

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.474/05

Thursday this the 7<sup>th</sup> day of June 2007

**C O R A M :**

**HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE MR.GAUTAM RAY, ADMINISTRATIVE MEMBER**

S.Sambasivan,  
S/o.Subbayya Pillai,  
Sr.Trackman, Southern Railway,  
O/o.the Senior Section Engineer/  
Permanent Way/West, Karur.  
Residing at South Street,  
Unjalur Post, Erode District – 638 152.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

**Versus**

1. Union of India represented by the General Manager,  
Southern Railway, Headquarters Office,  
Park Town P.O., Chennai – 3.
2. The Senior Divisional Personnel Officer,  
Southern Railway, Palghat Division, Palghat. ...Respondents

(By Advocate Mrs.Sumathi Dandapani, Sr. & Ms.P.K.Nandini)

This application having been heard on 7<sup>th</sup> June 2007 the Tribunal on the same day delivered the following :-

**ORDER**

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

The case relates to reduction in the pay of the applicant from anterior period dating back to 1.1.1993 and also recovery of the so called excess payment. When the matter came up for consideration, counsel for the applicant produced order dated 28<sup>th</sup> March 2005 in O.A.825/02, O.A.820/02 and O.A.829/02. It dealt with an identical case in which the following orders were passed :-

"3. When the matter came up for hearing, Shri.T.C.Govindaswamy appeared for the applicants and Shri.P.Haridas and Smt.Sumathi Dandapani appeared for the respondents. Learned counsel for the applicants submitted that an identical issue has been decided by this Bench of the Tribunal in O.A.1396/99 and vide its order dated 19.4.2002 the Tribunal has in paragraphs 12 & 13 observed as follows :-

"12 The Govt. servants' right to salary and allowances, pay fixation etc. are governed by rules. Just because it had been fixed at some point of time erroneously that by itself would not give any right to the Government servant to seek a direction from this Tribunal to continue to protect the said pay. Respondents had justified their action on the basis of the rules governing the pay fixation. This had not been contested by the applicants on the basis of any rules. In this view of the matter we are unable to find any infirmity in Annexure A-6 series orders issued by the respondent. Having said so, we note that the applicants were in no way responsible for their erroneous pay fixation made in 1988. The respondents detected the mistake after considerable delay and issued finally the orders refixing the pay of the applicants retrospectively with effect from 10.7.1988 on 28.5.1999 (A-6 series). This would involve recovery of over payments made to the applicants. Considering the fact that the applicants were in no way responsible for the wrong fixation of pay of the applicants and the fact that the same would cause hardship to the applicants we direct the respondents not to make any recovery of the over-payments made to the applicants upto 28.5.1999.

13 We have gone through the order of this Tribunal in O.A.217/99. We are of the view that the facts in that case are identical with the facts in this O.A. We find that in that O.A there was no order similar to the order issued by this Tribunal in O.A.1019/96 which specifically authorised the respondents to take action in accordance with law."

4. Learned counsel for the applicants submitted that he has no objection if a similar order is passed in this case also. Learned counsel for the respondents submitted that the matter is pending before the Hon'ble High Court of Kerala.

5. In the light of the submissions made by the learned counsel on either side we are of the view that the relief that has been granted in the said O.A can be extended to these applicants as well with a rider that no recovery be made upto the date of impugned orders and will be subject to the outcome of the High Court's order as mentioned above. The O.A. is disposed of accordingly. In the circumstances, no order as to costs."

.3.

2. As in the above case, in the present case as well the learned counsel for the applicant submitted that he has no objection if a similar order is passed in this case also. Learned counsel for the respondents also has no such objection and submitted that the decision of the Hon'ble High Court in the above case shall bind this case as well. Taking judicial note of the submissions made this O.A is disposed of with a direction to the respondents to adopt the same decision as in the above case and no recovery as in the above matter shall be effected. The O.A is disposed of.

