

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

DATED: THE 11<sup>TH</sup> DAY OF NOVEMBER 1998

CORAM: HON'BLE MR. S.L.JAIN, J.M.--

ORIGINAL APPLICATION NO. 609 OF 1996

N.C.Pandey, aged about 58 years  
son of Shri M.R.Pandey,  
Resident of 5/3 Sarvatra Colony, MES,  
Serpentine Road, Bareilly. Cantt.

.... Applicant

C/A Shri K.P.Singh, Advocate

Versus

1. The Union of India,  
through Secretary, Government of India,  
Ministry of Defence, New Delhi.
2. The Station Commander, Station Head Quarter,  
Bareilly Cantt.
3. The Administrative Commandant, Station Head-  
quarters, Bareilly Cantt.
4. Co. D.S.Negi, Administrative Commandant,  
Station Head Quarters, Bareilly Cantt.
5. The U.A., B.S.O. Garrison Engineer No.2  
Military Engineering Services, Bareilly Cantt.

.... Respondents

C/R Shri Prashant Mathur, Advocate.

3/40/-

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the Administrative Tribunal Act for issue of a writ/order or direction in the nature of certiorary quashing the order dated 14th August 1995 issued by Administrative Commandant Station Head Quarter Bareilly Cantt, respondent no.3, mandamus directing the respondents not to charge the Special Licence Fees/Damage Rent from the salary of the applicant with costs.

2. There is no dispute <sup>between</sup> because the parties in respect of the facts that the applicant was transferred from Delhi to the Chief Engineer Bareilly as Staff Officer III in the year 1984, he applied on 5.8.94 to the Station Headquarter to allot a married accommodation vide Annexure-1, <sup>on</sup> ~~as~~ 9.9.94 he was allotted <sup>at</sup> general govt. married accommodation by the station head quarters on temporary basis vide Annexure-II, on 14.10.94 a letter was given by the Administrative Commandant, Station Head Quarter Bareilly to U.A. B.S.C. Bareilly Cantt. to charge the special licence fee from the applicant with <sup>prospective</sup> ~~retroactive~~ <sup>from</sup> first July 1995 and further asked to vacate the accommodation by 31st Oct. 1985 failing which the damage rent will be charged, the applicant applied for the extension of time until he got the alternative accommodation in Military Engineering Services Pool on 15.10.95 vide Annexure -III, the applicant has requested the Station Head Quarters, Bareilly through the Chief Engineer Bareilly Zone, Bareilly to allow to retain the present temporary accommodation upto December 1995 and also submitted the undertaking to vacate the accommodation within two days after getting the alternative defence Civilian accommodation, on 9.11.95 vide Annexure V, the Chief Engineer, Bareilly Zone recommended vide Annexure VI on 25.1.96. The applicant was allotted a married accommodation by the Administrative Commandant by Station Head Quarter Bareilly, on the <sup>receipt</sup> ~~say~~ of the said

SDM

order on 23.2.96 the applicant has shifted in the alternative married accommodation.

3. The applicants case in brief is that under the similar circumstances Administrative Commandant Col. D.S.Negi has exonerated the two occupants Shri D.K.Agrawal, Assistant Garrison Engineer and Shri O.P.Rajput, A.G.E. on 20.3.96 to 22.3.96 from the Special Licence Fee. Shri B.S.Lalspal, A.E.E. III was also directed to vacate the accommodation on 31.10.95 vide letter dated 14.10.95. The said officer is still continuing on normal rent. The Govt. of India, Ministry of Defence has issued a policy letter dated 27.5.88 to the <sup>ef</sup>act that when a Govt. building is ~~sent~~ <sup>judic</sup>out to a private person for residential or business purpose as per the existing orders such as allotment of accommodation to military engineering service contractors for storage etc, the applicant is not covered under the said policy. The damage rent may be charged from unauthorised occupants from the date they are declared so, the applicant was never declared as an unauthorised occupant, as P.S.Negi in ~~judic~~ <sup>predic</sup> with the applicant, he is being harassed, as per policy letter dated 4.11.71 issued by the Q.M.G's Branch once accommodation being surplus of the military has been allotted to civilians they will not be evicted if subsequently military requirement increases, any additional accommodation necessary for entitled any services personnel will be hired after the accommodation being vacated the said accommodation due to realise Shri Gyan Nath Prasad who was treated as unauthorised occupant and damage rent charged by the official concerned on market rate were refunded to him vide order dated 14.7.79. The applicant cannot be charged special charge fee till alternative accommodation is offered to him, the action of the respondents is illegal, uncalled for, unwarranted, violative of the order 14 & 16 of the Constitution hence this O.A. for the above said reliefs.

