

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 1420 of 97

Date of order : 30.5.92

Present : Hon'ble Ms. Meera Chibber, Judicial Member

DR. ASIT KUMAR MONDAL,
alias Dr. A.K. Mondal,
S/O Late Fatik Chandra Mondal,
Principal Scientist (since retired,
and formerly Officer-in-charge, Frog
Culture Division, Kalyani), Central
Institute of Freshwater Aquaculture (CIFA),
an establishment of the Indian Council
of Agricultural Research (ICAR) under the
Ministry of Agriculture, Govt. of India,
Krishi Bhawan, New Delhi, residing at
B-10/75, Diagonal Road (1), P.O. Kalyani,
Dist. - Nadia, West Bengal, Pin- 741235.

.... APPLICANT

-Versus-

1. The Union of India, through the Secretary, Ministry of Agriculture, Govt. of India, Krishi Bhawan, New Delhi - 1.
2. The President, Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi - 1.
3. The Director General, Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi - 1.
4. The Secretary, Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi - 1.
5. Dr. P. V. Dehdrai, formerly Dy. Director General (Fisheries), Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi - 1, and at present Officer-on Special Duty, ICAR publications Division, Krishi Anusandhan Bhawan, Pusa, New Delhi - 12.
6. Director, Central Institute of Freshwater Aquaculture (CIFA), P.O. - Kausalyagang, Bhubaneswar - 751002, Orissa.
7. Head of Office, Central Institute of Freshwater Aquaculture (CIFA), P.O. - Kausalyagang, Bhubaneswar - 2, Orissa.
8. The Director (Personnel), Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi - 1.
9. Dr. S. D. Tripathi, formerly Director, Central Institute of Freshwater Aquaculture (CIFA), Kausalyagang, at present working as Sr. Aquaculture Special

list and Officer-in-charge,
ICLARM, House No.20, Road No.9/A,
Dhanmandi R/A, Dhaka 1209, 
Bangladesh.

10. The Officer-in-charge, Hostel/Guest House, Central Institute of Freshwater Aquaculture, P.O.-Kausalyagang, Bhubaneswar - 751002, Orissa.
11. Sri M.Ranadhir, Principal Scientist, Central Institute of Freshwater Aquaculture (CIFA), P.O.-Kausalyagang, Bhubaneswar - 751002, Orissa.
12. Sri Ardhendu Kumar, Audit Officer, C/O Principal Director of Audits (Scientific Department), Office of the Comptroller & Auditor General of India, 16A,Brabourne Road, Calcutta - 700001.

.... RESPONDENTS

For the applicant : Mr. S. Moitra, counsel

For the respondents: Ms. K. Banerjee, counsel

O R D E R

In this application the applicant has sought for the following reliefs :

- a) The respondents may be directed to pay to the applicant the sum of Rs.34,000/- being the HRA for 34 months from January 1994 to October 1996 @ Rs.1000/- per month.
- b) Alternatively, the respondents may be directed to pay to the applicant the sum of Rs.8000/- towards HRA and also to pay Rs.26,000/- which has been kept withheld from payment;
- c) The respondents may be directed to pay to the applicant the sum of Rs.27,200/- being the rents of the tenancy premises at Kalyani for 34 months from January 1994 to October 1996 @ Rs.800/- per month, which the applicant was compelled to bear in as much as he was not allotted a residential quarter at Kausalyaganga despite demands;
- d) The respondents may be directed to reimburse to the applicant the sum of Rs.2722/- which the applicant had to pay for single-room accommodation with the strangers/others at CIFA Guest-House for the period from 29.12.93 to 31.10.96;
- e) The respondents may be directed to take steps and do the needful so that the sum of Rs.6734/- which has been deducted from the salary of the applicant on account of Income Tax and deposited with the Income Tax Officer, Salary Circle II, Bhubaneswar is refunded to the applicant;
- f) The respondents may be directed to take steps and do the needful so that the applicant is paid tax rebate of Rs.10,000/- (approx) on Rs.67,503/- paid as interest on House Building Advance;

g) The respondents No.5,7,9) and 11 may be directed to pay to the applicant the sum of Rs.1 lakh for harrasment, humiliation and for deliberately causing financial loss and damage to the applicant in the circumstances aforesaid;

h) The applicant may be awarded costs.

i) Such other relief or reliefs as the applicant may be entitled to.