(Dated the 7<sup>th</sup> day of June 2007)



**GAUTAM RAY**  
**ADMINISTRATIVE MEMBER**

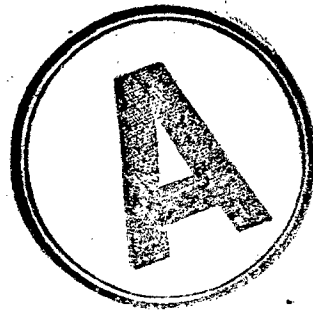


**K.B.S. RAJAN**  
**JUDICIAL MEMBER**

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CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH



O.A.475/05  
AND CPC 34/05 IN OA 475/05

..... MONDAY.. THIS THE 23<sup>rd</sup> DAY OF JANUARY, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

O.A 475/05:

Tom Joseph, aged 32 years  
S/o John Joseph, Section Officer,  
Office of the Defence Pension Disbursement Officer,  
Perumanoor, Thevara, Kochi  
residing at DAD Quarters  
Type III P-4-C, Palluruthy  
Kochi.

...Applicant

(By Advocate Mr.TC Govindaswamy)

V

- 1 Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Defence  
New Delhi.
- 2 The Principal Controller of Defence Accounts  
(Navy), Cooperage Road,  
Mumbai.39.
- 3 Assistant Controller of Defence Accounts,  
Defence Accounts (Navy)  
Office of the Joint Controller of Defence Accounts,  
Perumanoor, Thevara Kochi.
- 4 The Accounts Officer,  
Area Accounts Office (Navy)  
Office of the Joint Controller of Defence Accounts  
Perumanoor, Thevara, Kochi.
- 5 Assistant Accounts Officer  
Defence Pension Disbursing Office)  
Perumanoor, Thevara, Kochi.
- 6 Shri P.K.Omanakuttan,  
Assistant Accounts Officer

Area Accounts Office (Navy)  
 Assistant Controller of Defence Accounts(Navy)  
 Perumanoor, Thevara,  
 Cochin. .... Respondents  
 (R.6 impleaded vide order dated 11.8.2005)

(By Advocate Mr.TPM Ibrahim Khan, SCGSC for R.,1to5  
 R.6 party in person)

**C.P(C) No.34/05:**

Tom Joseph, aged 32 years  
 S/o John Joseph, Section Officer,  
 Office of the Defence Pension Disbursement Officer,  
 Perumanoor, Thevara, Kochi  
 residing at DAD Quarters  
 Type III P-4-C, Palluruthy  
 Kochi. ...Petitioner

(By Advocate Mr.TC Govindaswamy)

V.

- 1 Shri R.K.Sharma,  
 The Principal Controller of Defence Accounts (Navy)  
 Cooperage Road, Mumbai.39.
- 2 Shri Viswanath  
 The Assistant Controller of Defence Accounts (Navy)  
 Perumanoor, Thevara, Kochi.
- 3 Shri P.S.N.Murthy,  
 The Joint Controller of Defence Accounts(Navy)  
 Perumanoor, Thevara, Kochi. .... Respondents

(By advocate Mr. TPM Ibrahim Khan, SCGSC)

The Original Application and Contempt Petition (Civil) having been heard together on 15.12.2005, the Tribunal on 23. 1.2006 delivered the following:

**ORDER**

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has filed the present OA seeking allotment of quarter No.C.9 at DAD Residential Complex, Thevara, Perumanoor, Kochi in preference to the 6<sup>th</sup> respondent and to direct the second respondent to allot the said quarter to him.

2 The facts of the case in brief are that the applicant is working as a Section Officer in the office of the 5<sup>th</sup> respondent, namely, the Assistant Accounts Officer, Defence Pension Disbursing Office, Perumanoor, Thevara, Kochi. He joined the present office on 12.4.04 on transfer from Bangalore. Immediately on joining he made an application for allotment of a government accommodation and accordingly he was allotted Quarter No. Type III P.4.C Palluruthy, Kochi on 1.6.04.

3 In matters of allotment of Defence Accounts Department (DAD) Pool Accommodation the applicant is governed by the Allotment of Government Residences (Defence Accounts Department Pool) Rules 1986 and Rule 7(1) and Rule 13 thereof are relevant in this case. Rule 7(1) provides as under:

*"Save as otherwise provided in these rules, a residence falling vacant will be allotted by the Allotting Authority preferably to an applicant desiring a change of accommodation in that type under the provisions of Rule 13 and if not required, for that purpose, to an applicant without accommodation in that type, having the earliest priority date for that type of residence, subject to certain conditions.*

The provisions contained in Rule 13 is as under:

*"(1) An officer to whom a residence has been allotted under these rules may apply for a change to another residence of the same type or a residence of the type to which he is eligible under Rule 5, whichever is lower. Not more than one change shall be allowed in respect of one type of residence allotted to the officer.*

