available in NPTI residential colony, Faridabad whereupon Quarter No. 406/IV was allotted vide order dated 19.12.2003 (Annexure R-3) but he avoided to take this allotment letter. It was sent to his last known address, which was received back with the remark "**not met**". It was again sent but again received back undelivered and it was found that envelope was opened and repasted after going through the contents of the order contained therein. The letter was finally served on him when he joined the office after availing of his leave whereby he was required to take possession of the quarter within 8 days (reckoned from 15.3.2004) after which the recovery of rent will be effected. As per rules, he will not be entitled to draw HRA from that date. Since applicant did not take possession of the quarter in spite of memorandum dated 24.3.2004, the



office was left with no other alternative but to stop payment of HRA and to start recovery of rent and other charges from the 8th day of the service of the allotment letter i.e. w.e.f. 23.3.2004. They have relied upon Rule 12 of the Residence Allotment Policy/Allotment of Accommodation Rules of PETS (now NPTI). They have thus submitted that there is no merit in the O.A. The same may accordingly be dismissed. They have also taken an objection that this O.A. is not maintainable at Delhi as the applicant at present is posted at NPTI (HQ) Sector-33, Faridabad (Haryana) and O.A. could have been filed at Chandigarh Bench only.

9. I have heard both the counsel and perused the pleadings as well. At the time of hearing, it was agreed by both the counsel that the only issue now survives is regarding non-payment of HRA for 3 months i.e. from 23.3.2004 to 15.6.2004. As the quarter was accepted by the applicant on 23.3.2004 and thereafter applicant has been transferred to Nagpur in June, 2004. Therefore, all that I have to see is whether applicant would be entitled to get the HRA for these three months or not in the given facts of the case.

10. It would be relevant to quote the observations made by Hon'ble High Court of Delhi in CW No. 39/2004 which for ready reference read as under:

"6. I find considerable merit in the submission of the respondents. Petitioner had been duly served with the notices under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, who failed to avail of the opportunity of presenting his case. Petitioner's grievance is that licence fee at the prescribed rate had been charged by the employer and he was not obliged to pay the higher amount, as sought to be claimed. An order after following the due process of law had been passed assessing the damages, in fact, in the absence of any challenge to the said order, the same would be in force. In this particular case, I find that the respondent is requiring the petitioner to pay 10 per cent of the basic pay as the charges in accordance with the rules, as applicable to the Central Government employees. Not only this, the respondents, I find, had adopted a very considerate and fair approach, as is evident from Annexure P-22, filed by the respondents. By the said communication, the undertaking given by the petitioner that he would vacate the quarter, allotted in BTPS Staff Colony as soon as a quarter of his entitlement was made available to him in NPTI Complex, was noted. Not only this, the BTPS, as a special case, agreed to waive the penal rent of Rs.87,303/- provided the dues were cleared by 30.11.2003. Petitioner has chosen not

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to accept the said offer. In these circumstances, I find no ground to entertain the writ petition and the same is dismissed".

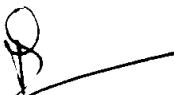
Similarly, when applicant approached this Tribunal by filing the present O.A., he insisted for grant of interim order. Even at that time, a detailed order was passed by this Tribunal on 24.5.2004. It would be relevant to quote those observations as well:

"I have closely perused the facts as submitted by the applicant as well as by the respondents and also heard the learned counsel carefully. While I find that the applicant has avoided receiving the allotment letter on one ground or the other when it had been issued, the same was received by him together with the Memorandum dated the 10th March, 2004 and whereby he should have availed himself of the allotment by giving acceptance and also by taking possession of the same as per the undertaking given by him in compliance with the directions of the Ministry of Power, he did not do any such thing. He has kept arguing that he should have been allotted a quarter in the BTPS Colony as per the directions of the Ministry, even though he has not advanced any rational or plausible reason therefor. It is quite clear that the applicant for reasons best known to him, was not interested in having a quarter allotted to him in the NPTI Complex. He is reported to be staying away from the NPTI Complex till today even since he has been evicted from the BTPS Colony. The respondents, therefore, appear to have been left with no alternative, but to take recourse to the provisions of Rule 12 of the Residence Allotment Policy/Allotment of Accommodation Rules of PETS (Now NPTI), a copy of which is placed at Annexure R-IV. Being an employee of the NPTI, it is incumbent on the applicant to comply with the relevant rules. Taking recourse to the provisions regarding acceptance of allotment and taking possession of the same or the consequence of failure on the part of the allottee not accepting such allotment or not taking possession of the allotment within the prescribed period do not appear to be quite apt and relevant in the present case particularly when it is apparent that the applicant has been evading and avoiding allotment of a quarter being made in his favour in the NPTI Complex. All his submissions in support of his contention that recovery of licence fee etc. and stopping of HRA should be stayed, therefore, appear to have been weakened by the fact that the applicant is not interested in the allotment of the quarter at all. It is difficult to understand and appreciate the position of the applicant particularly in view of the fact that there could not have been a better position for the applicant than to be staying on the campus where he is supposed to be performing his duties as Dy. Director (Tech.) in the NPTI".

