

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 170 of 2001

Dated : This the 04th day of August, 2004

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

V.N.Ram son of late Shri Ram Manchar
resident of 62 P/4A, Sainik Colony,
(Bhola Ka pura) P.S.Dhoomanganj.

...Applicant.

By Advocate : Shri Manoj Kumar.

Versus

1. Union of India through, Quartermaster General,
Army Headquarters, Ministry of Defence,
New Delhi - 110011.
2. Station Commander, Sub Area Commander,
Station Headquarters, Carripa Road,
New Cantt., Allahabad.
3. Chief C.D.A.(Pensions),
Dopadighat, Allahabad.
4. Assistant Accounts Officer, B.S.O. MES
(G.E.West), New Cantt, Allahabad.

....Respondents.

By Advocate: Shri R.K.Tiwari

MR.D.E.R

By Hon'ble Mrs. Meera Chhibber, JMW

By this D.A. applicant has sought the following
relief(s):-

" (i) issue a order or direction in the nature
of certiorari quashing the impugned order
of recovery for the Rs.33,202/- for the
periods w.e.f. Nov. 95 to 15 July, 96,
passed by the Respondent No.3 dated 30.11.00
(Annexure No.1) on the direction of the
Assistant Account Officer(Respondent No.4)
vide their Bill No. dated 05.3.1998(Annexure
No.2) to this application.



(ii) issue a order or direction in the nature of mandamus commanding the respondents no. 2 and 4 not to recover any amounts in the persuance of the orders of damage rate for the periods w.e.f. Nov. 95 to 15 July, 96 from the applicant.

(iii) issue a order or direction in the nature of mandamus restraining the respondents not to take any coercive methods against the applicant for realisation of the illegal amounts.

(iv) issue any suitable order or direction as this Hon'ble Tribunal may deem proper and appropriate in the facts and circumstances of the case, otherwise the applicant shall suffer an irreparable loss and injury which can not be compensated in terms of money.

(v) Award the cost of the application to the applicant."

2. Notice was issued on 14.3.2001 thereafter number of opportunities were given to respondents to file their C.A., no C. A. was filed. On 30.4.2003 the case was dismissed in default and for non prosecution. On an application filed by the applicant, this case was restored on 29.5.2003 and once again respondents were directed to file their reply. Still no reply was filed and on 12.3.2004 one last opportunity was given to the respondents to file their C.A. positively within 3 weeks subject to cost of Rs.250/-. It was made clear that in case no reply is filed by the respondents case shall be decided on the basis of pleadings available on record. Copy of the order was given to the respondents' counsel so that C.A. may be filed within the stipulated period. Yet no C.A. was filed and on 29.4.2004 they were given one more opportunity to file their C.A. within 3 weeks subject to cost of Rs.500/-. It was made clear once again that if no reply was filed by the respondents, case shall be



decided finally on merits on the next date. Thereafter on 05.7.2004 once again the case was adjourned at the request of applicant's counsel but inspite of this opportunity also, respondents have not filed their C.A. till date. Counsel for the respondents was seeking further time to file reply but in this case it is seen that twice cost was imposed on the respondents and orders were also given to the respondents' counsel but yet they have not filed any C.A., which shows that they really do not have any intention of defending this case at all, therefore, the request for further time to file their C.A. has not been exceeded to.

3. I have heard counsel for the applicant as well as counsel for the respondents, who made his oral submissions. I am deciding this case on merits as ^{have R} respondents ~~are~~ not bothered to file their reply in two years and case is listed for hearing.

4. The brief facts as submitted by applicant are that applicant was transferred from Meerut to Zonal office (PD) C.C.D.A.(Pension), Complex, Allahabad in 1989. He applied for suitable married accommodation to respondent no.2, who initially allotted him Hired married accommodation at Nyay Marg, Allahabad but since same was not suited to applicant, he requested for someother accommodation. Respondent no.2 then allotted hired accommodation at Ponappa Road at Allahabad but the same was not suitable because condition of the same was very bad, therefore, he personally met ~~to~~ the Station Commander i.e. respondent no.2 and explained his personal problems in details. He was ultimately allotted a Lt. separated married accommoda-
tion H.No. P-58, Hastings Road, New Cantt, Allahabad on



12.5.1992 with an assurance that he would be allotted another new ~~one~~ suitable married accommodation as per his status in near future as and when vacant in the station. Thereafter applicant was posted on his promotion to Ordnance Factory, Khamaria, Jabalpur (M.P.) on 02.8.93 and rejoined to the office of Chief C.D.A.(Pension), Allahabad on 05.9.95.

