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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.1346/2004

New Delhi, this the 18th day of May, 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Lalit Mohan
S/o Shri Gurditta Mal,
R/o E-16/1269, Khaisa Nagar,
Karol Bagh,
New Delhi-110005.

.... Applicant.

(By Advocate Shri S.N. Anand)

Versus

Union of India through
Secretary to the
Government of India
Department of Atomic Energy (DAE),
Anushakti Bhawan,
CSM Marg,
Mumbai-110089.

... Respondents.

(By Advocate: Mrs. Meenu Mainee)

O R D E R (ORAL)

By this O.A, applicant has sought the following reliefs:

- (a) Set aside and quash the impugned communication No. BARC/Accts/Sal.II/1176 dated 17-2-2003, Endorsement No. BARC/Accts/S.II/1269 dated 12-3-2003 and letter No. BARC/Accts/S-II/425 dated August 28, 2003;
- (b) Direct Respondent to forthwith release legitimate dues admissible to the applicant".

2. The brief facts, as stated by the applicant, are that he joined Bhaba Atomic Research Centre, Mumbai in August, 1983. He was initially allotted transit accommodation being Flat No. 614/NILGIRI in 1989 and thereafter he was allotted another transit accommodation being Flat No. 611/NILGIRI vide letter dated 20.11.1991 on a flat rate licence fee of Rs.75/- per month. Finally, he was allotted Type-IV accommodation being Flat No. B-08/SURABHI vide letter dated 19.8.1997 on a flat rate licence fee of Rs.142/- per month (page 17). Vide order dated 10.3.1999, applicant was awarded the punishment of compulsory retirement under Rule 15 (4) of the CCS (CCA) Rules, 1965 (page 25). Thereafter, he was sent letter dated 14.6.1999 calling upon him to vacate the



accommodation by 15.6.1999, failing which eviction proceedings will be initiated and damage rate for stay beyond 16.4.1999 will be charged. He was further sent notices dated 25.8.1999 and 14.9.1999 asking him to vacate the residential accommodation within 15 days and ultimately respondents sought to recover licence fee and other damages from January, 1994 to August, 1999 totalling Rs.1,75,839/- in an illegal, arbitrary and mala fide manner. Being aggrieved, he gave a representation on 14.3.2000 and since respondents² are bent upon making illegal recovery from him, he had no other option but to file the present O.A.

3, It is submitted by the applicant that he remained a Central Government employee for all intent and purposes till the date of imposition of penalty of compulsory retirement. Therefore, no recovery by way of damage could have been made from him at least till the penalty became effective from 10.3.1999. Moreover, applicant was called upon to vacate the residential accommodation only on 25.8.1999. Therefore, no damage rate could have been charged prior to the said period. Counsel for the applicant also relied upon the order dated 14.9.1999 passed by the Estate Officer appointed under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to show that the Estate Officer had himself permitted him to retain the accommodation upto 31.8.1999 and since he had vacated the accommodation on 25.8.1999, no damages could have been recovered from him.

4. Respondents have opposed this O.A. They have submitted that the applicant was not attending the office, was absolutely irregular in his attendance and was in the habit of attending office late/leaving office early and was seldom available at the work spot. He used to be unauthorisedly absent, deserting his duty place after signing in the incoming/outgoing registers thus leaving behind assignments unattended/incomplete. Since he did not improve despite being advised, he was issued a charge-sheet dated 19.10.1996 and penalty of compulsory retirement was imposed on him by way of punishment vide order dated 10.3.1999. Consequent on his retirement w.e.f. 17.3.1999, as many as seven ^{periods} ~~stages~~ of his unauthorized absence were treated as dies non:

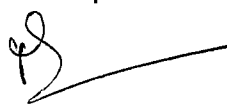


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- "1. 14.1.1994 to 18.1.1994,
2. 7.2.1994 to 21.2.1994,
3. 13.5.1994 to 17.5.1994,
4. 27.6.1994 to 05.7.1994,
5. 30.11.1994 to 02.12.1994,
6. 26.12.1994 to 13.1.1995,
7. 01.03.1995 to 17.3.1999"

They have submitted that since the above mentioned periods were treated as dies non, licence fee towards occupying the departmental quarters at damage rate was levied on the applicant by following the procedure as enumerated in the order dated 14.9.1999.

