

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 478 OF 2004
ALLAHABAD THIS THE 28th DAY OF August 2008

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

R.C. Jain, aged about 64 years,
Son of Late Sri Jugmender Das Jain,
R/o Q, No.31/B Ordinance Road,
Bareilly Cantt, Bareilly (U. P.)
Home Address: 1999/1, Bhagirthi
Kunj, P.B.121 Railway Road,
Roorkee (U.A.)

..... .Applicant
By Advocate : Shri R.C. Pathak

Versus

1. Union of India, through
the Defence Secretary,
Ministry of Defence, Govt. of India,
South Block, D.H.Q.P.O.
New Delhi-110011.
2. Station Commander, Station Headquarter,
Bareilly Cantt, Bareilly (U.P.).
3. The Garrison Engineer No.1 (West)
M.E.S. Bareilly Cantt, Bareilly (U.P.).
4. The Controller of Defence Account,
C.D.A.C.C. (Aray) Meerut Cantt (U.P.).
5. The Barrack Stores Officer, BSO
C/o GE No.1 (West),
Bareilly Cantt, Bareilly (U.P.).

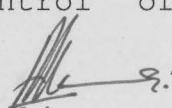
..... . Respondents
By Advocate : Shri R.K. Srivastava

O R D E R

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

This application is filed seeking quashing of the order dated 21.02.2002 and 15.02.2002 issued by the respondents no.5 and 2, and for direction to the respondents to pay back the excess amount recovered from the applicant.

2. The brief facts of the case are that the applicant was posted as a civilian on the post A.E. (Assistant Engineer) in M.E.S. under control of



respondent no.3 at Bareilly cantonment and retired from service on 30.06.2001. The applicant was residing in the government accommodation, and for the license fee was paid for it. The applicant applied on 01.06.2001 to the respondent no.2 for retention of the government accommodation for four months for treatment of his wife a cancer patient. The respondents informed the applicant for retention of government accommodation with effect from 01.07.2001 to 31.08.2001 on normal rent, and 01.09.2001 to 31.10.2001 twice of the normal license fee as per Annexure A-5. Beyond the circumstances of the applicant had no alternative to retain their government accommodation 31.10.2001 up to 15.01.2002. In view of this the respondents issued rent bills amounting to Rs.3331/- on normal rent. The applicant submitted a representation on 22.11.2002 to respondent no.3 for payment of his leave encashment. The respondent no.3 issued a check dated 03.09.2003 of S.B.I. Bareilly for payment of his leave encashment amounting to Rs.64,623/- after deducting Rs.13,722/- charging 30 times of normal rent for retention of accommodation w.e.f. 01.11.2001 to 15.01.2002. After receipt of the same the applicant submitted a detailed representation on 31.10.2003 and a reminder on 02.02.2004 produced as Annexure A-10 and 11. The respondents have failed to decide the representations of the applicant hence OA is filed for the above reliefs.



3. On notice the respondents have appeared and filed the counter affidavit and denied the contention of the applicant, and stated that the retention of government accommodation beyond retirement i.e. 01.07.2001 to 31.10.2001 two months normal rate of license fee, and two months on double of license fee have been levied, and further stated that the damage rent w.e.f 01.11.2001 to 15.01.2002 at the rate of 30 times of normal license fee has been recovered. The respondents state that they have not received any representation or the reminder. It is stated that the officer was given retention for four months after his retirement and further retention not agreed by the competent authority and declared him unauthorized occupant, and therefore, the rent bill issued is a correct one and cannot call for interference and the relief claimed cannot be granted.

4. The applicant has filed the rejoinder reiterating the statements made in the OA, and specifically stated in para 4 that the levy of the license fee shall be based on circular dated 22.05.1999 as per Annexure A-3 but the respondents unlawfully deducted 30 times. The respondents have filed the supplementary affidavit reiterating the same contentions stated in the counter affidavit, the recovery was done as per the terms of CCS (Pension) Rules 1972.

