

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 25 DAY OF 3 2010)

Hon'ble Mr. A.K. Gaur, Member (J)

Original Application No. 525 of 2007

(U/S 19, Administrative Tribunal Act, 1985)

Ambika Prasad Singh, aged about 52 years, Son of Ramagya Singh, presently posted as Senior Auditor in the Accounts Officer (Project), Dantak, C/o 99 APO.

..... *Applicant*

By Advocate : *Shri H.S. Srivastava*

Versus

1. Union of India through the Secretary, Ministry of Defence (Finance) New Delhi.
2. The Controller General of Defence Accounts, West Block -V.R.K. Puram, New Delhi.
3. The Principal Controller of Defence Accounts (Pensions), Draupadighat, Allahabad.
4. The Controller of Defence Accounts, (Border Roads), Seema Sarak Bhawan, Ring Road, Narayana, New Delhi.
5. The Assistant Accounts Officer, BSO (MES), Office of the Garrison Engineer (West), Allahabad

..... *Respondents*

By Advocate : *Shri S. Singh*
Shri S.C. Mishra
Shri S. Srivastava
Shri S.N Chatterji

ORDER

The applicant through this O.A filed under section 19 of Administrative Tribunals Act, 1985 has prayed for following main relief/s:-

"1). *To quash the P.C.D.A (Pensions), Allahabad letter No. AN- IV/Res./III-62/GV/Ret./06 dated 29.11.2006 (Annexure A-8).*

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2). To quash the PCDA (Pensions), Allahabad letter No. AN-IV/Res./C/62/GV/Ret. Dated 04.04.2007 (Annexure A-10).

(3) To quash the P.C.D.A (Pensions) Allahabad letter No. AN-IV/506/C-62/GV/07 dated 11.5.2007 (Annexure A-14).

(4) To issue orders direction to the respondents not to make recovery of license fee at market rate and allowed to retrain the quarter at normal rent till the decision of the Court.

2. Factual matrix of the case are that the applicant was posted in the office of respondent NO. 3 in May 2001 and was allotted Government accommodation on 18.7.2001 vide allotment letter dated 18.7.2001 and started living with his family in Quarter No. III/62, Topkhana, Allahabad. The applicant was transferred to the Accounts Office (Project) DANTAK on 29.4.2005 and joined the aforesaid office leaving his family at Allahabad in his allotted Government accommodation on the clear understanding that he would retain that quarter during his posting in DANTAK Project, as no employee is permitted to keep his family at that station being Field Area. The applicant requested the respondent No.3 vide his application dated 28.10.2005 to permit him to retain the quarter in question for the period he remains posted at Dantak Project, since A.O. (P) Dantak is also a Border Road Organization under C.D.A (Border Road) and Dantak being in field station, no family accommodation is available there. When no letter regarding permission to retain the quarter was received by the applicant and he came to Allahabad on leave in January, 2006, he again requested the respondent No. 3 through application dated 12.1.2006 to permit him to retain the quarter in question in terms of Rule 177 of Border Roads

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Regulation. On receipt of the aforesaid application, the office of the respondent NO. 3 asked from the Head of the Office of the applicant vide their letter dated 24.1.2006 to forward a requisite certificate that the applicant is posted to Field Area and precluded from his family to enable him to obtain sanction of the Competent Authority to regularize his retention of Govt. Accommodation beyond two months. The Head of the Office of the applicant in compliance of the aforesaid letter sent the requisite certificate to the respondent No. 3 vide his letter dated 2.2.2006 stating that the applicant reported to their office on 13.5.2005 on his permanent posting from Office of the PCDA (P), Allahabad. Thereafter the office of the respondent No. 3 informed the applicant through their letter dated 29.11.2006 that the applicant is authorized to retain the allotted Government accommodation at last duty station for four months under Rule 9 (2) of DAD Pool Allotment Rules 1986. They have further informed that they had referred the matter to the Head Quarter Office CGDA, New Delhi who has not clarified that retention of Government accommodation at last duty station on posting of officers/staff to Bhutan is not covered under Rules. After receipt of the above letter dated 29.11.2006 applicant represented to the respondent No.2 vide application dated 31.11.2007 requesting him to allow him to retain the aforesaid quarter for 3 months more for remaining period of his Bhutan tenure but no reply has been received so far. In the meanwhile the office of the respondent No. 3 issued letter dated 4.4.2007 asking the A.A.O B.S.O (MES), Allahabad to prepare the license fee bill to

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recover license fee from 30.4.2005 to 31.8.2005 at normal rate and from 01.09.2005 to 31.3.2007 at market rate. In pursuance of respondent no. 3 letter dated 4.4.2007, the respondent No. 5 had initially floated license fee bill for Rs.95750/- on 17.4.2007 which they have amended and have now sent revised bill on 24.4.2007 for Rs.1,71,216/-.

3. On notice, the respondents have filed Counter Affidavit denying the claim of the applicant on the ground that as per Rule 9 (2) of Allotment of Residential Accommodation DAD Pool Rule 1986, retention of Government accommodation at old duty station is permissible for four months only. Since the retention of Government accommodation beyond permissible limit of 4 months is not covered under the Rules, it had been decided by the Competent Authority to refer the instant case to the Headquarters Office CGDA, New Delhi for their clarification. The office of CGDA, New Delhi had clarified vide their letter dated 09.11.2006 stating that the matter regarding retention of Government accommodation at last duty station in respect of officers/staff posted to Dantak (Project) has been examined in consultation with Ministry of Defence (Finance) and the retention of Government accommodation at last duty station on posting of officers/staff to Bhutan is not covered under Rule. Consequent upon the clarification received from the office of the CGDA, New Delhi, the applicant has been communicated with the decision through his office A.O. (Project) Dantak vide letter dated 24.11.2006. Simultaneously, he has also been advised to vacate the quarter immediately.

