CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1802/2004

New Delhi, this the 10th day of March, 2005

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

V.K. Aggarwal,
WZ-75, G-Floor,
Gali No. 4, Shiv Nagar,
New Delhi. .... Applicant.

(By Advocate Shri M.K. Bhardwaj)

Versus

1. The Commissioner,
Kendriya Vidyalya Sangthan,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi-110016.

2. Assistant Commissioner,
Delhi Region, KVS,
JNU Campus,
New Mehrauli Road.

3. Assistant Commissioner,
KVS, Chandigarh Region,
SCO No. 72-73,
Dakshin Marg, Sector-31,
Chandigarh-160030. .... Respondents.

(By Advocate: Shri S. Rajappa)

O R D E R (ORAL)

By this O.A., applicant has sought a direction to the respondents to refund the amount of Rs.81,925/- deducted by the respondents on account of penal rent and to quash and set aside the order dated 28.3.2003 whereby they have charged penal rent from the applicant on account of overstayed in Government accommodation. He has also sought interest @ 24% on amount of Rs.81,925/- from the date of deduction till the date of actual payment. Applicant has further sought a direction to the respondents to

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refund the amount deducted from his DCRG/Salary for the month of July, 2002 to November, 2002 and HRA.

2. It is submitted by the applicant that by order dated 30.10.1999, respondents transferred the applicant from KV. No. 1, Delhi Cantt to KV Babugarh. He gave a representation to cancel the said transfer order but instead of acceding to his request, respondents directed to vacate the quarter No. T/III/9 without any delay. He challenged his transfer order by filing O.A. No. 110/2000. The Tribunal was pleased to grant status quo as on 1.2.2000 (Annexure A-3). It is submitted by the applicant that since the Tribunal had granted status quo, he could not have been asked to vacate the accommodation. Therefore, respondents started accepting the usual charges subject to some conditions. He also requested them to permit him to retain the accommodation till the final disposal of the O.A. On the contrary, Principal, KV No. 1, Delhi Cantt wrote a letter on 11.1.2002 to Principal, KV Baddowal stating therein that applicant was required to pay the double of the normal license fee for the month of January and Feburary, 2000. Applicant continued to retain the accommodation as he was already granted status quo by the Tribunal but respondents acted in an arbitrary manner by charging penal rent from the applicant.

3. It is submitted by the applicant that on account of recovery of penal rent, applicant was paid salary after deduction of an amount to the tune of Rs.3335/- per month from July to November, 2002 vide letter dated 18.7.2002. He finally vacated the quarter in August, 2002 whereafter he was given a certificate which stated that applicant had paid all the dues upto 31.7.2002. He thus submitted that once respondents had issued a certificate stating that he had already deposited all the dues, it was not open to the respondents to recover penal rent from the applicant, that too in violation of rules. It is submitted by applicant that respondents made illegal recovery of Rs.12,600/- from HRA and Rs.3335/- per month from his salary from July to November, 2002 and yet vide letter dated 18.12.2002, it was stated that an amount of Rs.52,650/- is still outstanding against the applicant.

4. He finally retired from service on superannuation on 30.11.2002 but respondents illegally deducted the amount of Rs.52,650/- as charges for penal rent even though he had continued on the strength of interim orders passed by the Tribunal. While issuing the commutation of pension, an amount of Rs.52,650/- was reduced and rest amount was remitted in the saving account of the applicant on 28.3.2003. It is in these circumstances the applicant has filed the O.A. seeking the relief, as mentioned above.

5. Respondents on the other hand have opposed this O.A. by stating that the O.A. is barred by limitation as the amount alleged to have been recovered was passed in the year 2002 whereas the present application has been filed in the year 2004. Therefore, it is liable to be dismissed on this ground alone.

6. On merits, it is submitted that the O.A. filed by the applicant challenging his transfer was ultimately dismissed by the Tribunal against which he filed appeal to the Hon'ble High Court of Delhi but that was also dismissed as withdrawn. Therefore, it is not open to the applicant to state that his transfer was passed in mala fide intention. They have thus submitted that since the O.A. was ultimately dismissed, he cannot claim the benefit of interim order passed therein, especially when he already stood relieved on the day when the status quo order was passed by the Tribunal in its earlier O.A. No. 110/2000.

