

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No. 462 of 1990  
~~T.A. No.~~

DATE OF DECISION 26-3-1991

V Thankaraj Applicant (s)

M/s CP Ravindranath &  
EM Joseph Advocate for the Applicant (s)

Versus

Flag Officer Commanding-in- Chief, Southern Naval Command, Cochin & 4 others Respondent (s)

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s) 1 to 4

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant Shri V Thankaraj, working as Lascar in the Naval Ship Repair Yard has prayed in this application that the order dated 6.6.1990 issued by the second respondent directing him to vacate the Quarter No.B/5 in Dawson Vihar, Thykoodam as arbitrary and violative of the Allotment of Residences(Defence Pool Accommodation for Civilians in Defence Services) Rules, 1978 and for a declaration that he is eligible to be allotted the quarters which he is in occupation. The facts of the case as averred in the application are as follows.

2. On his application for allotment of residential accommodation Flat No.B-24 in Dawson Vihar was allotted to

the applicant. This flat happened to be in the sixth floor  
the  
of building. As the applicant had recently undergone a surgery  
having sustained injuries in a bus accident and <sup>as</sup> he had got  
rheumatic complaint, he found it very difficult to occupy the  
quarters situated at the sixth floor as very often the lift  
used to go out of order. Therefore he was awaiting the  
vacancy of a flat on the first floor or on the ground floor.  
While so Smt. AV Leela to whom flat No. B/5 on the first floor  
was allotted declining to occupy it. The applicant approached  
the office of the third respondent for allotment of the B/5  
quarter to him. The applicant was directed to contact the  
Estate Manager. On the applicant making a representation  
before the Estate Manager, the Estate Manager after obtaining  
an endorsement regarding the cancellation of the allotment of  
Smt. Leela, endorsed on the representation that the flat No.  
B/5 be allotted to the applicant. The applicant thereafter  
occupied the quarters on 11.5.1990 and the inventory of  
fittings on his taking charge of the quarters was taken by  
the Engineering Department. The water and energy meter readings  
were also taken. But subsequently the same quarter was allotted  
to the 5th respondent. Coming to know of this allotment, the  
applicant made a representation to the first respondent, the  
Flag Officer Commanding in Chief stating that the Estate  
Manager had already allotted the quarters to him, that he had  
occupied the quarters and that as he was suffering from  
injuries sustained in an accident and <sup>as</sup> his wife had undergone  
an operation, it would be a blessing if the applicant is allowed

to retain the B/5 quarters. But the second respondent has passed the impugned order at Annexure-D directing the applicant to vacate quarter No.B/5. The applicant prays that the above order being violative of the rules in regard to the allotment of quarters as he is entitled to a change of quarters, the impugned order may be quashed and the respondents be directed to allow him to retain the quarters.

3. On behalf of the respondents 1 to 4, one Chief Staff Officer(Personnel & Administration), Headquarters Southern Naval Command attached to the office of the Flag Officer Commanding-in-Chief has filed a statement stating that the occupation of the applicant of quarter No.B/5 while the quarters allotted to him was B-24 is unauthorised and that it was in these circumstances that the impugned order was passed. It has been stated that as per the rules, the authority competent to allot the quarters and to allow a change in the allotment is the first respondent and that as the Estate Manager has no authority to reallocate a quarter, the applicant cannot be said to be in lawful possession of B/5 quarters. It has also stated that the disciplinary proceedings have been initiated against the Estate Manager for his unauthorised action in reallocation of the quarters which is beyond the authority conferred on him.

4. The fifth respondent to whom the quarter No.B/5 was allotted presently occupied by the applicant has filed a statement stating that quarter No.B/16 had already been allotted to him, that he is satisfied with that, that he has no grievance in the applicant's continuance in the B/5 quarters and that it

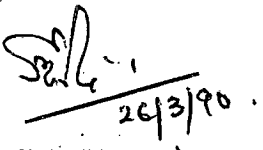
would be difficult for him if he is asked to change over to B/5 quarters.

5. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced. The learned counsel for the respondents 1 to 4 argued that the Estate Manager has no authority to <sup>effect</sup> ~~vacate~~ a change in the allotment of quarters, his action in allowing the applicant to change ~~into~~ quarters B/5 from B-24 is unauthorised and illegal, that by virtue of such a permission the applicant has not obtained any right to occupy that quarters and that therefore the impugned order directing him to vacate the quarters is perfectly valid and justified. The learned counsel for the applicant on the other hand argued that the administrative instructions regarding the competence of persons to allot or realLOT quarters <sup>having</sup> not been circulated among the staff, he was not aware that the Estate Manager has no authority to realLOT the quarters, that it was only at the direction of the second respondent that he approached the Estate Manager for a change of quarters to B/5 and that therefore the applicant's occupation of quarters B/5 cannot be termed as unlawful or illegal. The learned counsel invited our attention to the Annexure-A1 application submitted by him to the Estate Manager, the endorsement made by the Estate Manager therein and Annexure-A2, the inventory signed by him and the staff of Engineering Department at the time of taking over of the B/5 quarters and argued that these documents would show that the applicant had no intention of entering into a quarters which

he was not as per rules, entitled to occupy. Now that the fifth respondent has already been allotted quarters No.B/16 and as he is satisfied with that and as the applicant is occupying quarter No.B/5 which is of the same type as he is entitled to occupy the question involved in the case is to be settled more on humanitarian consideration and on grounds of equity rather than on strict interpretation of the rules. The learned counsel for the respondents 1 to 4 is right in pointing out that the authority competent to allot the quarters being the first respondent, the Estate Manager could not have validly reallocated the B/5 quarters to the applicant. It appears that the Estate Manager has transgressed the limits of his authority in allowing the B/5 quarters to the applicant. But the applicant being a sickly person suffering from injury sustained in an accident and his wife being subjected to a surgery recently, on compassionate grounds, the allotment of B/5 quarters to the applicant in the first floor can be justified. Therefore, though the allotment of the B/5 quarters to the applicant by the Estate Manager is not strictly in accordance with the rules, we are convinced that the interest of justice demands allowing the applicant to continue in that quarters. Though the impugned order cannot be termed as violative of the Allotment Rules, as stated by us earlier, we are convinced that on the ground of equity, the order has to be directed to be recalled.

6. In the conspectus of facts and circumstances, we allow the application and direct the respondents to recall the impugned order at Annexure-D and to allow the applicant to retain the quarters No.8/5 which he is presently in occupation. We make it clear that this cannot be treated as a precedent having been made in the peculiar circumstances of the case. There is no order as to costs.

  
( AV HARIDASAN )  
JUDICIAL MEMBER

  
( SP MUKERJI )  
VICE CHAIRMAN

26-3-1991

trs