2. At the outset it is relevant to point out that this case was taken up with the consent of both the counsel. On seeing the reliefs prayed for, the counsel ~~is~~ was informed that the reliefs sought at 8(e) and (f) did not flow from earlier prayers and are beyond the Tribunal's jurisdiction apart from being barred by Rule 10 of CAT Procedure Rules, 1987. The 1d. counsel for the applicant admitted that they be deleted. Similarly prayer at 8(g) also is beyond the powers of Tribunal and Tribunal cannot grant any damages for humiliation and harrasment. So the same is also deleted.

3. The grievance of the applicant in nutshell is that even though he is a very Sr. Principal Scientist ~~is~~ with the respondents, he was not allotted the type V Quarter at CIF A Headquarter after he was transferred from Kalyani to CIF A Headquarter on 23.12.93 as a result of which he had to bear the rent at Kalyani for his family members as they could not be taken to Headquarter for non-allottment of Quarter Type V and at Headquarter also though he stayed in one room Guest House he was not paid the HRA @ Rs.1000/- per month from November, 1994 to June, 1995 and even though when he was paid a sum of Rs.26,000/- on account of HRA from 1.1.94 to 31.10.94 and from 1.7.95 to 31.10.96 the same has been withheld on the ground of excess payment from his leave salary. Thus he is claiming all these amounts from the respondents. He has also claimed that he be reimbursed an amount of Rs.2722/- which he ~~is~~ was made to pay on account of staying in Guest House. The applicant had retired on 31.10.96.

4. The applicant has further alleged malafide against the Director of Kausalyagang Headquarter/ as he had challenged the Director's order retransferring him back to Kalyani which was quashed by the Cuttack Bench of CAT, the said Director was prejudiced against the applicant and it was in his behest that the applicant was humili-

liated and harassed by not providing him a Type V Quarter inspite of his being the Seniormost Principal Scientist and being entitled to be provided a Type V Quarter.

5. The respondents have contested the claim of the applicant by explaining that when the applicant joined Kaushalyaganga after his transfer, he was occupying a suit of rooms in CIFA Guest House and as per circular dated 18.9.90 the accommodation in the Guest House of an Institute can be given for a maximum period of 10 days. However the Director at his discretion may allow the use of Guest House for more than 10 days in case of ICAR employee on an official tour. It is further made clear that in case an employee violates the above norms he shall be charged a penal rent of Rs.50/- for A.C. Room and Rs.30/- for non-A.C.Room. The circular was issued in 1990 even before the applicant was transferred to Kaushalyaganga. Thus the question of malafide does not arise. It is stated by the respondents that the applicant himself violated these norms and forcibly stayed in the Guest House without taking the approval from the Director. Thus he was liable to pay the ~~penal~~ rent and there is no question of reimbursing the same.

6. As far as HRA is concerned the respondents have drawn my attention to another circular dated 19.10.94 (Annexure R/VI) wherein it was clearly mentioned that it is reiterated that the Council follows the instructions issued by the Govt. of India from time to time and according to Govt. instructions any official who is provided with Hostel/Guest House facility by the Institute is not entitled to draw HRA. On the other hand he is liable to pay the prescribed charges for use of Hostel and Guest House facilities. Hence HRA already paid in contravention of existing orders should be recovered from the concerned officers. This circular was issued from the Headquarter and was addressed to all the Directors/Project Directors. They have further invited my attention to the order dated 1.2.95 (Annexure R/VII) wherein the Headquarter had clarified that the Council's orders are meant for all the employees of the Institute

and further referred to letter dated 16.11.95 issued from the Headquarter to the Director CIF A stating that actions may be taken against Dr. A.K. Mondal as per Council's letter dated 1.2.95. Thus they say that the Director was bound by the instructions of Head-Quarter and the allegation of malafide is absolutely wrong and unsustainable.

7. As far as the allotment of Quarter Type V at CIF A is concerned, the respondents have explained that there are only 2 Type V Quarter at CIF A and as per ICAR Headquarter (Allotment of Residence) Rule, 1981 reservation has been provided for such persons as are required for upkeep of quarters of who may be required to attend official duties at odd hours or to officers appointed to managerial positions and Directors are authorised to frame or revise these rules vide ICAR letter dated 2.1.91. Accordingly CIF A framed the Allotment of Residence Rules, 1991 which provides for reservation under Rule 9 and Rule 9.4 provides for reservation of accommodation. It is stated that the applicant did not hold any of the posts as per Annexure I of the Allotment of Residence Rules, 1991 framed by CIF A.

