

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 466 of 2006

Wednesday, this the 20th day of December, 2006.

CORAM :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

1. Mr. Amarnatha Shetty,
Chief Conservator of Forests,
Working Plan & Research,
Forest Headquarters, Thiruvananthapuram.
2. Mr. Lakhwinder Singh
Chief Conservator of Forests,
Northern Region, Mathottam, Kozhikode.
3. Mr. Nagesh Prabhu,
Conservator of Forests,
Eastern Circle, Aranya Bhavan, Palakkad.
4. Dr.B. Shivaraju,
Chief Conservator of Forests (IHRD),
PTP Nagar, Trivandrum.
5. Mr. Trivedi Babu,
Chief Conservator of Forests (Protection),
Forests Headquarters, Trivandrum. Applicants.

(By Advocate Mr. Elvin Peter P.J.)

versus

1. Union of India, represented by
The Secretary, Ministry of Environment & Forests ,
Government of India, Pariyavaran Bhavan,
New Delhi.



2. The Chief Secretary,
Govt. of Kerala, Government Secretariat,
Thiruvananthapuram.
3. The Principal Secretary,
Finance Department, Govt. of Kerala,
Secretariat, Thiruvananthapuram.
4. The Principal Secretary,
Public Works & Transport Deptt., Govt. of Kerala,
Secretariat, Thiruvananthapuram.
5. The Principal Chief Conservator of Forests,
Forest Headquarters, Thiruvananthapuram. ... Respondents.

(By Advocate Mr. M.P. Prakash, Special Govt. Pleader for R2-5 and
Ms. Mini R. Menon for R-1.)

(The Application having been heard on 7.12.06, this Tribunal
on 20.12.06 delivered the following) :

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The question involved in this case is whether order, relating to fixation of rent to the government quarters, of the Public Works Department, issued under the provisions of Rules relating to the allotment of Government Quarters, could be impliedly superseded by a Ministry of Finance Circular?

2. Brief facts of the case with terse sufficiency are given in the succeeding paragraphs.

3. Applicants are members of the Indian Forest Services borne in the Kerala Cadre. Some of them have been in possession of the Government quarters and some others would be allotted the Government Quarters of the State Government. By Annexure A-1 order dated 22-12-1989, passed by the Public Works Department (3rd respondents), rent is assessed to such quarters. This order had been issued in pursuance to the 1985 Pay Revision order (G.O. (P)515/85/Fin. Dated 16-09-1985), and the same inter alia states as under:-

"In the circumstances Government are pleased to order the fixation of rent, to be levied from the Class I Officers failing within and above the range of pay of Rs 2100 - 4200 (1985 pay revision) who are occupying Government quarters/flats specially constructed for Class I Officers, @ 8-1/2% of their basic pay. They will also surrender HRA. However, the rent at 8-1/2% of the basic pay and the HRA surrendered together shall not exceed Rs 1300 p.m."

Vide the last para of the aforesaid order, the rates of rent would be given effect to from 01-01-1990 (i.e. prospective effect).

4. This order is purported to have been issued under the powers vested with the said Public Works Department, vide Rule 3 of Annexure A-9 Rules. Rule 3(vii) defines "standard rent" as '***the rent fixed for quarters by the Public Works Department and got approved by Government on***



its capital cost and other aspects as laid down in the relevant rules issued in that behalf Rule 14(1) deals with Rent payable by the occupant of the quarters and the same shall be 7.5% of his pay in the revised scale or standard rent whichever is lower or the amount fixed in accordance with the rules in force from time to time. Rule 31 stipulates that the Government may, notwithstanding anything contained in these rules, in deserving cases, dispense with or relax the provisions of any rule to such extent or subject to such condition as they deem fit. Explanation No. 4 under Rule 14(1) states that the standard rent shall be fixed at 8% of the capital cost of the building.

5. The said order dated 22-12-1989 had not been modified even by 3rd June, 2000, vide Annexure A-2.

6. The State Government had issued a comprehensive order dated 25th November, 1998, relating to revision of pay scales of State Government officials, vide Annexure A-10. Rule 44 thereof provides that the revised scales of pay and other benefits sanctioned in that order will be applicable to all State Government employment, Aided School and Private college staff including those employed in Private Polytechnics and also employees of local bodies. Para 12 thereof deals with Rent Recoveries from Government employees residing in Government Quarters.