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Since applicant has not vacated the quarter, respondents decided that his retention beyond permissible period of 4 months may be treated as unauthorized and licence fee at market rate w.e.f. 01.09.2005 to 31.3.2007 may be recovered from him. Respondents vide order dated 24.4.2007 prepared the Bill amounting to Rs.1,71,216/- and forwarded to A.O. (Project) Dantak by respondent NO. 5 for making recovery from pay and allowance of applicant. The applicant requested vide his application dated 11.5.2007 seeking interview with PCDA (P) in the matter but his request has not been acceded to at this belated stage, and he has been advised to deposit the arrears of amount and also to vacate the quarter in question vide letter dated 11.05.2007.

4. The applicant has filed Rejoinder Affidavit denying the submissions made by the respondents in their Counter Reply reiterating the same facts as enumerated in the O.A.

5. Learned counsel for the applicant filed Misc. Application No. 2266 of 2009 in which he has annexed the letter dated 01.02.2008. By the said letter dated 01.02.2008, the following order has been passed:-

“Shri A.P Singh, SA/8324289 is the resident of Qtr. No. C-62, Ganga Vihar Colony, Allahabad while serving in this office, he was selected for posting to Project Dantak, Bhutan and relieved of his duties in this office on 29.4.2005. During his posting in Bhutan, Shri Singh did not vacate the Quarter in his occupation in spite of directions from this office.

For the period of unauthorized retention, the allotting authority has proposed recovery as market rate

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of licence fee after normal retention period was over. The individual has filed a petition in CAT, Allahabad Bench, Allahabad and obtained stay order against recovery. The matter is still subjudice.

In the meantime, Shri A.P Singh has been transferred back from Bhutan to LAO (s), COD, Chheoki, Allahabad (an eligible office for DAD Pool Accommodation at Allahabad) and joined the office on 13.06.2007 as intimated by the individual vide his application dated 05.01.2008.

Considering the aforesaid facts, the competent authority has decided to regularize the allotment of Govt. Accommodation w.e.f. 13.06.2007. In view of the above, recovery of HRA, Licence fee and other charges may be effected accordingly".

6. The respondents, on the other hand, had filed Supplementary Counter Affidavit. In para 8, it is stated that the accommodation in occupation of the applicant is not a Defence Accommodation, but a DAD Pool Accommodation, which is governed vide allotment of Residential (DAD Pool) Rules 1986, framed by the President of India in exercise of powers conferred by the provisions of Article 309 of Constitution of India. It is further stated that the DAD Officers/Staff while serving in AO (Project) Dantak, Bhutan are not debarred to keep their family in Dantak Bhutan and the officers and staff keep their family with them as per their convenience.

7. In reply to the supplementary counter affidavit, applicant filed supplementary rejoinder affidavit and nothing new has been enumerated in this affidavit.

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8. I have heard Shri H.S. Srivastava, learned counsel for the applicant and Shri S. Srivastava, learned counsel for the respondents and perused the pleadings and documents on record.

9. Learned counsel for the applicant would contend that as per Rule 177 of Border Roads Regulation, Civilians paid from Defence Services Estimates on deputation to Border Roads Organization posted to field service areas they are precluded from living with their families may retain the Defence Accommodation already allotted to them at their old duty station, licence fee in such cases shall be recovered at the normal rates i.e. assessed rates or 10% of the individuals monthly emoluments, whichever is less. The accommodation so retained shall not be sublet by the individuals for any period fully or partially, without the prior permission of Government. He further argued that since Government of India is a model employer, it is not expected that different set of Rules/Orders would be applied to different employees doing the same job and working in the same condition. Learned counsel for the applicant further urged that all the employees who were posted earlier to the Dantak Project and were living in Government Accommodation on their old duty station were retaining that accommodation on payment of normal rent.

10. On the other hand, learned counsel for the respondents submitted that under the provision of Rule 9 (2) (iv) allotted quarter can be retained by the allottee for a period of 4

months only, in case of a transfer to a place outside India, as such the applicant was entitled to retain the Government Accommodation for a period of four months only. Learned counsel for the respondents argued that vide order dated 9.11.2006, Sr. Dy.C.G.D.A (Projects) after consultation with Ministry of Defence (Finance) issued a clarification that the retention of Govt. accommodation at last duty station on posting of officers/staff to Bhutan is not covered under Rules.

11. I have given my thoughtful considerations to the pleas advanced by the parties counsel and I am of the considered view that respondents have rightly passed the order dated 9.11.2006, saying that the issue has been examined in consultation with Ministry of Defence (Finance) and in this connection it is intimated that the retention of Govt. accommodation at last duty station on posting of officers/staff to Bhutan is not covered under Rules. In my view the A.A.O, B.S.O (MES), Allahabad has rightly prepared the license fee bill to recover license fee from 30.4.2005 to 31.8.2005 at normal rate and from 01.09.2005 to 31.3.2007 at market rate.

12. I have carefully gone through the Full Bench decision of the Tribunal reported in **1994-1996 A.T. Full Bench Judgment - Ram Pujan Vs. Union of India and Ors.** and in my considered view, the retention of accommodation beyond the permissible period would be deemed to be unauthorized occupation and there would be an automatic cancellation of

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allotment, and penal rent/damage rent can be levied according to its prescribed Rules from time to time.

13. In view of the aforesaid observation, O.A. has no merit and is accordingly dismissed. No order as to costs.

Arjan
Member (J)

Manish/-