

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1395 of 1999

Allahabad this the 03rd day of March, 2003

Hon'ble Mrs. Meera Chhibber, Member (J)

A.K. Moitra, aged about 49 years, Son of Late Shri R.K. Moitra, resident of 8/6, Old MES Power House, Lalitpur, Road, Jhansi Cantonment.

Applicant

By Advocate Shri R.K. Nigam

Versus

1. Union of India through Secretary, Ministry of Defence, Defence Headquarters, New Delhi.
2. Hq. Chief Engineer, Jabalpur Zone P 6-84, Jabalpur.
3. Station Commander, Station Hqrs Jhansi.
4. Garrison Engineer, Jhansi Cantonment.
5. Garrison Engineer(P) Fy. Itarasi.
6. Asstt. Accounts Officer(BSO) C/O Garrison Engineer, MES, Jhansi.

Respondents

By Advocates Shri S.C. Mishra,
Shri R.C. Joshi

O R D E R (Oral)

By Hon'ble Mrs. Meera Chhibber, Member (J)

By this O.A., applicant has sought quashing of the impugned order dated May, 1999 (annexure A-1), June, 1999 (annexure A-II) and dated 21.10.99 (annexure A-III), and has further sought a direction to the respondents not to give effect or to act upon the impugned order

of realisation of damage rent to the tune of Rs.21,907/- in any manner whatsoever and further commanding the respondents not to dispossess the family of the applicant from the present accommodation, and also to draw the bills of the applicant at the same pay scale and rate of pay etc., which he ~~is~~ has been enjoying so far.

2. It is submitted by the applicant that he was holding the substantive post of Store Keeper at Jhansi, where he was allotted official quarter no.8/6 in the complex of MES Power House, Lalitpur Road, Jhansi in 1978 and had been staying therein since then. Vide order dated 30.06.97 the applicant was transferred from Jhansi to Itarasi under Garrison Engineer(P)Fy. but, since his children ~~was~~ studying at Jhansi and at Itarasi he had not been allotted the residential accommodation(it is evident from the certificate dt. 16.8.99, page 17 stating therein that due to shortage of accommodation in this station, it is not possible to allot married accommodation to MES/437355-Shri A.K. Moitra-S.K.-I of this division), he requested the authorities to allow him to retain the quarter at Jhansi on the ground of his childrens education. Vide order dated 05.08.99 (annexure A-8, page-23), the applicant was informed the sanction of Station Commander, Jhansi for retention of MES Pool accommodation 8/6, Old Power House in favour of Shri A.K. Moitra-applicant w.e.f. 01.07.97 to 31.07.98. Thereafter, the Executive Engineer at Itarasi once again wrote a letter to the Headquarter, Jabalpur on 16.10.99 requesting them to consider the case

of the applicant sympathetically and extension for retention of quarter may be given in favour of Shri A.K. Moitra on the ground of his children education w.e.f. 01.07.98 to 30.06.00 after taking up the matter with the higher authorities. The grievance of the applicant is that instead of according the sanction, the respondents issued the impugned orders wherein it was stated that a sum of Rs.21,907/- w.e.f. 01.07.97 to 01.07.99 be recovered in 12 instalments, first being for Rs.1826/- and balance instalments for Rs.2009/- per month. Vide letter dated 21.10.1999, the respondents also cancelled the ex-post facto sanction for retention of married accommodation accorded earlier on the ground that the applicant had concealed the full facts. Therefore, the Garrison Engineer(P) was requested to charge the rent and alleged charges from the applicant as per rules. It is these orders which are challenged by the applicant in the present O.A. on the ground that no show-cause notice was given to him before cancelling the sanction, which was already granted to him nor was he given the full facts as to which facts have been hidden by him before passing the impugned order. Therefore, he has submitted that this order is bad in law and is liable to be quashed. He has also submitted that the authorities ^{as au B} were under the obligation to consider that his children were studying at Jhansi and at the new station where he was transferred, the authorities ^{have} given a certificate to the effect that they were not in a position to give him the married accommodation due to shortage of same, therefore, the applicant could not have ^{been B} made to suffer and so long the provision was there to accord sanction for retention of married accommodation at the earlier station, same could not have been cancelled at his back without



giving him atleast any opportunity of being heard. The applicant's counsel also stated at bar today that after filing of the O.A. , the applicant has again been transferred back to Jhansi from Itarasi vide order dated 14.08.2000. This order has been placed by the applicant on record alongwith affidavit. He has, thus, submitted that the relief, as prayed for, may be granted.

