

OPEN COURT

**CENTRAL ADMINISTRATAIVE TRIBUNAL ALLAHABAD BENCH:
ALLAHABAD**

(THIS THE 21st DAY OF AUGUST 2009)

PRESENT

HON'BLE MR. JUSTICE A. K YOG, MEMBER (J)

**ORIGINAL APPLICATION No. 1163 OF 2004.
(Under Section 19, Administrative Tribunal Act,1985)**

Smt. Vindeshwari Devi aged about 48 years, wife of late Raja Ram Yadav, Resident of House No. T. 30F/03, Old M.H. Area, Kanpur Cantt.

.....Applicant.

By Advocate: Shri Amrendra Kumar Srivastava

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Station Commander, Station Headquarter, Kanpur Cantt.
3. Comanding Officer, 7, Air Force, Hospital, Kanpur Cantt.
4. A.A.O (B.S.O.) (M.E.S) Kanpur.

..... Respondents

By Advocate: Shri S. Singh
Shri S.C. Mishra

O R D E R

Heard learned counsel for the parties and perused the records.

2. Applicant (Smt. Vindeshwari Devi has filed abovenoted O.A. against the orders dated 25.8.2003, 31.3.2004 and 29.6.2004 (Annexures A-1, A-2 and A-3 respectively) whereunder he was required to vacate the residential quarter allotted to her or otherwise also liable to be paid damage charges. It is to be noted that order dated 25.8.2003 (Annexure A-1) is only show cause notice wherein applicant was required to submit her explanation. By means of

(Signature)

another impugned order dated 31.3.2004, applicant was directed to vacate the residential quarter (No. T. 30F/03, Old M.H. Area, Kanpur Cantt). Impugned order dated 29.6.2004, purports to impose damage rent. Applicant relies upon the letter of Govt. of India Ministry of Defence dated 06.1.1986, which contemplates three, conditions wherein an employee, who has allotted the Govt. accommodation can be asked to vacate the same (i) where the allottee expired, (ii) where allottee retired and (iii) where allottee is transferred to another station. The other condition is that in case of allotment of accommodation on temporary basis can also be revoked, if accommodation is required for regular personnel subject to other procedural requirement. Copy of letter has been annexed as Annexure A-5/Compilation II.

3. Respondents have filed counter affidavit. The main contest of respondents, as contained in para 7 of the counter affidavit, is that accommodation for allotment was under 10% quota and that allotment was required to be cancelled as it ought to be treated as provisional/temporary inasmuch as the accommodation was allotted from station unit pool. Apparently such a defence in the counter affidavit is an attempt to create a new case, which do not mention in the counter affidavit. Secondly allotment of accommodation was temporary and provisional.

4. On the other hand, applicant has filed allotment letter dated 4.5.1982 purports to have been issued by Garrison Engineer verifying the accommodation in question was allotted to the applicant. Said certificate does not show that allotment was temporary or provisional. Allotment of applicant has been allowed to hold and continue in

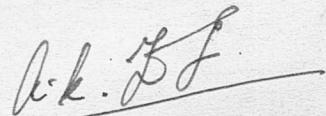


possession of the Govt. Accommodation ever since 1994 till dispute arose in the year 2004. One can easily process inference that it was on regular basis. Apart from the above, it is to be noted that Bench vide order dated 4.10.2004 had passed interim order, which is continue till date, relevant extract of interim order reads:-

".....Counsel for the respondents is directed to file a short counter within 14 days on the question of interim order. In the meanwhile, status quo as on date shall be maintained and no damage rent shall be recovered from the applicant in pursuance of the said order".

5. Interim order has been continued ever since then. Learned counsel for the Applicant further informs that the applicant is still occupying residential quarter in question and rent is being paid regularly.

6. In view of the above, impugned orders dated 25.8.2003, 31.3.2004 and 29.6.2004 (Annexures A-1, A-2 and A-3 are set aside and quashed. O.A. stands allowed. No costs.


Member (J)

Manish/-