5. They have explained that since the applicant was compulsorily retired w.e.f. 17.3.1999, the permissible retention period of accommodation expired on 16.4.1999. Thereafter, his request for retention was not acceded to which was duly communicated to the applicant vide note dated 10.6.1999. He was also informed that damage rate of licence fee would be charged for stay beyond 16.4.1999. As per sub-clause (2) of Rule IX of the Allotment Rules, a residence allotted to an officer shall be retained for one month from the date the allottee ceases to be in service or from the date of unauthorized absence. In this case, since the applicant absented unauthorisedly for six broken spells and for the seventh spell, the absence was continuous from 1.3.1995 till the applicant's compulsory retirement on 17.3.1999, therefore, applicant's allotment was deemed to have been cancelled during the periods of his unauthorized absence which was treated as dies non. Accordingly, levying of market rent was inevitable. These facts were intimated to the applicant which were agreed to by him on the basis of which applicant was permitted to retain accommodation after 31.8.1999. Applicant vacated the flat on 25.8.1999. Thereafter, requisite forms for settlement of his terminal dues were forwarded to the applicant by registered post at his known address four times and acknowledgment for the same were also received along with reminders but he has not returned the forms duly completed till date but has instead filed the present O.A. It is thus due to non

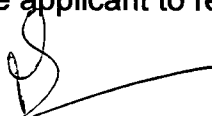


co-operation from applicant himself that his settlement dues have not yet been cleared. They have further explained that Rs.40/- towards Readers ticket and Rs.20/- towards CHSS cards are due from the applicant as he had not returned the said card after his compulsory retirement. Rs.10,048/- is the balance amount payable to the co-operative credit society towards the loan which the applicant had taken and finally an amount of Rs.1,75,839/- is due towards licence fee for occupation of departmental flat unauthorisedly, the detailed break up was already given to the applicant and is annexed at page 30 of the O.A. They have thus submitted that the O.A. may be dismissed with costs.

6. I have heard both the counsel and perused the pleadings as well.

7. At the outset, it would be relevant to mention that counsel for the applicant made a statement at bar that out of four recoveries mentioned in letter dated 17.2.2003, applicant is not disputing the recovery of Rs.40/- towards cost of Readers ticket, Rs.20/- towards the CHSS cards and Rs.10,048/- towards the payment of co-operative society but is disputing only the amount of Rs.1,75,839/- which is alleged to be due from applicant on account of damage rate for the periods as mentioned at page 30 of the O.A.

8. It is seen that applicant was given the allotment of Flat No. B-08/SURUBHI vide letter dated 19.8.1997 on a flat rate of Rs.142/- per month (page 17). From the perusal of order dated 14.9.1999 issued by the Estate Officer under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, it is seen that the Estate Officer has himself recorded in the said order that allottee could retain the said public premises, i.e. Flat No. B-08/SURUBI for a period of one month from 17.3.1999 to 16.4.1999 in accordance with rules. His request for further retention was not allowed by the competent authority which was duly intimated to the applicant vide letter dated 8.6.1999. On the contrary, he was directed to vacate the premises, failing which action would be initiated for his eviction from the premises. He was further informed that licence fee at market rate will be charged for any stay beyond the permitted concessional period. From the said order, it is seen that as a special case, the Estate Officer had permitted the applicant to retain the accommodation



upto 31.8.1999 but he was also informed that damage rate of licence fee will be charged beyond the normal concessional period of one month as already intimated to the said allottee to which the allottee had agreed to.

9. A bare reading of above lines would clearly show that even though applicant was allowed by the Estate Officer to retain the accommodation upto 31.8.1999 but it was made clear to him that damage rate of licence fee would be charged beyond the normal concessional period of one month i.e. for retention of quarter after 16.4.1999. Therefore, in spite of knowing this fact if applicant vacated the quarter on 25.8.1999, as was stated by the counsel for applicant, naturally applicant would be liable to pay the damage rate of licence fee for retaining the said quarter after 16.4.1999 till he vacated the said quarter.