3. The respondents have opposed the O.A. on the ground that the applicant is not entitled to any relief in as much as he has not informed the authorities that in 1997 his children ~~was~~ not studying in B.Sc or B.Com. They have further submitted that retention of accommodation for school going children for second academic session is not permissible in any circumstances as per Ministry of Defence/Finance O.M.No.1(52)/Works-1/86 dated 5.5.1988(annexure C.A.-1). They have further submitted that the applicant did not apply for the ~~Married~~ accommodation at Itarasi even after the expiry of the period of retention of married accommodation at Jhansi. Moreover, his children ~~was~~ not studying in B.Sc/B.Com during 1997 i.e. the time when the applicant was posted at ~~XXXX~~Itarasi and when the higher education facilities were very much available at Jhansi, there was no justification to retain the quarther at Jhansi. They have further submitted that if the ~~petitioner~~ would have applied for married accommodation immediately on his joining at Itarasi, he would have ^{been allotted} allotted the accommodation. The certificate regarding non-availability of the married accommodation was obtained by the applicant only on 16.08.99 i.e. after two years of the expiry of the period of extension, therefore,

he cannot get any benefit on the basis of the said certificate. They have, thus, submitted that since the applicant had obtained the sanction by suppressing these facts, the sanction granted was rightly cancelled by the authorities and since the applicant had overstayed at Jhansi without proper sanction of the authorities, he is liable to pay the damage rent. They have, thus, submitted that there is no merit in the O.A. and the same is liable to be dismissed.

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

5. The question which ^{has B} come ~~for~~ for consideration before me is that whether the respondents could have cancelled the sanction already given in favour of the applicant earlier without giving him any show-cause notice or even giving the full reasons as to how he is said to have suppressed the material facts and whether on the basis of such cancellation, the respondents could have claimed the damage rent from the applicant. The answer is definitely 'No'. The law is well settled that any order which ~~have~~ civil consequences, cannot be passed without giving an opportunity of being heard to the person concerned. In the instant case, the applicant has made a specific averment in para-4.15 that the sanction was cancelled without giving him any opportunity of giving him any notice with ~~the~~ retrospective date, which averment has not been disputed/denied by the respondents in their counter-affidavit. I am of the considered view ^{their P} that once the sanction was granted ~~and subsequently even if P~~ respondents came to know that the said sanction was

obtained by the applicant by giving false information or by concealing the facts, as alleged by them in the counter-affidavit, they ought to have given a show-cause notice to the applicant to explain all the facts and asking him to give his representation as to why the sanction already granted could not be cancelled and it is only B after hearing him ~~they~~ they could have passed any order which was in accordance with law, but, definitely an order cancelling the sanction already granted could not have been passed without putting the applicant on notice, as this would be violative of principle of natural justice. Accordingly the impugned orders i.e. annexure A-1 to annexures A-3 are quashed and set aside but, the respondents are given liberty to give show-cause notice to the applicant in case they feel that the applicant has misrepresented his case to them, asking him to give his representation within 4 weeks and should pass the final order only after considering all the aspects of the matter including the certificate granted to him by the Itarsi division and the fact that the applicant has once again been transferred back from Itarsi to Jhansi the respondents may give show-cause notice to the applicant, if they feel necessary, within 4 weeks from the date of receipt of a copy of this order calling upon the applicant to explain his case within 4 weeks thereafter and then pass reasoned order after considering all the points raised by the applicant within a period of 2 months thereafter. The said order should be intimated to the applicant. In case any favourable orders are passed in favour of the applicant, the respondents should return the amount already recovered from his salary, otherwise adjust



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It is made clear that till such exercise is completed, the respondents are restrained from making any recovery from the applicant's salary. With the above observation and direction, the O.A. stands disposed off. No order as to costs.



Member (J)

/M.M./