**"12. RENT RECOVERY FROM GOVERNMENT EMPLOYEES
RESIDING IN GOVERNMENT QUARTERS :**

		<u>Existing Rate</u>	<u>Revised Rate</u>
i)	Those who draw the scale of pay between Rs. 2610-3680 and Rs. 2750-4625	5.5% of Basic pay	2 %
ii)	Those who draw the scale of pay from Rs. 3050-5230 but below Rs. 6500-10550	6% of basic pay	2.5 %
iii)	Those who draw the scale of pay from Rs. 6500-10550 but below Rs. 7800-12975	7% of basic pay	3 %
iv)	Those of and above the scale of pay of Rs. 7800-12975	8.5 % of basic pay "	4 %

7. The date of effect of the above order vide para 38 is 01-11-1998.

8. Again, Annexure A-11 is Finance (PRC-C) Department's order dated 25th March, 2006 issued in pursuance of the latest Pay Commission recommendation. Rule 41 deals with the applicability and according to the same, the revised scales of pay and other benefits, sanctioned in that order will be applicable to all State Government employees , staff of aided schools, colleges and polytechnics(excluding those covered by UGC/AICTE scales of pay ..

9. Rule 15 deals with rent recovery and the same states as under:-

"Rent Recovery:

15. With effect from the date of coming over to the revised scale, rent at the following rates will be recovered from Government employees residing in Government Quarters:

SL No.	Range	Rate
(i)	Those who draw pay in the scale of pay between Rs.- 5930 and Rs. 10790-18000 and other categories who are specifically exempted (eg. Judicial Officers)	Nil
(ii)	Those who draw pay in the scale of pay from Rs.11070-18450 but below Rs. 16650-23200	2% of basic pay
(iii)	Those of and above the scale of pay of Rs. 16650-23200	4% of basic pay

Note:-

- (1) Basic pay for the purpose of this clause will include personal pay, dearness pay and special pay.
- (2) In the case of employees who remain on pre-revised scales of pay beyond 1.3.2006, the corresponding revised scale in respect of the post will be taken into account to determine rent to be recovered.
- (3) For those who are not on State Government scales of pay (e.g. AIS Officers, those on UGC/AICTE scale etc.) existing orders and rates will continue."

10. The date of effect of the above order vide para 53 is from 01.07.2004.

11. In pursuance of the afore said order dated 25-11-1998 (Annexure A-10), the Ministry of Finance had issued the impugned order, which was issued under "by order of the Governor" and authenticated by the Chief Secretary, and the same reads as under:-



"GOVERNMENT OF KERALA

Finance (Pay Revision Cell-C) Department

C I R C U L A R

No. 17/2005/Fin. Dated, Thiruvananthapuram 13th April, 2005

Sub: Government quarters occupied by AIS Officers - Rate of rent recovery - clarification issued.

Ref: 1. G.O.(Ms.)No.20/88/PW&T dated 30.3.1998
 2. G.O.(Ms.)No.127/89/PW&T dated 22.12.1989
 3. G.O.(Ms.)No.4/95/F & WLD dated 17.2.1995
 4. G.O.(P)No.3000/98/Fin. dated 25.11.1998
 5. Circular No. 46/04/Fin. Dated 28.7.2004
 6. Office Memorandum F.No.105/1/2004-IC GOI,
 Ministry of Finance dated 1.3.2004
 7. Letter No. 87269/SPL.C2/04/GAD dated 15.12.2004

In the Government order read as first paper above orders were issued for rent recovery at percentage rates of basic pay based on the Government of India pattern w.e.f. 1.4.1988. Later, in the Government order read as second paper above, orders were issued for fixation of rent in respect of Class I Officers w.e.f. 1.1.1990 prescribing rent @ 8 1/2 % of basic pay subject to the condition that the rent @ 8 1/2 % of basic pay and the H.R.A. surrendered together shall not exceed Rs. 1300 per month. Since the then H.R.A. For All India Service Officers was Rs. 1000 in Trivandrum, the rent effectively was only Rs. 300 per month. The above limit was related to the 1983 pay revision orders, but it was not revised on the basis of subsequent pay revision orders (1988, 1992). In the Government orders read as third paper above, rules for allotment and occupation of Quarters under the control of Forest Department were issued by the Government.

