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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 240/2008

Date of Order : 15.01.2010.

CORAM:

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

Hemant Kumar Jain S/o Shri Bhadra Babu Jain aged about 46 years, resident of 3/368, Sector 14, Udaipur at present employed on the post of Inspector of Custom and Central Excise in the Office of Superintendent Custom Range, Udaipur, 142-B Sector 11, Udaipur.

....Applicant

For Applicant Mr. J.K.Mishra.

VERSUS

- 1- Union of India through Secretary to Government of India Ministry of Finance, Department of Revenue, North Block, New Delhi.
- 2- The Commissioner, Central Excise Commissionerate, Jaipur-II, NCR Building, Statue Circle, B.D. Road, Jaipur.
- 3- The Assistant Commissioner, Custom Division, Jodhpur.
- 4- Assistant Commissioner, Central Excise Division, 142-B, Sector 11, Udaipur.

...Respondents.

For Respondent Mr. M. Godara proxy for Mr. Vineet Mathur.

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**ORDER
(BY THE COURT)**

The applicant was posted as an Inspector on promotion from March 2003 and was posted at Udaipur and he apparently, joined duty on 27th May, 2003. He was allotted a Government Quarter 3/337 Type III, vide letter dated 22nd August, 2003. Since a normal tenure at a station is four years, the applicant was under the apparent belief that he will be allowed stay of four years at that station but, the exigency of the administration and the requirement of service required that he be transferred after



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fourteen months to the Central Excise Range at Kankroli. The transfer order was 8th July, 2004.

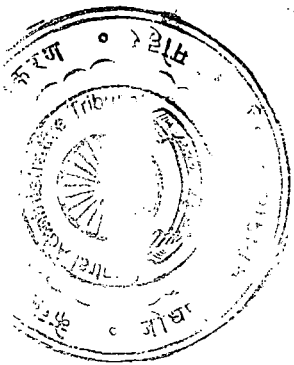
2- It is pertinent to note in this connection that even though transfers are normal incidents in the Government servants career but the Rules and the Guidelines as well as the dictates of the Hon'ble Supreme Court, have denied the authorities, the freedom to transfer an employee in the mid academic session unless and until, it becomes absolutely necessary in the requirements of the service. In all probability, the applicant also understood the extent of the exigency of service as even though, his two daughters were studying in Class XII and VIII at Udaipur and no Central School is available at Kankroli and no Government accommodation is available at Kankroli. He accepted the transfer with grace and joined the place of duty at Kankroli. Apparently, after discussion with his superiors, he filed a detailed representation which is Annex. A/4 on 5th November, 2004, requesting for continued usages of the Government accommodation available at Udaipur. Apparently, vide Annex. A/5, the same was forwarded to the Udaipur Division. It appears that at the relevant time, the Government quarters at Udaipur were in surplus and no one was waiting allotment or refused accommodation. The applicant would point-out that the superior officers were aware of this situation and had in fact, concurred with his requirement in that. They had deducted License Fee for the accommodation provided for his family at Udaipur for their continued occupation despite his transfer and also he was denied HRA, even though, he was transferred out of Udaipur and was



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eligible for receiving HRA at Kankroli, only on the acknowledged ground of being provided with a Government quarter at Udaipur.

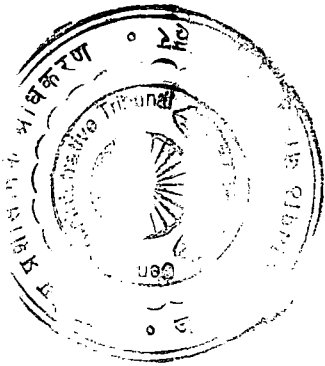
3- It appears that the applicant had also submitted another representation and projected his problems and requested for transfer back to Udaipur. In the meanwhile, apparently, the concerned authorities took concurrence of the competent authority for the retention of the Government quarter at Udaipur, during the applicant's stay at Kankroli. To buttress this, the applicant would aver that he was never asked to vacate the accommodation and usual License Fee was regularly deducted from his salary. He would also point-out that there existed certain particular peculiar situations concerning the colony, where, the Government accommodations were situated. Vide Annex. A/6 he would, therefore, claim that his stay at Udaipur, had already been beneficial even otherwise for the Government as well. He was transferred back to Udaipur and joined duty at Udaipur on 9th March, 2006 and he continued in the same quarters.