5. I have heard the learned counsel for the parties, and perused the pleadings and the materials on record. The learned counsel for the applicant submits that the



action of the respondents is illegal, unlawful and arbitrary against the policies. It is an admitted fact that the applicant was in occupation of the government accommodation and he retired on 30.06.2001, and thereafter he vacated the government quarters on 15.01.2002. The period in question with regard to calculation of the license fee of the accommodation in which the applicant was stayed till 15.01.2002. The normal license fee for the accommodation was Rs.386/- P.M. The applicant was posted as a Civilian Assistant Engineer in M.E.S. under the control of respondent no.3 is not denied by the respondents either in the counter affidavit or by their statements in these proceedings, that being so the learned counsel for the applicant has produced Annexure A-3 dated 22.05.1999 with regard to the retention of the government accommodation and subsequent rental charges in which it is stated, "Permissible period of retention of accommodation to Def. Civs. Paid from the Defence Services estimates on retirement/terminal leave. The applicant further stated and submitted in his representation dated 31.10.2003 and 02.02.2002 Annexure A-10 & 11 that the respondents acted illegally, and further stated in his rejoinder para 4 giving details how the calculation should have been done by the respondents on taking into consideration of Annexure A-3 dated 22.05.1999 in which it is clearly stated as follows:-

"1. I am directed to refer to Item (iii) of the Table below rule 8 of the allotment of Residences (Defence pool accommodation for civilians in Defence Services) Rules, 1978

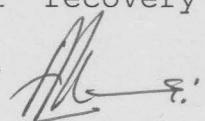


published vide SRO 308 of 1978 dated 17 Oct 78 as revised vide Min of Def letter No.42837/03 (B-1)/5905/D (Q&C) dated 20 Dec 89 where in the Def civilians have been allowed to retain the Defence Pool accommodation allotted to them for a period of four months after retirement and terminal leave and the allottees of the accommodation can be allowed further retention in special circumstances on payment of special license fee for a period not exceeding four months and to say that it has now been decided that retention of accommodation will be permissible for a period of two months after retirement or terminal leave on payment of normal license fee. Retention of accommodation can be further extended for two months on payment of twice the normal license fee for the bonafide use of the allottee. Retention of accommodation shall also be permissible on medical/children education grounds for a further period of two months on four times the normal license fee and subsequent two months on payment of six times the normal licence fee. The allottee will be required to apply for retention of accommodation on medical/educational grounds before expiry of initial retention period of four months duly supported by documentary proof, along with the Bank Draft, in respect of License fee.

2. This order shall be applicable with immediate effect.

3. This issues with the concurrence of Finance Division of this Ministry vide their I.D. No.215/DO(Works)/99 dated 30.03.99."

In view of this it is clear that the calculation made by the respondents without taking into consideration of the above and applying the CCS (Pension) Rules 1972 without giving any reasons for the non application of the same to the applicant's case has resulted in the miscarriage of justice. The inaction on the part of the respondents in not taking into consideration the relevant facts and circumstances of the case and the applicability of Annexure A-3 before passing the order of recovery



against the applicant on the ground of damage rent cannot be sustained on the face of it, and therefore the contentions of the applicant are acceptable and as such the applicant has made out a case for grant of the relief claimed. In view of this the contention of the respondents are rejected. Having regard to the fact that the applicant has submitted a representation dated 31.10.2003 and 02.02.2004 produced as Annexure A-10 & 11, I thought it just and proper to direct the respondents to consider the same and pass appropriate orders.

6. In view of the above the OA is allowed. The impugned orders dated 21.02.2002 and 15.02.2002 produced as Annexure A-1 and A-2 are quashed. The respondents are directed to pass appropriate orders on the representation of the applicant, on taking into consideration of the above observation made in the preceding paragraphs of this order, and disposed of the representation of the applicant produced as Annexure A-10 & 11 on taking into consideration of Annexure A-3 in accordance with law by a speaking and reasoned order within a period of three months from the date of receipt of a certified copy of this order.

7. With the above directions the OA is allowed.
No Costs.


Member-J

/ns/