10. The question, however, in this case is whether the respondents could have charged damage rate from the applicant even for the earlier period when he was duly allotted the quarter, on the ground that he was unauthorisedly absent and the period of unauthorized absence had been treated as dies non? Counsel for the respondents submitted that as per the Government Residence (DAE) Bombay Rules, 1982, they could charge damage rate from the person if he remained on unauthorized absence but in spite of taking adjournment on two occasions for showing the said rules, counsel for the respondents could not show me any such rule whereunder the authorities could charge damage rate from the allottee of a quarter even if he was absent unauthorisedly for 2 days, 5 days, 1 day or 3 days, as had been done in the instant case. On the contrary, the extract of the rule which was incomplete but annexed by the respondents itself shows that as per Rule 9, allotment of a quarter was to be effective from the date on which it was accepted by the officer and shall continue in force until it is cancelled by the Director of Estate Management or is deemed to have been cancelled under any provision in these rules.

11. Admittedly, the quarter was allotted to the applicant by the competent authority and he was compulsorily retired by way of punishment only vide an order dated 10.3.1999. Respondents have not been able to show me any order passed by the Director of Estates to show that the said accommodation was



cancelled or it could be deemed to have been cancelled even if a person was unauthorisedly absent for a short spell of two or three days. Perusal of counter affidavit shows that respondents have treated the absence of 5 days, 14 days, 2 days, 7 days, 2 days, 18 days and 4 years 16 days all inclusive, as dies non and for all these days damage rate has been levied against the applicant. The effect of treating the period of absence as dies non though means as if that period never existed in service and is not to be reckoned for the purposes of qualifying period while calculating it for the purposes of pension but to my mind it does not sound justifiable that if a person is absent unauthorisedly for 2 days, 7 days or 4 days and the said period is treated as dies non, it is open to the respondents to charge damage rate for the said days. According to me, so long a person holds the accommodation under a valid allotment order and continues to be the Government servant, he would be entitled to stay in the said accommodation, subject to payment of normal licence fee. Admittedly, he was compulsory retired from service only vide order dated 10.3.1999 with immediate effect. Therefore, till 10.3.1999, he would have a right to continue staying in the Government accommodation. Thereafter, respondents have themselves stated in the order passed by the Estate Officer as well as in their counter affidavit that according to the rules he could retain the accommodation for one month, subject to payment of normal licence fee. That would make it upto 16.4.1999. Therefore, according to me, till 16.4.1999, there is no justification whatsoever to charge damage rate from the applicant for the period when he was unauthorisedly absent. Therefore, to that extent only, the prayer made by the applicant is allowed.

12. From the perusal of page 30, it is seen that different amounts have been calculated for different months apart from electricity charges and the water charges. I cannot deal with each and every amount. Sufficient ^{is it} to say that since electricity charges and water charges are admitted dues for having occupied the flat, that would have to be borne by the applicant but as far as the damage rate prior to 16.4.1999 is concerned, that cannot be recovered from the applicant. In other words, till 16.4.1999, applicant would be liable to pay only the

normal licence fee and electricity and water charges but after 16.4.1999 he would have to pay the damage rent till 25.8.1999 when he vacated the flat. Therefore, respondents shall recalculate the amount which would be recoverable/due to the applicant after making such calculations/adjustment as referred to above and pay the same to the applicant. These payments shall be made to the applicant only after he hands over the duly filled in forms, as required under the rules.

13. The applicant is, therefore, directed to submit all the forms as are required by the respondents after duly filling them up within a period of 8 weeks from the date of receipt of a copy of this order and respondents shall give the settlement dues/payments which are due to the applicant in law after adjustment of dues recoverable from applicant as mentioned above along with calculation sheets, within two months thereafter.

14. The O.A. is accordingly partly allowed in terms of observations and directions as made in paras 12 and 13 above. No order as to costs.


(MRS. MEERA CHHIBBER)
MEMBER(J)

'SRD'