4- But, it would appear that an Audit team raised an objection and claimed that market rent be recovered from him for the period from 6th July, 2004 to 8th March, 2006 which is the impugned order. Thereupon, the applicant submitted a detailed representation on 12th March, 2007 which is produced as Annex. A/7. It would appear that the 4th respondent had given a reply to the preliminary audit objections vide letter dated 22nd March, 2007 which has been produced as Annex. A/8. It would also appear that the concerned officer did not agree with the version

A handwritten signature in black ink, appearing to be 'X. B. ...' with a flourish at the end.

of the internal audit team. It would appear that the Deputy Commissioner had given cogent and sufficient reasons for the retention of quarter by the applicant and vide Annex. A/9 dated 20th June, 2007, the Commissioner himself had also sent an explanatory letter to the Joint Secretary (Administration), New Delhi, to grant an ex post facto permission for the period in question. But, it seems to have been turned-down by it on the ground that there is no provision for allowing a retrospective benefit in the Board's order dated 5th February, 2007. To this, applicant vide Annex. A/11 representation, cited his reasons and also high-lighting that the occupation in the Government quarter was with the permission of the Deputy Commissioner and the concurrence of the Commissioner himself.



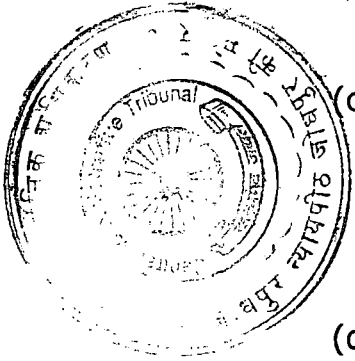
5- The respondents admitted the factual matrix of the matter in their paragraphs 4.11 and 4.12 stating that the application of the applicant was turned-down by the competent authority and matter of relaxation is a discretionary power of the competent authority but, it is not a compulsion. They contended in Para 5 (D) of their reply that it is a fact that the Commissioner has never given any actual permission to the applicant to retain the quarter but, on this ground, the applicant would point-out that the License Fee was regularly being deducted from his salary with the knowledge of the Commissioner. He was denied HRA at Kankroli, as he was having the Government accommodation which was also in the knowledge of the Commissioner. But, he also admits that the Commissioner has not given or issued a specific order directing him to retain the accommodation. But, at the same time, he would point-out that the Commissioner and

his subordinate officers by their actions acknowledged the right-ful occupation of the applicant and his family members in the quarter in question and as regards the letter of the Commissioner, he would say that the same is self-explanatory and illuminative. The letter Annex. A/8 is more so and he questions the applicability of the Public Premises Eviction Act. He points-out some aspects of this matter viz.

- (a) The applicant was permitted to retain the accommodation at his previous station by the competent authority due to special and peculiar circumstances.
- (b) He was transferred on extreme administrative exigency to cater to a special need at Kankroli in the midst of the academic session.
- (c) No Government accommodation was available at the new place of posting nor, was there any educational facilities available for his children.
- (d) He was not paid any HRA at the new place of posting.
- (e) License Fee at normal rate was deducted from his monthly salary.
- (f) The Government accommodation at Udaipur was surplus and no one was deprived of accommodation because of his occupation.
- (g) The maintenance of the Government Pool Accommodation at Udaipur, was being done only by him and other occupants and had the house been vacant, the Government will only lose.

6- To buttress his contentions, he has produced Annex. A/14

issued by the Government of India, F.No. 213/ 42/ 2008 - Ad.