2. In the Government order read as fourth paper above (Pay Revision orders), Government have revised the rate of rent recovery from the employees occupying Government quarters w.e.f. 1.11.1998 without prescribing any maximum limit for rent recovery. Under para 12 of the above cited Government order, the revised rate of rent (for those of and,



above the scale of pay of Rs. 7800-12975) is 4% of basic pay. Thus, for quarters occupied by the All India Service Officers also, the rent is 4% of the basic pay. This continues till date.

3. The General Administration (Special) Department vide their letter cited above has informed that the G.O. (Ms.) No. 127/89/PW & T dated 22.12.1989 has ceased to be in operation in the light of the revised rates prescribed in G.O. (P) No.3000/98/Fin. Dated 25.11.1998 and that the rent fixed in Government order dated 25.11.1998 is applicable to the AIS Officers also.

4. The Government of India vide its Office memorandum cited 6 above, have clarified that Dearness Pay (50% DA merged with the basic pay with effect from 1.4.2004) would be counted for license fee. (License fee is the term used for rent recovered from the Government employees residing in Central Government quarters). Accordingly, it is clarified that the rent for accommodation provided by the Government to All India Service Officers with effect from 1.4.2004 shall be 4% of basic pay plus dearness pay, without any limit.

5. The Accountant General has reported that several All India Service Officers are continuing to pay Rs. 300 per month as rent, even now, which is quite irregular. The Accountant General has suggested recovery of back arrears as well.

6. In the circular dated 28.7.2004, directions have been issued to all Heads of Departments/Offices to ensure rent recovery on the basis of orders contained in G.O.(P) No. 3000/98/Fin. Dated 25.11.1998.

7. It is, therefore, clarified that w.e.f. 1.11.1998 the provisions contained in para 12 of G.O.(P) No.3000/98/Fin. Dated 25.11.1998 are applicable to the All India Service Officers occupying Government quarters. The rent payable is 4% of basic pay without any upper limit. The instructions contained in the Office Memorandum of the Ministry of Finance, Government of India are also applicable to the All India Service and other officers, whose D.A. has been merged with the basic pay with effect from 1.4.2004. Thus, from 1.4.2004 the rent payable will be 4% of the basic pay, plus dearness pay, without any limit. All officers concerned shall immediately



start paying the rent on the lines indicated above. They shall also pay up the arrears at the earliest."

12. As the aforesaid order, according to the applicants, tinkers with the rate of rent payable by the applicants in variance with the Annexure A-1 order, they had moved Annexure A-5 and A-6 representations questioning the validity of Annexure A-4 order in so far as it varies in respect of rent recoverable from the applicants from the Annexure A-1 order but their representations were rejected by Annexure A-7 order. By Annexure A-8 order, the Chief Conservator of Forests had advised all the Conservators of Forest to realise the rent from those in occupation of the Government quarters, vide Annexure A-8. Thus, Annexure A-4, A-7 and A-8 are under attack.

13. Respondents have contested the O.A. According to them, when Annexure A-1 order had been issued in the wake of the revision of pay scale effected in 1985, the same ceased to exist once the pay scales were revised and the impugned Annexure A-4 circular has been passed, consciously, giving full reference to the Annexure A-1 order, vide para 1 of the said circular dated 25-11-1998.

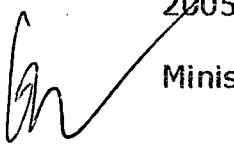
14. Yet another point contended by the respondents, vide para 13 of the counter is as under:-



"13. The pay revision order dated 25.11.1998 (which actually amended/nullified the earlier rent recovery order of the PWD) has been issued with the approval of the Council of Ministers. It has the full authority of the Govt. and applies to all Departments including PWD, Forests, etc. The clarificatory circular dated 13.4.2005 has been issued under the signature of the Chief Secretary, who is the Secretary to the Council of Ministers and is also directly in charge of all Departments in Government, including PWD and Forests Department."

15. The applicant had filed his rejoinder and the respondents, additional counter.

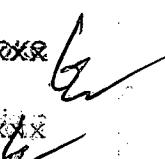
16. The counsel for the applicant referred to the provisions of Annexure A-1 which, according to him, had been passed under the powers vested with the Public Works Department vide the 1995 rules of allotment and occupation of Quarters under the Kerala Forest Department. With particular reference to rule 3(viii) he had assertively argued that the only department which could fix the standard rent is the said Public Works Department and none else could enjoy the power of fixation of standard rent. He had also submitted that Annexure A-1 order dated 22-12-1989 passed by the Public Works Department has not been amended at least till 2000 vide Annexure A-3 order dated 03-06-2000 and hence, the impugned order dated 13th April 2005 and in particular para 7 thereof cannot be held legally valid as the Ministry of Finance cannot have the power to pass orders in respect of that

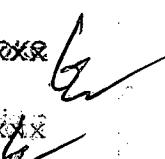


subject which is within the exclusive domain of another department.