*(2) Applications for change made in the form prescribed by the Allotting Authority shall be received quarterly by 15<sup>th</sup> March, 15<sup>th</sup> June, 15<sup>th</sup> September, and 15<sup>th</sup> December, and shall be included in the waiting list in the succeeding month. For purposes of this rule, the officers whose names are included in the waiting list in an earlier quarter shall be seniors in block to those whose names are included in the list in subsequent quarters. The inter-se seniority of the officers included in the list in any particular quarter shall be determined in the order of their priority dates.*

*(3) Changes shall be offered in order of seniority determined in accordance with sub rule (2) and having regard to the officer's preference as far as possible.*

*PROVIDED that no change of residence shall be allowed during a period of six month immediately preceding th date of superannuation.*

In terms of the aforesaid rules, he applied for change to a DAD residential quarter at Perumanoor (Thevara) vide his Annexure.A3 application dated 9.6.04 addressed to the 4<sup>th</sup> respondent, namely, the Accounts Officer, Area Accounts Office, (Navy), Office of the Joint Controller of Defence Accounts, Perumanoor, Thevara, Kochi. Without assigning any reason the 2<sup>nd</sup> Respondent, namely, the Principal Controller of Defence Accounts, (Navy), Cooperage Road, Mumbai.39 rejected his request after two moths on 9.8.2004 and the 4<sup>th</sup> Respondent conveyed it to him vide Annexure.A4 letter dated 13.8.04. According to the applicant, at the material time, quarter No.C.7 Thevara was lying vacant from 1.7.04 and the same could have been allotted to him, had his name been duly waitlisted in terms of Rule 13(2) (ibid). Thereafter, quarter No.C.9 fell vacant on 1.9.04 and Quarters C.19 and C.23 fell vacant on 12.9.04 and 24.12.04 respectively. Arbitrarily rejecting the applicant's request for allotment in change and contrary to Rule 7 referred to above, the respondents had allotted those quarters as fresh allotments to others. The applicant once again submitted Annexure. A5 application dated 14.9.04 stating that his wife was undergoing treatment at Cochin Hospital near Thevara and it would be convenient for him, if an allotment is made to him at the earliest at Thevara. The Respondnet No.2 took nearly four months again even to respond to the said request of the Applicant. The Respondent No.4 vide his letter dated 3.1.05 directed him to produce the medical certificate to prove that his wife is under treatment. The applicant vide Annexure.A6 letter dated 20.1.05 informed

the respondent No.4 that for allotment of accommodation in change under Rule 7 referred to above, production of medical certificate is not necessary and his wife had already undergone the treatment in November, 2004 in the said hospital and no certificate can be produced now for that period. The respondents 2&4 after another 5 months issued the impugned A.1 letter dated 7.6.05 rejecting his request for non-production of relevant medical certificate in support of his wife's medical treatment. The applicant has alleged that Annexure.A1 order was hurriedly issued to deny him his claim for the allotment of quarter No.C.9, Thevara. which had fallen vacant on 1.6.05.

4 The applicant, therefore, sought an interim relief in the OA to restrain the respondents from allotting the said quarter No.9-C at DAD Residential Complex, Thevara, to any other persons, till the disposal of the OA. When the matter came up for hearing on 23.6.05 Shri TPM Ibrahim Khan, SCGSC appeared on behalf of the respondents. On the assurance of the learned SCGSC that no action will be taken to allot the said quarter to any one else, if it has not already been allotted so far, no restraint order as sought by the applicant was passed and the case was adjourned to 28.6.05. Again on 28.6.05 the learned SCGSC sought further time to get instructions from the department in the matter and the case was posted for 29.6.05. When the matter came up on 29.6.05 the learned SCGSC sought further two weeks' time to file a statement on behalf of the respondents and again assured that no action will be taken to allot the quarter in question as already undertaken by him on 23.6.05 and the case has been adjourned to 18.7.05. The applicant has submitted that notwithstanding the aforesaid assurance of the learned SCGSC on the previous two occasions, the quarter was allotted to the 6<sup>th</sup> respondent, namely, one Shri P.K.Omanakuttan, Assistant Accounts Officer. The explanation given by the



Respondent No.3 was that the Senior Central Government Standing Counsel did not intimate the undertaking given by him in the court to the Respondents since the file relating to the case happened to be misplaced. In the absence of any intimation, the quarter No.C.9 at Thevara was allotted to the 6<sup>th</sup> Respondent and he occupied it on 27.6.05. The Applicant had filed CP (C)34/05 in this regard and the same will be dealt with separately in this order.