8. It is further stated that one Type V Quarter was earmarked as Director's residence and the other was allotted long back in 1988 to be used as Ladies Hostel keeping in view the security and welfare of the lady employees & Research Scholars in this remote place and since this quarter is adjacent to office-cum-laboratory building, 12 ladies are occupying this Hostel since 1990. Moreover, Director is empowered under Rule 24 of the Allotment of Residence Rules, 1991 to allot the quarters in whatever manner he feels in view of the interest of Institute at large. Apart from it, it is stated that there were number of Sr. Pr. Scientists even before Sri Mondal joined CIF A, they all either took lower type quarters or made private arrangements outside in civil and claim HRA which was open to him also but he only wanted Type V quarter which could not be given to him due to the reasons explained above. Therefore it is his

own decision and since he was occupying one Guest House he would not be entitled to the HRA. As such recovery was ordered as per Head-quarter's clarification. They have thus stated that the OA is totally misconceived and is liable to be dismissed with costs.

9. I have seen the pleadings as well as relevant circulars and rules on the subject and am satisfied that the OA is totally misconceived and does not require any interference by me. It is seen that there ~~were~~ only two Type V quarters at Kausalyaganga, out of which one was earmarked for Director and the other was changed into a Ladies Hostel in 1988 itself i.e. much before the applicant had been transferred to Kausalyagang. Therefore the allegation of malafides is totally misconceived. Even otherwise if the applicant was aggrieved he should have challenged those orders. In the present OA the applicant has not challenged any order by which these houses were earmarked nor has he challenged the rules or circulars even though it is provided in the rules itself as explained by the respondents, that Director has the power to earmark the houses and allot the same in the larger interest of the Institute or as per Rule 9.4. Therefore the allegations of malafides is rejected. The applicant's counsel tried to argue that the Allotment of Residential Accommodation Rules at the Headquarter of Central Institute of Freshwater Aquaculture, 1991 are not valid as Director has no authority to make these rules but this contention is also not sustainable in law and cannot even be looked into as the Allotment of Residence Rules, 1991 are not challenged in the OA and as per Rule 9.4 the officers/personnel vix. Director will be given overriding priority in the allotment of residential quarters. Apart from it the respondents have indeed annexed the authority letter dated 2.1.91 (Annexure I) giving power to the Directors of Institute to frame/revise the Rules at Institutes. Therefore the submission is rejected.

10. Now the question arises whether the recovery of HRA and damages could have been deducted from applicant's due. The respondents have clearly stated that as per the circular if any person

lives in the Guest House beyond 10 days without taking the permission he is liable to pay the penal rent. In the instant case the applicant has admittedly stayed in the Guest House for more than 10 days, that too without taking permission from the competent authority. So naturally he is liable to pay the penal rent as per circular dated 18.9.90 (Annexure R/VI) and since he was using the Guest House facility, he would not be entitled to HRA as laid down by the Director, ICAR Headquarter and clarified by letter dated 1.2.95 (Annexure R/VII) and the Director had in fact sought clarification from the Headquarter as to what should be done in the case of Sri A.K.Mondal and it was the Headquarter who clarified that necessary action may be taken against the applicant as per clarification given in the letter dated 1.2.95. Therefore the recovery of HRA cannot be said to be illegal. Since the applicant was living in the Guest House, he would not be entitled to HRA.

11. The third point raised by the applicant was that since he was not allotted type V quarter at CIF A he could not stay with his family as a result of which he had to incur a rent of Rs.800/- at Kalyani also but here again the respondents could have hired a house at Kausalyagang and claimed his HRA as was being done by other employees or could have applied for a lower category as was being taken by other Principal Scientists. If the applicant did not take the right decisions, he cannot blame the respondents for same. The applicant's counsel has vehemently argued that he was made to live in one room even though he was entitled to Type V and VI but he is not realising when both the Type V quarters were earmarked, the applicant would not have got the same. He had other options which were not availed by him. Thus I find that there is no illegality in the actions of respondents and no case is made out by the applicant for interference by this Court.

12. The OA is accordingly dismissed with no order as to costs.


MEMBER (J)