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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A. No. 2652 of 1992.

New Delhi this 3rd day of December, 1993.

Rajender Singh, Ex. Field Officer,  
r/o GH-13/1059, Paschim Vihar,  
New Delhi-110041 ..... Applicant  
(By Shri Mahesh Srivastava)  
Versus

1. Indian Council of Agricultural Research-Through its Secretary (DARE)  
Krishi Bhawan,  
Dr. Rajendra Prasad Marg,  
New Delhi-110001
2. Indian Agricultural Statistics Research Institute of (IASRI)- through its Director,  
Library Avenue, ..... Respondents  
New Delhi  
(By Advocate Shri J.M. Sharma)

Hon'ble Mr. S.R. Adige, Member (A)

ORDER

In this application Shri Rajender Singh, Retired Field Officer, Indian Agricultural Statistics Research Institute (IASRI) has prayed for a direction to be issued to the respondents to release D.A. on his pension w.e.f. 1.10.88 and for quashing of the order dated 23.10.90 informing him that as per rules his D.A. on pension has been withheld for unauthorised occupation of residential premises and non-payment of outstanding dues of the said residence which was in <sup>the</sup> unauthorised occupation of the applicant, after the expiry of the stipulated period, consequent to his retirement.

2. Shortly stated, the applicant retired from service after attaining the age of superannuation ~~service~~ on 31.7.88. During the course of his

employment, he was allotted residential accommodation bearing No.78, Krishi Niketan, Paschim Vihar, New Delhi. The standard rent for the accommodation in question was Rs.115/- per month which was being deducted from the salary of the applicant till the date of his superannuation. After the applicant superannuated on 31.7.88, he was allowed to retain the said accommodation for a further period of two months and was to vacate <sup>it</sup> on 30.9.88. The applicant actually vacated the said accommodation on 3.6.91.

3. According to the applicant, the respondents have framed allotment rules for the residences under the administrative control of the Director,IASRI; namely the IASR I (Allotment of residence) Rules, 1981 and Rule 23 which pertains to overstay in the residence after cancellation of allotment of quarter reads as under:-

"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 officer to whom it was allotted or of any person claiming through him, such officer shall be liable to pay damage for use and occupation of the residence, services, furniture and garden charges, equal to the market licence fee as may be determined by the authority from time to time."

4. Further more, according to the applicant, the market licence fee determined by IASRI was 4.66 times, the monthly licence fee which worked out to approximately Rs.536/- p.m. and the applicant was issued a memorandum dated 29.10.88 (Annexure-B), calling upon him to vacate the said quarter or to pay market license fee at the said rate w.e.f. 1.10.88 onwards, till the quarter was vacated. The applicant claims that in response to that he remitted a sum of Rs.551/- (including <sup>license</sup> fee of Rs.536/- and water charges of Rs.15/-) for the months of November and

December, 1988. Again in December, 1988, he was called upon to vacate the premises failing which eviction action apart from the market rent @ 4.66 times of license fee would be charged from him w.e.f. 5.1.89. Yet another notice of identical nature was issued to him on 19.1.89 calling upon him to vacate the premises by 31.1.89 failing which the market rent would be realised from him @ 4.66 times of licence fee. The applicant claims to have deposited rent and water charges @ Rs.551/- per month from January, 1989 to January, 1990.

5. Meanwhile, it appears that on 17.11.89, a notice was sent to the applicant by the respondents stating that he would have to deposit damage charges @ Rs.1322-40P per month based upon the revised market licence fee calculated at the rate of Rs.20/- per sq. mt. w.e.f. 1.9.87 vide Directorate of Estates' O.M. dated 27.8.87 (Annexure-F). The respondents claim that these revised rates are applicable w.e.f. 1.10.88 itself i.e. the day the unauthorised occupation commenced, right upto the date the premises were actually vacated i.e. 3.6.91 and on that basis a total demand of Rs.41,044/- has been raised against the applicant after adjusting the sums already deposited by him (paragraph 4(f) of the counter-affidavit).