5 The respondent No.3 filed a reply to the OA. He stated that the request of the applicant for change of allotment was not granted by the competent authority. However, the application for fresh allotment made by one Smt.T.Sakunthala, Sr.Auditor was considered on extreme compassionate grounds due to demise of her husband who was occupying the quarter at Cochin Port Trust accommodation. Similarly Shri T.C.Jacob, AO, DPDO, Ernakulam and Smt.Sobha Mohan, Sr. Auditor, Area Accounts Office, Ernakulam have also been given fresh allotments in Thevara area as they were not in occupation of any other quarter. As regards the request of the 6<sup>th</sup> respondent Shri P.K.Omanakuttan, the 3rd respondent has submitted that his application for change was considered on merits and it was allowed and the decision to allot him the accommodation in question was communicated on 22.6.05 and he occupied it on 27.6.05. According to the respondents, decision to reject the request of the applicant for change of allotment was based on material facts available with the Estate Officer on the date of consideration and it was not arbitrary and discriminatory and the said order was arrived at after due application of mind.

6 The 6<sup>th</sup> Respondent has also filed his reply. He submitted his application dated 24.5.2005 for change and the same was allowed by 2nd

Respondent and Quarter No.C-9, Thevara was allotted to him and the same was occupied by him on 27.6.2005.

7 The applicant in his rejoinder has pointed out that there was no reason why the competent authority could overlook his priority and allotted the quarter to Shri Omanakuttan. According to him, extraneous considerations and ulterior motives were patent in the allotment made to Shri Omanakuttan overlooking his claim and the allotments made to others.

8 We have heard both parties and considered the pleadings. We have also examined the relevant rules. The rule position is very clear. Under Rule 7 of the Allotment of Government Residences (Defence Accounts Pool) Rule 1986, the Applicant was entitled for seeking change of accommodation and the allotting authority was expected to allot an accommodation in change subject only to the three conditions mentioned in the said Rule. Rule 13 (1) also entitles an officer to whom a residence has been allotted under these Rules to apply for change to another residence of the same type or a residence of the type to which he is eligible. Under Rule 13(2) such applications are to be wait-listed in the manner provided in the said Rules.

9 From the above rule position, it is seen that no reason is required to be shown by an officer for change of allotment to another residence of the same type or a residence of the type to which he is eligible. Rule 13(2) mandates the respondents to prepare a waiting list of the applications for change received on quarterly basis by 15th March, 15<sup>th</sup> June, 15<sup>th</sup> September and 15<sup>th</sup> December respectively. Under the said rules the Annexure.A3 application dated 9.6.04 submitted by the Applicant for change should have been wait-listed for the quarter beginning 16<sup>th</sup> March as it had fulfilled the conditions prescribed in Rule 7 (ibid). In the present case, the Respondent No.2. ie., the Principal Controller

of Defence Accounts (Navy), Cooperage Road, Mumbai, instead of following the aforesaid rule, asked the Applicant to furnish reasons for seeking such a change. The applicant has submitted that he was seeking the change on the health grounds of his wife. Then the Respondent No.2 not satisfied with the reasons given by the Applicant, in an arbitrary and illegal manner directed him to submit a medical certificate in respect of his wife to consider his request for change of allotment. The applicant has informed the Respondent No.2 that his wife's treatment was over and that it is not necessary under the Rules to provide any medical certificate or show any reason for seeking change of accommodation. On the other hand the 6<sup>th</sup> respondent who had his original allotment in Palluruthy where the Applicant also has been residing, requested for a change of accommodation from Palluruthy to Thevara vide an application dated 24.5.05. . He was originally allotted quarter No.P4/5 Type III at Palluruthy. His request was on the ground that he was facing traffic problem in daily commuting between office and quarter which is 7.2 Km, and he had to cross two bridges and a railway gate. He has given the further reason that his son was studying in KV No.1 Naval Base, Kochi which is near to Thevara residential complex. The Respondent No.2 readily accepted his application without asking any proof and promptly decided to allot quarter No.C.9 at Thevara, Kochi in lieu of his earlier allotment of quarter No.P4/5 Type III Palluruthy.