17. On the other hand, the counsel for the respondents argued that Annexure A-4 impugned order has been passed "on behalf of the Governor" and had been issued by the Chief Secretary, who is Secretary to the Council of Ministers and who is also directly in charge of all the Departments in Government, including PWD and Forests Dept. He has further contended that in so far as allocation of business rules are concerned, the same are in the nature of directory and not mandatory. In this regard he had invited our attention to para 20 of the judgment of the Apex Court in the case of Crawford Bayley & Co. v. Union of India, (2006) 6 SCC 25, which reads as under:

"Though the Division Bench dealt with this aspect exhaustively in its judgment and held that the provisions of the Business Rules are not mandatory and will not vitiate the appointment, we fully agree that the Rules of Business are administrative in nature for governance of its business of the Government of India framed under Article 77 of the Constitution of India."

18. Arguments were heard and documents perused. True, that the Rules on allotment of Government Quarters vide Annexure A-9 defines standard rent and confers the power to fix standard rent upon the Public Works Department. And in the wake of the 1985 pay Revision, the PWD did ~~xxxxxx~~ pass even prior to the 1995 Rules, the ~~xxxxxxxxxxxxxx~~ 

order dated 22-12-1989, as extracted in para 3 above. Admittedly, the said order dated 22-12-1989 was not amended till at least 2000 as could be evidenced by Annexure A-3 letter. The said order obviously had been passed in pursuance of pay revision at the material point of time. As regards rent to be levied, G.O. (Ms) No. 20/88/PW&T dated 30-03-88 provided for rent to be levied from those officers whose scales of pay will within the range of Rs. 550 - 2950 (1985 revision) and as per the very order, it was ordered that separate orders would be issued in regard to all Class I officers on and above the scale of pay of Rs. 2100-4200. That is how, a separate order came to be issued for all Class I officers vide Annexure A-1 and provisions of that order governed the case of the applicants herein. Vide note (3) appended to para 15 of Annexure A 11 order dated 25th March, 2006, existing orders and rates of rent would continue in so far as those who are not on State Government Scales of pay (e.g. AIS officers, those on UGC/AICTE scale etc.,). Since the order dated 22-12-1989 had not been amended or rescinded, according to the applicants, it is this order (i.e. Annexure A-1, that is the 'existing order' within the meaning of note 3 of Annexure A11 order dated 25-03-2006, whereas, according to the respondents, by virtue of clarificatory circular dated 13th April, 2005, it is that order that would govern the rent payable by the AIS Officers occupying the State Government houses. As per this order, order dated 25th November, 1998 (Annexure A-10), in particular para 12 thereof would be the "existing order" in regard to rent payable by AIS Officers. The question



is whether the respondents are right in so holding, when the order dated 25th November, 1998 was not passed by the Public Works Department, as was the case when the rent was revised in the wake of the 1985 pay revision.

19. The Rules which regulate payment of standard rent were promulgated in 1995. It was under these rules that powers were vested with the PWD to fix standard rent. Pay revision for the State Government officials was in 1998 vide Ammexure A-10 order dated 25th November, 1998. This order has neither referred to the earlier order of the PWD (Annexure A-1) which stipulated the rent payable by Class I officers, nor did it refer to the relevant Rule promulgated in 1995. Yet, the impugned order dated 13th April, 2005 stipulated that order dated 25th November, 1998 would apply to All India Service Officers also in so far as rent payable is concerned. This order states that w.e.f. 01-11-1998 para 12 of the order dated 25-11-1998 (Annexure A-10) would be applicable to A.I.S. Officers in respect of rent payable. And, this order passed as many as 7 years later than the earlier order dated 25th November, 1998 has been issued as a "clarificatory order", vide para 7 thereof. First of all, when PWD is the authority to pass orders relating to standard rent, if the authorities desired that any other authority than the PWD could pass orders relating to payment of rent, then relevant provisions of the 1995 Rules should have been suitably amended. Keeping that provision intact, no authority than the PWD could pass any order relating to