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11. Admittedly, applicant was appointed in the NPTI. Therefore, he should have been provided a quarter by the NPTI. However, as NPTI did not have its own residential colony, an arrangement was made for getting a house allotted to the applicant in BTPS Staff colony. Thereafter, there were certain problems. BTPS took proper course for evicting the applicant from quarter under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and passed a proper order for his eviction as well as for payment of charges which was challenged by him but the writ petition was rejected by observing that applicant had given an undertaking that he would vacate the quarter allotted to him in BTPS staff colony as soon as quarter is made available to him in NPTI Complex. The said allotment was made by the NPTI. In spite of that, the applicant did not vacate the quarter at BTPS staff colony. Therefore, no case was made out for interference. As per applicant's own averments, he was served the allotment letter dated 19.12.2003 along with memorandum dated 10.3.2004 calling upon him to explain as to why action should not be taken against him. At this juncture, it would also be relevant to refer to the undertaking given by the applicant himself on 8.8.2003 whereby he had undertaken to vacate the quarter allotted to him in BTPS colony as soon as the quarter is made available to him in NPTI colony, Faridabad. In view of the undertaking given by the applicant, as soon as the quarter was allotted to him in NPTI colony, he should have taken possession thereof without insisting that he should be allotted a quarter in BTPS staff colony as he had no right to claim the house in BTPS colony after he was allotted a house by NPTI itself where he was working. From the letters annexed and the observations made by the Hon'ble High Court and Tribunal, it is clear that applicant had been avoiding to take possession of the house in spite of the same having been allotted to him. At the time when interim orders were passed, definite findings had been recorded by this Tribunal that applicant had been evading and avoiding to receive the allotment of quarter made in his favour in the NPTI Complex. In these circumstances, the question that arises is whether applicant would be entitled to get the HRA or not? As far



as SR-317-B-10 is concerned, it only deals with the situation as to what would be the consequence in case possession is not taken by the allottee within the stipulated period as far as that house is concerned but whether a person would be entitled to get the HRA or not is fully covered by the Residence Allotment Policy of PETS (NPTI) known as Allotment of Accommodation Rules which have been annexed by the respondents with their counter affidavit at page 88. Rule 12 of Allotment of Accommodation Rules specifically deals with such a situation, which for ready reference, reads as under:

“Non-acceptance/non-occupation as per Rule-11 will entail forfeiture of HRA to the officer, with effect from the date of receipt of the letter of allotment, if the residence is not required for allotment to any other eligible officer”

The above rule makes it absolutely clear when read with Rule 11 which for ready reference reads as under:

“The allotment of residences will be done against the application received. If any officer fails to accept the allotment made to him of a residence under these rules within 5 days after the date of allotment or fails to take possession of that residence within 8 days after the date of receipt of the letter of allotment”

that in case residence is allotted and is not accepted by the officer within 5 days after the date of allotment or fails to take possession of that residence within 8 days, it would entail forfeiture of HRA to the officer. The action of the respondents, therefore, in not giving HRA to the applicant from 24.3.2004 to 15.6.2004 is very much in consonance with the Allotment of Accommodation Rules. I, therefore, find no illegality in the action of the respondents. The O.A is found to be bereft of any merit. The same is accordingly dismissed. No order as to costs.

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 (MRS. MEERA CHHIBBER)
 MEMBER (J)