7. Since the applicant was transferred and relieved from KV No. 1, Delhi Cantt, he was no longer on the rolls of KV No. 1, Delhi Cantt. He did not join at the transferred place, therefore, he cannot take advantage of his own fault. He stood relieved on 4.11.1999 after the transfer order dated 30.10.1999 whereas he took the status quo order on 1.2.2000. All these facts have been suppressed by the applicant. Therefore, he has not approached the court with clean hands. They have further submitted that a person who is unauthorisedly absent beyond the period and continues to occupy the same is required to pay penal rent as per KV Sangathan (Allotment of Residence) Rules, 1998 (hereinafter referred to as `1998 Rules). Since he did not pay the penal rent, the same was rightly recovered from his amount after his retirement. As far as the

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letter relied upon by the applicant is concerned, they have stated that it only stated that he had paid the license fee but that will not absolve him from his liability to pay the penal rent as admittedly he had overstayed in the house after his transfer. They have thus submitted that there is no arbitrariness in recovering the amount and the claim as made by the applicant cannot be given to him. They have thus prayed that the O.A. may be dismissed.

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

9. Counsel for the applicant submitted that applicant was governed by Allotment of Residences (Kendriya Vidyalaya Sangathan) Rules, 1976 (hereinafter referred to as `1976 Rules'), circulated vide letter dated 4.5.1976 and as per Rule XV of the said Rules, he was only liable to pay twice standard licence fee for use and occupation of the residence. Rule XV for ready reference reads as under:

> **"Overstayl in Residence after Cancellation of Allotment:**
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> Where after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the employee to whom it was allotted or any person claiming through him/her such employee shall be liable to pay twice standard licence fee for use and occupation of the residence, at the rate as may be determined by the KVS. This is without prejudice to the right of the Principal to evict him from the residence".

He also relied on the judgment given by the Tribunal in O.A. No. 869/2000, decided on 22.11.2000 wherein according to him it was held that the standard rent to be payable by an employee who overstayed in the quarters was twice the licence fee payable by the allottee, in terms of the 1976 Rules. He thus submitted that the present case is fully covered by the aforesaid judgment. On the contrary, respondents have relied on 1998 Rules. Perusal of Rule 2 of these Rules shows that this deals with application and for ready reference reads as under:

> **"2. Application.**
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> (1) These Rules shall apply to the employees working in Kendriya Vidyalayas, Regional Offices and Hqrs office or any other establishment under the administrative control of the Kendriya Vidyalaya Sangathan.

(2) Any valid allotment of a residence which is subsisting immediately before the commencement of these rules shall be deemed to be an allotment duly made under these rules and all the provisions of these rules shall apply in relation to that allotment and to that officer accordingly".

Perusal of sub-rule (2) makes it clear that these rules were to apply even to those cases where allotment of residence had already been made before the commencement of these rules but those cases were also deemed to be an allotment made under these rules and all the provisions of these rules shall apply in relation to that allotment and to that officer accordingly, meaning thereby that after 1998 all cases of allotment of residence in Kendriya Vidyalaya Sangathan were to be governed by the 1998 Rules, as by fiction of law they were said to be deemed to be an allotment made under the new Rules. This provision makes it absolutely clear that 1976 rules were not applicable as far as allotment of residence in KVS is concerned after 1998. Counsel for the applicant had submitted that since these rules have not superseded the earlier rules specifically, therefore, he can still rely on the earlier rules of 1976. However, in view of sub-rule (2) of the 1998 Rules, the contention of counsel for applicant is rejected. Since applicant's case would be covered by the 1998 Rules, naturally he would be governed by 1998 Rules and not by 1976 Rules. In this view of the matter, reliance placed by the counsel for applicant on the judgment dated 22.11.2000 given in O.A. No. 869/2000 is also misplaced because in that judgment the Tribunal had relied on 1976 Rules. Moreover, in that case KVS had itself relied on 1976 rules earlier. Therefore, Tribunal observed that it is not open to the respondents to now rely upon a different set of rules. In any case, since it is made clear by the 1998 rules that applicant would be governed by these rules, reliance on the judgment given in O.A. 869/2000 is totally misplaced.

10. It is not disputed by the applicant that after he was transferred from Delhi Cantt, he still retained the accommodation at Delhi. Now as per Rule 12 of the 1998 Rules, residence allotted to an employee could be retained by an employee only for two months on transfer to another KV/RO/Headquarters at the same or other station in India. The consequence of stay beyond the limited period, as allowed by Rule 12 is