5. He once again gave an application to respondent no.2 for allotting a suitable married accommodation because he was in the rank of Joint Controller of Defence Accounts (Junior Administrative Grade 'A') but no other house was allotted to him. Instead he was sent a letter on 27.9.1995 asking him to vacate the quarter allotted to him earlier by 30.10.1995 otherwise the market rent would be charged (page 23). Applicant gave a detailed reply on 12.10.1995 stating therein that there are in all 132 Quarters including separated family accommodation in Hastings Road and on an average 105 to 110 are occupied rest being vacant. Moreover married accommodation for controller and Joint Controllers are under construction and would be completed by the end of April, 96. At present there is no married accommodation for Joint Controllers on DAD Pool, therefore, they are residing in Hastings Road on Station Pool. He also invited the attention of respondent no.2 to the Army Headquarters' letter dated 10.8.1993 wherein it was clarified that CsDA/JCsDA are to be provided with the Government married accommodation from the Station Pool where DAD pool have not constructed their own accommodation. He, thus, submitted that Government married accommodation from the Station Pool is occupied by him as he is entitled for it, therefore, there is no question of charging market rent from him. He, however, assured that as soon as the married accommodation of DAD Pool is completed, he will shift there in

May, 1996. It is submitted by applicant that no reply was given to the applicant on his this reply but after a period about 2 years, he was given a show cause notice on 18.12.97 asking him as to why he should not be charged the damage rent from 1995 to August, 1996 and as to why the action should not be initiated against you for unauthorisedly occupying the defence pool accommodation quarter No. 58, Hastings Road, New Cantt, Allahabad. (Page 26). Applicant once again gave a detailed reply on 29.12.1997 reiterating the grounds, which he had already stated in his earlier letter. Once again thereafter no reply was given to him and applicant retired on attaining the age of superannuation on 31.12.1997. Applicant was given all the retiral dues after his retirement but after a period of over three years he was sent a letter dated 30.11.2000 whereby he was requested to deposit an amount of Rs.33,202/- through MRO stated to be the licence fee from 28.11.1995 to 15.7.1996 against quarter no. 58 Hastings Road, Allahabad. It is this letter, which has been challenged by the applicant, ^{He} has stated that normal rate of licence fees of H.N.R-58, Allahabad ~~by~~, rent was ^{already} ~~already~~ deducted from his salary every month, Hastings/ by way of/ deducted from his salary every month, therefore, applicant is not liable to pay any damage rent for the said period for Quarter 58, Hastings Road, Allahabad. He has further stated that as soon as the DAD Pool accommodation for IDAS Officers was constructed, the applicant vacated the aforesaid allotted accommodation on 15.7.1996 and since he was occupied this accommodation till the DAD pool quarter were constructed, he could not have been asked to pay the damage rent for occupying the said quarter. Applicant has further submitted that no reply was given to applicant when he had given to reply of show cause notice, therefore, after his retirement respondents cannot be allowed to ~~take~~ ^{demand} up this matter and ~~claim~~ damages from him. Even

otherwise no break up of the damages as claimed by respondents were given to the applicant, therefore, the order directing the applicant to deposit the amount is illegal and improper on the face of record.

6. As said at the outset, respondents have not bothered to file their C. A., which itself shows that they are not interested in defending this case at all. However, counsel for the respondents submitted that the accommodation was allotted to the applicant on temporary basis only, therefore, he could not have continued on the said accommodation indefinitely and since there was requirement to allot these accommodation to other officers of the station, the applicant was asked to vacate the quarter in writing as back as in 1995. But since he did not vacate the same, respondents have rightly asked the applicant to pay the damage rent.

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

8. Perusal of the army headquarters' letter dated 11.8.1993 shows that CsDA/JCsDA are to be provided with Government married accommodation from the station pool where DAD pool have not constructed ^{own} on their l accommodation. Meaning thereby that Armyheadquarters had also clarified the position that till the DAD pool had constructed ~~on~~ their own accommodation, ~~The~~ JCsDA were to be provided with government married accommodation from the station pool. In the instant case applicant had stated in his reply that houses are still lying vacant in the station pool and in view of the Armyheadquarters' letter he is entitled to retain the married accommodation allotted by respondent no.2 from station pool. Respondents have not rebutted this averment as they have not even filed

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their C.A.. In these circumstances I have to accept the averments made by the applicant that till DAD pool houses were constructed, he was entitled to retain the quarter allotted to him from the station pool. It is also clear from the pleadings that as soon as the DAD pool houses were completed, applicant vacated the station pool accommodation and shifted to DAD pool accommodation. In these circumstances if applicant continued to retain the accommodation of the station pool, I think there is no justification in claiming the damages from the applicant that too after 3 years of his retirement.

9. In view of the above discussion, letter dated 30.11.2000 ^{is} quashed and set aside. The D.A. is accordingly allowed with no order as to costs.



Member (J)

Brijesh/-