6. The applicant disputes this claim and avers that the Directorate of Estates' O.M. dated 27.8.87 revising the license fee could not be made applicable in his case firstly because <sup>it hasn't been adopted through notification by IASRI and</sup> all along he was receiving notices to deposit license fee at the old rate that is 4.66 times the normal rate, and secondly because the O.M. could be made applicable only by amending Rule 23 IASRI (Allotment of residence) Rules, 1981 and these rules were amended by the respondents

only in 1992, while the applicant vacated the premises on 3.6.91. Therefore, the applicant contends that he is governed by Rule 23 as it stood before the amendment as reproduced in paragraph 3 above, according to which the market license fee would be that which was determined by the concerned authority from time to time, and the market license fee which was so determined was only 4.66 times the normal rent. Meanwhile, the respondents admit that they have withheld the D.A. admissible to the applicant on his pension from March, 1990 onwards for non-vacation of the quarters and non-payment of license fee dues.

7. I have heard Shri Mahesh Srivastava, learned counsel for the applicant and Shri J.M. Sharma, learned counsel for the respondents.

8. During hearing, Shri Sharma brought to light that the respondent No.2 (IASRI) had filed a Civil suit in the Court of the Sub-Judge, Delhi on 8.7.90 praying for a mandatory injunction and/or for possession of the said quarter No.78, Krishi Niketan, Pashim Vihar, New Delhi, and for recovery of damages and/or mesne profits. The suit is being defended by the applicant Shri Rajendra Singh, and amongst the grounds taken by him is that the suit is not maintainable because the jurisdiction of that court has been taken away by Section 14, read with Section 28 AT Act which, inter alia, contemplates that no court, except the Administrative Tribunals and the Supreme Court shall have any jurisdiction in respect of service matters, and the allotment and the vacation of the quarters are within the purview of service matters. That suit is still pending as of today in the Court of Sub-Judge, Delhi and no final decision has been taken in that suit as yet. Shri Sharma emphasised that the D.A. admissible to the

applicant on his pension should continue to remain withheld till the Civil suit was decided, because if the respondents succeeded there (he admitted that as the quarter had been vacated, the only matter left for adjudication now was recovery of damages and/or mesne profits), the D.A. withheld, could easily be set off against the respondents' claims without further protracted litigation. In this connection, Shri Sharma also invited attention to the photocopy of an unsigned statement appended with the set of documents filed by the respondents and taken on record from which it would appear that until April, 1993 a total sum of Rs. 42,592/- has been withheld by the respondents being the monthly D.A. admissible to the applicant on pension, which is more than the Rs. 41,044/- claimed by the respondents from the applicant on account of license fee dues.

9. As the applicability of Rule 72(6)CCS (Pension) Rules mutatis mutandis to the IASRI staff, which provides for recovery of license fee dues from dearness relief without the pensioners' consent, has not been specifically challenged by the applicant in the O.A., and as the claims and counter claims of the applicant and respondents with respect to the rate and quantum of the damage charges are pending adjudication in the Civil suit before the Sub-Judge, Delhi, including the question of jurisdiction of that Court to decide such cases, it does not appear necessary or expedient to record a finding on those issues at this stage. Suffice it to say that there is *prima facie* no justification for, the respondents to withhold the D.A. admissible on the applicant's pension beyond Rs. 41,044/- claimed

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by the respondents as license fee dues.

10. In the result, this application is partly allowed and the respondents are directed to release forthwith the D.A. withheld, if any, in excess of the <sup>sum of my</sup> Rs.41044/- claimed by them, and ensure release of all D.A. dues on regular basis from that point of time onwards. This direction should be complied with, within two months of the date of receipt of a copy of this order, and should be accompanied by a statement of calculations which should be furnished to the applicant. No costs.

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(S.R. ADIGE)  
MEMBER (A)

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