clarified in sub-rule (4) of Rule 12 wherein it is made clear that where a residence is retained under clause (2), the allotment shall be deemed to be cancelled on the expiry of the admissible concessional period unless immediately on the expiry thereof the employee resumes duty in the Sangathan. In the instant case, it is stated by the respondents that applicant did not join at the transferred place, which is proved from the findings given in his other OA. Therefore, after two months from the date of his transfer, allotment of quarter was deemed to have been cancelled automatically. At this juncture, it would be relevant to give details of his other O.A. No. 1761/2004 as in the said O.A. applicant had sought release of salary for the period from 5.11.1999 to 21.8.2001 but the O.A. was rejected vide judgment dated 17.2.2005 by making following observations; vide order dated 1.2.2000 applicant had already been relieved to join duty at Babugarh. Therefore, the status quo order would mean that he stood relieved and was supposed to join at Babugarh. He preferred to stay at home and did not join either at Babugarh or elsewhere even though modified transferred order dated 25.7.2000 was issued posting him to Baddowal as the post of WET was abolished with effect from the ssession 2000-01. The post was very much available in November/December, 1999 when applicant was transferred. Therefore, in these circumstances, respondents were right in issuing the order dated 17.2.2003 treating his unauthorized absence from 5.11.1999 to 21.8.2001 as dies non. Tribunal had further observed that they are convinced that applicant had really not gone to Babugarh to join his duty on 6.12.1999, as claimed by him. It was further observed that merely filing an O.A. in the Tribunal does not give him right to remain absent from duty unless a stay order in respect of the transfer order has been granted to him. No such stay was granted either by the Tribunal or by the High Court. It was thus held that the applicant cannot claim salary for the period in question, copy of the order is place don record.

11. From the above said judgment, it is clear that the status quo was meaningless as before the status quo order was passed by the Tribunal, the applicant was already relieved by the respondents from KV No. 1, Delhi Cantt. It is thus proved that he could

stay in the accommodation only for two months as was permissible under the rules after his transfer. Now Rule 19 of the 1998 Rules makes it further clear that where, after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the employee to whom it was allotted or of any persons claiming through him, such employee shall be liable to pay damages for use and occupation of the residences, services, furniture and garden charges, etc. as may be determined by the govt. of the Sangathan from time to time. In view of the above rule, respondents are right in saying that applicant was liable to pay the damages. The assessment of damage has been done by the respondents as per the schedule of the Allotment of Government Residences (General Pool in Delhi) as that was followed by the 1998 Rules in Rule 20. It is thus clear that the orders passed by the authorities were very much in accordance with the 1998 Rules and they cannot be said to be illegal or arbitrary.

12. Counsel for the applicant submitted further that these Allotment of Residence Rules, 1998 are not really rules in strict sense but are only some papers annexed by the respondents with their counter affidavit. Such a contention cannot even be entertained because if applicant wanted to challenge these rules, it was open to him to amend his O.A. and to challenge these rules in a proper manner because 1998 rules were annexed by the respondents with their counter affidavit. No such effort was made by the applicant. Therefore, now counsel for the applicant cannot even be allowed to say that these rules are bad in law.

13. In view of the above discussion, since the overstay by applicant is not disputed by him, the fact that he was already transferred from KV No. 1, Delhi Cantt to Babugarh and subsequently to Baddowal is not disputed. The status quo order has been held to be of no avail to the applicant by the Tribunal in O.A. 1761/2004, naturally applicant is liable to pay the penal damages. Therefore, respondents have rightly withheld the amount which was due to them on retirement of applicant.

14. Counsel for the applicant further submitted that the amount has been withheld without putting him on notice. Even this contention is wrong in view of the fact that respondents had issued letter dated 11.1.2002 with copy to the applicant wherein it was made clear that he is occupying unauthorized accommodation Type-III/9 of the plinth area of 51 sq. mtr. He was, therefore, required to pay the double of normal licence fee @ Rs.290/- for the month of January, 2000 and February, 2000 and licence fee for unauthorized occupation at penal rent @ Rs.55/- per sq. mtr. i.e. Rs.2805/- per month from March, 2000 onwards. It was requested to deduct the above licence fee as per the rule mentioned above. Thereafter, another letter was issued dated 18.7.2002 wherein it was once again made clear that applicant has already been asked to vacate the staff quarter and deposit the outstanding penal rent forthwith. It was further made clear that penal rent @ Rs.2805/- for unauthorized occupation of staff quarter at KV No. 1, Delhi Cantt from July, 2002 to November, 2002 is being deducted from his monthly salary. The total arrears of outstanding penal rent from January, 2000 to February, 2000 @ Rs.290/- per month and Rs.2805/- from March, 2000 to June, 2002, come to Rs.79,120/-. Therefore, after making the recovery as permissible under law from his salary, it was made clear that the remaining outstanding penal rent of Rs.76,470/- should be deducted from his retirement gratuity. Both these letters have been annexed by the applicant himself yet he never challenged these letters which clearly shows that he was fully aware about these facts. Therefore, it is not open to the applicant to now contend that the amount was recovered from his gratuity without putting him on notice. This contention is also, therefore, rejected.

15. In view of the above discussion, I find no merit in the O.A. The same is accordingly dismissed. No order as to costs.

(MRS. MEERA CHHIBBER)
MEMBER (J)

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