10 When the rule is clear and it prescribed a particular and definite course of action there cannot be any scope for discretion. In this case, the Rules permit that an officer who has been allotted accommodation initially can seek change once in his tenure to a desired area and he has to make an application to that effect to the competent authority. The competent authority is expected to prepare waiting lists of such persons who have applied for change by 15<sup>th</sup> of

March, 15<sup>th</sup> of June, 15<sup>th</sup> of September and 15<sup>th</sup> of December respectively. The rules neither prescribe any reason to be given by an application for seeking such a change nor permit the concerned authority to demand any reason.

11 The Applicant and the Respondent No.6 were similarly placed as both of them were initially allotted residences in the Palluruthy area. Applicant's claim for change to Thevara area was an earlier one. However, in an arbitrary and illegal manner and in order to defeat the claim of the Applicant, Respondent 2 sought reasons from the applicant for seeking such a change when no such requirements have been provided in the rules. Even on furnishing reason, Respondent No.2 has insisted for documentary proof in support thereof. When the applicant has brought to the notice of Respondent 2 that there was no requirement of showing any such reason or production of documentary proof thereof, for grant of his request for change of accommodation, Respondents 2 and 4 in an arbitrary manner and without any rhyme or reason, kept the request of the applicant pending with them for more than 5 months. When the quarter No.C.9 Thevara became available for allotment, the Respondent No.4 suddenly conveyed the rejection of his request by the Respondent No.2 vide the impugned A1 order dated 7.6.05.

11 In our considered opinion, the action of the Respondent No.2 rejecting the request of the applicant for change of accommodation was arbitrary, illegal and contrary to Rule 13 of the Allotment rules. Respondent No.2 was expected to wait list the name of the applicant when the request was received on 9.6.2004 and allot the accommodation in DAD Complex, Thevara in his turn on the basis of his priority. Even though Respondent No.2 has no discretionary power to reject the applications for change, it is seen that he considers each such case on merits and reject the cases of some officers and accept the cases

of others. These are done de-hors the Rules. We, therefore, hold that the rejection of the request of the applicant dated 9.6.04 for change of allotment to DAD Complex, Thevara itself was absolutely illegal and violative of provisions of the Allotment of Government Residences (Defence Accounts Department Pool) Rules, 1986 particularly Rule 13 of the said Rules. It is noted that even after the receipt of the request of the applicant for change to the DAD Residential Complex at Thevara, Respondent No.2 has allotted the accommodations which fell vacant, thereafter to at least three officers, namely, T.Sakunthala, TC Jacob and Smt. Sobha Mohan apart from Respondent No.6 Shri P.K.Omanakuttan for whom quarter No.C.9 was allotted and these allotments are in violation of the allotment Rules. But the fact remains that the Applicant's name has not been wait-listed so far in terms of Rule 13(2) (ibid) and therefore, it cannot be said that the above mentioned allotments have been made in violation of the rules, as far as the respective allottees are concerned. The Applicant has also not sought any relief against the Annexure.A4 letter dated 13.8.2004 rejecting his request for change of accommodation at DAD Residential Complex, Thevara.

12 We have also noticed the discriminatory attitude of the Respondent No.2 in the matter of allotment to other officers, particularly in the case of Respondent No.6. In the case of the Applicant, the Respondent No.2 took two months' time even to consider his first request dated 9.6.2004. His second request dated 14.9.2004 was rejected after nearly four months on 3.1.05. His third representation dated 20.1.2005 was rejected after a period of about 5 months. In the case of Respondent No.6, his application dated 24.5.05 for change was processed on 17.6.05 and the Respondent No.2 has accorded his sanction on the same date. Respondent No.2, thereafter, telephonically informed the Respondent No.3 that Qr.No.C9, Thevara was allotted to Respondent No.6 and

