

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 402 of 1991 with
~~T.A. NO.~~ M.A.No. 603 of 1993.

DATE OF DECISION 15th February, 1996.

Shri E.I. Joseph Petitioner

Party-in-person Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent

Mr. Akil Kureshi Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K. Ramamoorthy : Member (A)

The Hon'ble Mr.

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

14

- 2 -

Shri E.I. Joseph,
Assistant Accounts Officer,
Office of the C.D.A. S.C.
1, Finance Road,
Pune - 1.

...Applicant.

(Party-in-Person)

Versus

1. The Station Commander,
Station Head Quarters,
Ahmedabad - 380 003.
2. The Unit Accountant (M.E.S.),
Ahmedabad - 380 003.
3. The Controller of Defence Accounts,
Southern Command,
1, Finance Road,
Pune - 1.
Maharashtra State.
4. Union of India, through,
Secretary,
Govt. of India,
Ministry of Defence,
Central Sectt.
New Delhi.

...Respondents.

(Advocate : Mr.Akil Kureshi)

J U D G M E N T

O.A.NO. 402 OF 1991 with
M.A.NO. 603 OF 1993.

Date : 15-02-1996.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The application is against the levy of market rate of rent for the accommodation occupied by the applicant. *11.A.No.603/93 is also allowed.* The short facts of the case are as under :

2. The present applicant is a Senior Accounts Officer who was allotted a Defence pool of accommodation. He was allotted a JCO's quarter No.485/1 on 20th November, 1984. On 4.6.1986, the applicant was given an alternative accommodation. The applicant having been on out-station

15

- 3 -

duty and having thereafter been on leave, the applicant did not receive the communication in time. As per this communication, the applicant was supposed to have taken over the charge of the defence accommodation on 28.6.1986. Having come to know about this development on 2.7.1986, the applicant had represented immediately in this matter. The respondent-department had however, decided to treat the applicant's continued occupation even after the offer of the alternate accommodation as unauthorised occupation and began to charge market rates. On 11.8.1986, the department also had issued him with a show cause notice for eviction. The applicant has contested both on the ground that other similarly placed officers had not to vacate the premises. In any case, the levy of a market rent is also illegal.

3 In their reply, the respondents had stated that allotment of the accommodation from the defence pool was basically an interim arrangement. The Army accommodation was basically meant for Defence Officers, and if a J.C.O was going without accommodation, the department is well within its right to allot the designated accommodation to the J.C.O. after offering an alternate accommodation to the Civilian Officer. Such an alternate accommodation had been given to the applicant.

4 It is also an admitted position that the alternate accommodation had a plinth area of 51.10 sq.mtrs. (some what less than the plinth area of 55.75 sq.mtrs. eligible for Civilian Officers of the status of the present applicant). Though this by itself cannot be taken as a valid explanation for the refusal for the alternate accommodation. The applicant having failed to move into

12

the alternate accommodation, the respondent-department treated the applicant's continuance in JCO's quarter as unauthorised occupation and therefore, the respondent-department had begun to charge market rent thereafter.

5. The counsel for the applicant and the respondents were heard at length. There are certain distinguishing features of this case which needs mention at this stage.

(1) Another Civilian Officer-a teacher-had been also similarly issued a notice to take up an alternate accommodation and on his not moving out, that officer was treated as being in unauthorised **occupation**. This officer namely, Shri S.K.Goel, was also given eviction notice. However, the Judge of the City Civil Court, Ahmedabad has allowed the appeal against this eviction order on the ground that the order is illegal, improper and unreasonable. Shri Goel's case has identical feature such as non-receipt of the original letters in time and also the fact of the alternate accommodation being less in plinth area than his entitlement.

(2) The second distinguishing feature is the fact that even though the applicant was given aⁿeviction notice in August, even before the reply was received and considered, the respondent-department had started levying market rates on the accommodation occupied by the applicant.

(3) The original allotment of the JCO's was unconditional, and the fact that he spent more than six months in the house-having been allotted the quarter in November, 1984,- the applicant was well within his right to treat the allotment as a permanent allotment.

6. Though the respondents-department's primary responsibility is to see that action is taken for allotting defence pool accommodation to defence officers, at the same time, the department itself has laid down detailed instructions regarding eviction of the Civilian ~~em~~ employees, once a Civilian employee is allotted defence pool accommodation. If, therefore, a civilian employee has been in a charge of defence pool accommodation for a considerable period-well beyond six months. The procedure to be followed is clearly laid down in the Government of India, Ministry of Defence letter dated 6.1.1986. Such an eviction action has also to be considered at a higher level. The letter of 13th November, 1977 of Southern Command Headquarters annexed with the rejoinder furnished by the applicants, also states the position in this regard at length and in full detail. This has been done to avoid ugly Civilian Defence Personnel Wrangles.

7. In this particular case, the applicant has since, vacated the accommodation on 31.3.1987 subsequent to the transfer and the only issue that remains is the question of levy of market rent at the rate of Rs.5,276/- from 14.6.1986 to 31.3.1987.


8. As mentioned earlier, the applicant having been out of station and having been on leave, the date of 14.6.1986, will not be the operating date, as the operating date will be the date which the applicant gets the necessary notice. It is also clear that there has been no pre-condition allotted to the allotment and allotment has been for a period well over 18 months. No formal decision also seems to have been taken on the reply furnished to the eviction notice nor has a decision

been taken at the higher level as envisaged in the circular on 6.1.1986.

Under the circumstances, the Tribunal has come to the conclusion that the petition, can be disposed of with a direction to the respondents to reconsider the whole issue in the light of existing instructions referred to para 6 above, as these instructions do not seem to have been followed in passing the order to charge market rent.

The respondents are therefore, directed to reconsider the matter after detailed scrutiny of the issues covering such a case by way of instructions as covered by the Government of India, Ministry of Defence letter No. 7(1)/85/D/(Q&C) dated 6.1.1986 as also in the letter No. 040101/10IV/Qs. dated 18.11.1977 of U.O.I. 1/C, Southern Command head quarters, Pune, and take a decision as to the rent to be charged to the applicant for his continued occupation of the JCO's quarters for a period upto March, 1987. This may be done within a period of 12 weeks from the date of receipt of this order. The applicant will be at liberty to approach to this Tribunal if he has any grievance subsisting even after the final order is be passed by the respondents.

No order as to costs.


(K. Ramamoorthy)
Member(A)

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