standard rent. Order dated 25th November, 1998 was passed by the Secretary (Finance) and as stated earlier, that order did not refer to the earlier order dated 22-12-1989 or the 1995 Rules. Since specific stipulation has been made in the Rules that it is within the PWD which shall formulate the standard rent, order in regard to standard rent by any other authority would impliedly mean that the said provisions of the Rules have been modified. Admittedly, the PWD has not revised its earlier order and it is the Ministry of Finance which has issued the impugned order, stating that the order passed by the PWD ceased to exist. As such, if the impugned order be treated as valid in so far it gives retrospective effect with regard to rent payable by AIS officers, that would mean that an executive instruction overrides the provisions of Rules. This is impermissible. In the case of ***I.C.A.R. v. Satish Kumar, (1998) 4 SCC 219, the Apex Court has held,*** "By amending the provision of law retrospective operation could be given to the Rules. However, retrospective operation of service rules could not be given by mere executive instructions."

20. If as per the above dictum of the Apex Court, retrospective operation of an executive order is impermissible, the question that arises for consideration is whether prospective effect could be permitted. Answer to this question would be in affirmative subject to the condition that both the orders should relate to the same subject and should have been issued under the same authority, in which event, the latter order would impliedly



supersede the earlier order. In this regard, it is appropriate to refer to the decision of the Apex Court in the case of **Union of India v. Diljeet Singh, (1999) 2 SCC 672**, wherein the Apex Court has held as under:

"It is true that where a subsequent order does not specifically supersede an earlier order but if both the orders relate to the same subject and are issued in exercise of the same power, statutory or otherwise, notwithstanding the absence of specific words superseding earlier orders in the subsequent order, it can be inferred that the earlier notification has been impliedly superseded. But where the earlier order is a statutory notification and the subsequent order is not a statutory notification/order but is merely an executive order; such an inference cannot be drawn as a non-statutory order cannot replace a statutory notification even if it purports to do so specifically though a statutory notification can substitute a non-statutory notification/order".

21. In the instant case, three orders are involved. One is order dated 22.12.1989, conforming to the Rules, which had been issued under the seal and hand of the Secretary and Commissioner, Public Works Department and the same related fixation of rent; another is order dated 25th November, 1998 issued by the Secretary (Finance) which mainly revolved round pay scales and rent aspect was only a satellite subject, while Annexure A-4 circular, making the order dated 25-11-1998 applicable with retrospective effect to the AIS officers in so far as rent is concerned, has been issued by order of the Governor of Kerala and authenticated by the Chief Secretary. The latter order makes the earlier order dated 22-12-1989 superseded, with retrospective effect, vide para 3 and 7 thereof. If this order dated 13th April, 2005 (Annexure A-5) has to supersede the earlier order dated 22-12-



1989, then it should be self contained and should not be dependent upon any other order. Instead, if it 'clarifies' that the order dated 25-11-1998 passed by the Secretary (Finance) would make the order dated 22-12-1989 superseded, then it would amount to the Secretary (Finance) order having the authority to nullify the order of PWD, while Rules do not confer this power to Secretary (Finance). Thus, there would have been no illegality in the order dated 13-04-2005 (Annexure A-4) provided the same is made prospective, in which event, it is the Governor who had nullified the order dated 22-12-1989 and the same is within the authority of the Governor. Since this order had been issued under the seal of Governor, it may supersede but not the order dated 25th November, 1998 which was not so issued by the Governor. Giving retrospective effect to the order dated 13th April, 2005, is thus illegal. Of course, the said order has prospective effect.

22. In view of the above, the OA is partly allowed. It is declared that the impugned order dated 13th April, 2005 is valid in so far as it states that para 12 of G.O. Dated 25-11-1998 would govern the payment of rent in respect of AIS officers holding state Government accommodation, but the said order would be effective only from 13th April, 2005 and not w.e.f. 01-11-1998 as contained in para 7 thereof. Respondents are, therefore, restrained from charging rent from the applicants and similarly situated AIS officers as per order dated 25-11-1998 from 01-11-1998 but are at their liberty to charge rent at the rates provided in para 12 of order dated 25-11-1998 with effect



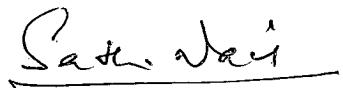
from 13th April, 2005.

23. Under the circumstances, there shall be no orders as to costs.

(Dated, the 20th December, 2006)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

cvr.