Respondent No.3 in turn vide Annexure.R.4 letter dated 20.6.05 addressed to the Respondent No.6 conveyed the telephonic message to him and asked him to submit his willingness in advance, pending issue of formal allotment letter which was actually issued to him only on 27.6.2005. Amazingly the Respondent No.6 has occupied the said accommodation on 27.6.05 itself. The Respondent No.2 has shown undue haste in allotting the quarter No.C.9, Thevara to Respondent No.6 and in conveying his decision to allot the said accommodation to him. The Respondent No.4 has even obtained the willingness of the Respondent No.6 in occupying the allotment even before the allotment letter was issued to him. The haste with which the Respondents 2, 3 and 4 have allotted the aforesaid quarter to the Respondent No.6 is glaring when the manner in which the Respondent Nos.2&3 have dealt with the request for change of accommodation of the Applicant. The time taken from the Annexure.A3 application of the Applicant dated 9.6.04 to the Annexure.A1 rejection letter dated 7.6.05 of the Respondent No.2, was full one year, that too without any useful result to the Applicant. It is also worth mentioning that when the quarter No.C.,9, Thevara fell vacant on 1.6.05, the 4<sup>th</sup> Respondent vide the Annexure.A.1 letter dated 7.6.2005 suddenly informed the Applicant that his request for change was rejected by the Respondents way back on 14.4.2005.

13 The Hon'ble Supreme Court in the case of **Shiv Sagar Tiwari Vs. Union of India and others**, AIR 1997 SC 2725 had come heavily on the allotting authorities for allotment of accommodation in violation of the allotment Rules. In the opening paragraph of the judgment, the Apex Court has observed as under:

*"The administrative law has of late seen vast increase in discretionary powers. But then, the discretion conferred has to be exercised to advance the purpose to subvert which the power exists. Even the Minister, if he/she be the repository of discretionary power, cannot claim that either there is no discretion in the matter of unfettered discretion. This proposition was*

reiterated emphatically by the House of Lords in the landmark decision of *Padfield*, 1968 AC 997. This apart, as pointed in *United States V. Wunderlich*, 348 US 98:

"Law has reached its finest moments, when it has freed man from unlimited discretion of some ruler, some, ...official, some bureaucrat... Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other invention"

14 The Hon'ble Supreme Court again in the case of *Kumari Shrilekha Vidyarthi and others Vs. State of UP and others*, (1991) 1 SCC 212 observed as under:-

"35 It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every state action is *sine qua non* to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

36 The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always.

37 Almost a quarter century back, this Court in *S.G. Jaisinghani V. Union of India* (1967) 2 SCR 703 indicated the test of arbitrariness and the pitfalls to be avoided in all 'State actions' to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law

upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law (See Dicey, *Law of the Constitution*, 10th edn. Introduction, cx). "law has reached its finest moments" stated Douglas, J in *United States Vs. Wunderlich* (342 US 98), "When it has freed man from the unlimited discretion of some ruler. Where discretion is absolute, man has always suffered. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it is classic terms in the case of *John Wilkes* (1770) 4 Burt 2528) means sound discretion guided by law. It must be governed by rule, or humour; it must not be arbitrary, vague and fanciful."

38 After *Jainsinghani* case (supra) long strides have been taken in several well known decision of this Court expanding the scope of judicial review in such matters. It has been emphasized time and again that arbitrariness is anathema to State action in every sphere and wherever the vice percolates, this Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India. It is, therefore, obvious that irrespective of the nature of appointment of the Government Counsel in the districts in the State of UP and the security of tenure being even minimal as claimed by the State, the impugned circular, in order to survive, must withstand the attack of arbitrariness and be supported as an informed decision which is reasonable.

39 No doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is uninformed by reason inasmuch as there is no discernible principle on which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repel the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision which was reasonable. If after a *prima facie* case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable, the State action must perish as arbitrary.



15 In this view of the position, we have considered the relief sought by the Applicant in this OA that he be allotted quarter No.C.9,DAD Residential Complex, Thevara in preference to the 6<sup>th</sup> Respondent. Since the Respondents have already allotted the said quarter to the 6<sup>th</sup> Respondent during the pendency of this OA, this O.A itself has been rendered infructuous. The Applicant in fact had the cause of action arisen when his Application dated 9.6.04 for change was rejected vide Annexure.A4 letter dated 13.8.04, but he did not choose to challenge the same. He has filed the present OA when the quarter in question has fallen vacant, without having his name wait-listed as required under Rule 13(2) of the Allotment Rules. In these circumstances, we direct the Respondents 2,3&4 to wait-list the name of the Applicant on the basis of his application for change dated 9.6.04 in terms of Rules 7(1) and 13(1)&(2) of the Allotment of Government Residences (Defence Accounts Department Pool) Rules, 1986 and to allot him the next available entitled type of quarter in the DAD Residential complex, Thevara. We also direct the Respondent No.1 to make necessary inquiry into the matter so that the arbitrary action of this nature can be avoided in future.