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VIII (EC) 27/8/2008, Paragraph Nos. 3, 4 and 5 of which is extracted hereunder :

3-"The Board had earlier considered this matter and issued comprehensive instructions vide letter F. No. 213/1/96-Ad.VIII(EC) dated 19.01.1996 (copy enclosed), to the effect that whenever officers / staff are posted to Customs Preventive Stations in remote / border areas, they shall be allowed to retain their departmental accommodation in their previous place of posting. It is hereby reiterated that these instructions shall continue to remain valid and shall be applicable all over the country. These instructions dated 19.01.1996 shall not be treated as superseded by the subsequent instructions vide F. No. 213/7/2006-Ad. VIII (EC) dated 05.02.2007. The officers posted to Customs' Preventive Stations in remote / border areas shall be entitled to retain their departmental pool accommodation in their earlier place of posting on payment of normal license fees. The concerned Chief Commissioners/ Directors General shall have the powers to allow such retention of accommodation to the officers / staff under their jurisdiction.

4. The Board noted that in a number of locations, the number of quarters available is much more than the demand for such quarters from the officers / staff posted in such locations. As a result, a number of quarters remain unoccupied, which results not only in loss of revenue to the Government in the form of license fees, but also in lack of proper maintenance of the quarters as also their safety / security. All these problems could be avoided if these surplus quarters could be allotted to the officers posted out of the stations for use by their families staying behind. This would also be an important staff welfare measure.

5.Accordingly, it has been decided that wherever surplus quarters are available, for which there are no takers, the same could be allotted to officers / staff posted out of the station, for use by their families staying behind, on payment of normal license fees, subject to the condition that such allotment shall be made for one year at a time and during the annual review thereof, if any locally posted officer / staff evinces interest in getting such quarters, he shall get preference. The concerned Chief Commissioners / Directors General shall have the powers to allow such allotment / retention of accommodation to the officers / staff under their jurisdiction."

He also placed reliance on Government of India Notification

F. No. 213/1/96-Ad. VIII (EC) dated 19.1.1996, Paragraph Nos.

1 and 2 whereof, is produced hereunder :-

"1. I am directed to say that in a recent visit by Secretary (Rev.) to some Customs Preventive Stations in border areas, it has been observed that a majority of officials/officers posted there had to pay high rents for accommodation hired in the local charges. Moreover, they were also facing the uncertainty of vacating Govt.



accommodation in which their families were living in the list stating / place where they were earlier posted.

2. Considering the extreme conditions in which these people are working and the uncertain hours of duty in curtailing smuggling activities in the border, it is absolutely essential that the officers and staff either stay in the same building where their office is located or in the immediate vicinity. In view of the fact that it is impossible for them to live with their families in these localities area, it has been decided that an office-cum-residential accommodation may be procured at such places and no rent need to be charged from officers / staff. It has also been decided to meet the expenditure for this proposal from the fare Fund."

Going by the same, it appears that the view of the Government itself is that on posting to Custom Preventive Stations in Remote / Border Areas, they should be allowed to retain the departmental pool accommodation on payment of normal License Fee. Therefore, Kankroli, being a Custom Preventive Stations in Remote / Border Area, the applicant is entitled for retention of his residential quarter at Udaipur and, therefore, the impugned order is irrational, illogical and against the specific intent of the Government of India. Therefore, the Order Annex.A/1 and Annex. A/2, is hereby quashed and the O.A. is allowed as above. The following orders are issued :

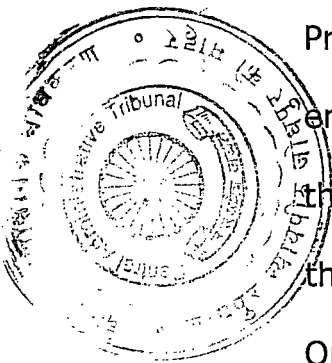
(i)The impugned orders at Annex. A/1 dated 5.3.2007 and Annex. A/2 dated 7.10.2008, are declared as illegal and against the specific intent and purpose of rules and thus quashed.

(ii)The amount which had been deducted from the pay of the applicant in pursuance to the impugned orders, shall be returned-back within a period of three months from the date of receipt of a copy of this order along with Interest @ 6% p.a. from the respective dates of such deduction.

(iii) No order as to costs.

(Dr.K.B.Suresh)JM

jrm



दिनांक 17/12/15 के आदेशानुसार
मेरी उपस्थिति में दिनांक 1/1/16
को बाल-II व III नष्ट किए गए।

अनुभव अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

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