J.VN

4. The defence of the respondents is that the O.A. is premature for the reason that the applicant has represented the matter vide letter dated 1.5.96 before the competent authority which is still pending for decision. The applicant was allotted the accommodation for three months only as a concession, as he was not entitled to the accommodation as it is to be allotted to senior civilian officers and not to the <sup>rank</sup> ~~rent~~ to which the applicant belongs, after the period of allotment lapses, the applicant was bound to vacate the same and as he continue to in possession he is treated as unauthorised occupant. On 6.6.95 Head letter from the office was issued to the Station/Quarters Branch Cantt. Bareilly require civilians to vacate the premises for its allotment marked as Annexure C.A.-III. Inspite of the said letter, the staff failed to vacate the temporary accommodation and as such the second reminder was issued vide letter dated 20.6.95 to vacate the temporary accommodation, despite the aforesaid letter applicant failed to vacate and as such there was no other option before the competent authority to have the special licence fee for the unauthorised occupation and the damage rent. A request for extension of time was received in the office much after the permissible period upto Dec., 1995 and no permission was granted to the applicant but the request of the applicant for further extension was regretted vide Annexure C.A. IV. The applicant has not applied for accommodation till 20.9.95. Shri D.K. Agrawal and O.P. Rajput special licence fee in respect of the said one was cancelled by the competent authority, in case of Shri D.K. Agrawal an extreme compassionate <sup>group</sup> was granted and Shri O.P. Rajput has shifted to other accommodation. There had been no discrimination or malafides. Shri B.S. Lespal has applied within the stipulated time for another accommodation was allotted the same and has shifted to the same. The policy has been misconstrued by the applicant no specific order <sup>necessary</sup> for declaring an individual as unauthorised occupant is, and there is no occasion for harassing the occupant, no discrimination is made <sup>xx</sup> <sup>hence</sup> J.M.J.

made hence prayed for the dismissal of O.A. with costs. Perusal of Annexure-II makes it clear that the accommodation was allotted to the occupant for three months with effect from 10.9.94 to 10.12.94.

5. The applicant has relied on Annexure -10 which clearly laid down that -

"Wherever an occupant of Defence Pool accommodation is declared as un-authorised occupant, either on superannuation or during service or he has been served with notice for eviction under the P.P.E Act, the rates mentioned in para 2 will form the basis for working but the damages rates of recovery from the date he has been declared as unauthorised occupant. For example an officer living in type V accommodation at Delhi, with a living area of 130.5 sq.mtrs., will be required to pay the damages rate @ Rs.2740-50 (i.e. 130.5 x 21) per month. Other allied charges will be over and above and will be recovered as per existing rules."

The applicant is neither declared unauthorised occupant nor has been served with notice for eviction under the P.P. Act hence the question for damage rent does not arise.

6. It is true that the applicant was lethorgic in applying for the alternative accommodation during the period in which he was entitled to retain the accommodation as per allotment order Annexure-II, But this lethorgic may be condemned but he cannot be charged either the special licence fee or the damage rent, the reason is that whenever a military accommodation is allotted to a civilian before they are asked to vacate the same an alternative accommodation when not offered to them, they cannot be compelled to vacate the same Annexure No.11, No.0581/8-30(B)-B-1 dated 4.11.71.

J.WN

Before me judgment in O.A. No.255/94 Mahendra Pal Singh and others v. Union of India and others has been cited in which specifically held that until alternative accommodation is not offered, an occupant cannot be asked to vacate the same.

In O.A. No.248/92 Manmohan v. Union of India and others it has been held that if the accommodation is not allotted and the possession of the same is not given to the applicant he shall not vacate the accommodation in dispute, is liable to be charged with normal rent. Annexure No.12 clearly laid down that such cases are only an Administrative matter and it does not fall under the purview of para 14(H) Quarters Rent treating him as an unauthorised claim.

7. It is true in view of section 20 of the Administrative Act 1985 that where no final order has been made by the Govt. or other authority or officer or other persons competent to pass such order with regard to appeal preferred or representations made by such person, if a period of 6 months from the date on which such appeal was preferred or representation was made, has expired. It shall be deemed that the applicant has availed of all the remedies available to him under the relevant rules as to redressal of grievances. This provision which is contained in 20(2)(b) is subject to provision contained under section 20(1) of the Act which is as under:-

"20(1). A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances."

S.Y.

8. The said provision is to be acted upon ordinarily but in extra ordinary circumstances such provision can be dispensed with as there was eminent threat of recovery of Special Licence fee and damage rent an interim relief was necessary and hence this O.A. was filed in an extra-ordinary circumstances and hence the O.A. cannot be said to be premature.

9. Shri D.S.Negi has filed an affidavit controverting the fact of any malice or harassment to the applicant. No fact has been brought on record which can lead me to conclude that Shri D.S.Negi was prejudiced to the applicant. The mere fact that he has adopted a procedure which was not in accordance with law or the statutory instructions issued by the Govt. he has decided the cases of the similar nature having different circumstances in different way, does not mean that he was prejudiced with the applicant or bent upon to harass the applicant.

10. Case of Shri D.K.Agrawal and D.P.Rajput was as explained in C.A. was on a different footings.

11. The aforesaid discussion leads to me to conclude that the action of the respondent no.4 for recovery of special licence fee and damage rent being illegal one, deserves to be quashed and is quashed accordingly.

12. The learned counsel for the applicant relied on rules regarding rent to be recovered and argued that in view of fundamental rules 45A(III)2(3) 4,5,6,7,8 are the only circumstances in which a licence fee in excess of rate prescribed can be charged and the applicant's case is not covered by the same. The said rules do not relate to civilians who has been provided the military residence.

AM

13. In the result, O.A. is allowed and order dated 14.10.95 issued by respondent no.3 is quashed with a direction not to charge the special licensee fee or the damage rent from the applicant, looking to the fact and circumstances of the case when the applicant was lethargic, behaved in a fashion which is not warranted as a civilian, it is ordered that parties shall bear their own costs.

*JON*  
MEMBER (J)

Gc