CPC 34/05:

16 The Petitioner has filed this Contempt Petition against the allotment of quarter No.C9 to the Respondent No.6 in the OA in spite of the assurance of Shri TPM Ibrahim Khan, SCGSC on 23.6.05 and 29.6.05 that the quarter in question will not be allotted to anyone, if it has not already been allotted. According to the applicant, in spite of the aforesaid assurance given by the learned SCGSC on behalf of the respondents, the Respondents 2 to 4 have allotted the quarter in question to the 6<sup>th</sup> respondent and allowed him to occupy

the same on 30.6.05 by issuing an ante-dated order dated 27.6.05. The said action of the respondents amounts to contempt of court and liable to be punished under Section 12 of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985.

17 The respondents on the other hand have submitted in the reply affidavit that during the course of hearing on 23.6.05, learned Standing Counsel submitted that no fresh allotment of quarter in question will be made if the quarter had not already been allotted to any one else. He informed the Respondent No.3 about the above said assurance only vide his letter dated 28.6.05, but by 27.6.05 itself, the quarter in question was allotted to the Respondent No.6. According to the counsel, the proceedings could not be communicated to the respondents immediately as the relevant file was misplaced in his office. The respondents have submitted that the allegation of the petitioner that the allotment of quarter was deliberately and willfully made to the Respondent No.6 violating the undertaking given by the Standing Counsel before this Tribunal was not correct. They have also stated that they are making inquiries against the persons who failed to transmit the correct information to the standing counsel even after the receipt of the letter dated 28.6.05.

18 We have considered the submissions of the petitioner and the respondents. When the matter came up for hearing on 23.6.05 it was on the assurance of the learned SCGSC that no orders have been passed on the interim relief sought by the applicant. On 28.6.05 when the matter was again listed, the respondents sought further time to get instructions from the respondents department and requested to post the matter on 29.6.05. On 29.6.05 the learned SCGSC again sought two more weeks time to file a reply with the assurance that no action will be taken to allot the quarter as already

undertaken by him on 23.6.05. From the records submitted by the respondents, it is seen that Annexure.R.1 letter dated 17.6.05 was a proposal initiated in the office of the Respondent No.2 proposing to allot the quarter No.C.9 at Perumanoor, Thevara, Kochi to Respondent No.6 which was approved by the Respondent No.2 on the same date. The Respondent No.2 at Bombay has telephonically informed the Respondents 3&4 at Kochi on 20.6.05 that it was decided to allot the accommodation to Respondent No.6. Same day the Respondent No.3 has asked the Respondent No.6 to submit his willingness in advance so that the sanction is issued to him. It was only on 22.6.05 the Respondent No.2 has issued the sanction for allotment of the said quarter to Respondent No.6. The respondents have not produced a copy of the actual letter of allotment issued to the 6<sup>th</sup> respondent. They have only submitted that the quarter in question was allotted to Respondent No.6 as per the orders of the Respondent No.2 dated 22.6.05 and the Respondent No.6 occupied it on 27.6.05.

19 In our considered opinion, the action of the Respondent Nos. 2&3 in allotting the quarter in question to Respondent No.6 in such a hasty manner speaks volume. However, the Respondents 2-4 have given the explanation that the assurance given by the learned SCGSC dated 23.6.05 was conveyed to the Respondents only vide his letter dated 28.6.05 and they were not aware of the said assurance till they received the said letter dated 28.6.05 but by this time the allotment of the quarter in question was already made to the Respondent No.6 on 27.6.05 and he occupied it on the same date. Hence it cannot be said that there was willful violation of the orders of this Tribunal. We, therefore, accept the explanation given by the Respondents and dismiss the Contempt Petition. However, in the facts and circumstances of the case in the

O.A, we have already directed the Respondent No.1 to make necessary inquiry into this matter and take appropriate action. A copy of this order shall be sent to the Respondent No.1 by the Registry. No order as to costs.

Dated this the 23<sup>rd</sup> day of January, 2006

GEORGE PARACKEN  
JUDICIAL MEMBER

SATHINAIR  
VICE CHAIRMAN

S.