IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. O.A.53/90 199
T.A. No.

DATE OF DECISION 31.8.90

A.C.Isaac Applicant (s)

Mr. Babu Cherukara Advocate for the Applicant (s)

Versus

The Controller General of Defence Accounts, New Delhi & 3 others. Respondent (s)

Mr. A.A.Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. **S.P. Mukerji, Vice Chairman**

The Hon'ble Mr. **A.V.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

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 17th January, 1990, the applicant who has been working as Senior Auditor in the Defence Accounts Department, has prayed that the impugned order dated 17.3.89 at Annexure-I imposing standard rent under FR 45A on the Government accommodation occupied by him for the period from 1.2.88 to 31.12.88 and the further order dated 29.9.89 at Annexure-II rejecting his appeal should be set aside and the recovery made of the penal rent refunded. The brief facts of the case are as follows:

2. While the applicant had been serving in the office of the Pay & Accounts Officer, Bangalore, he was allotted Government quarters on 27.12.85 which he vacated on 11.4.89 on his transfer to Cochin. It is not permissible for the allottee to sub-let or share such allotted quarters with any other person without the permission

of the competent authority. On a surprise check carried out on 16.8.88, it was found that the accommodation was occupied by one Shri Chelly. Another surprise check was conducted on 2.12.88 and, according to the respondents, it was found that the accommodation was being shared by the allottee with one Shri Sashi. On 9.12.88 he was served with a show cause notice (Annexure-III) to show why the allotment should not be cancelled and disciplinary action initiated against him. The applicant replied [Annexure-R2(a)] conceding that he had been sharing the accommodation with Shri Chelly since November 1988 without obtaining prior permission. He sought pardon for the lapse and sought permission to share the accommodation with Shri Chelly. There was no reference to his sharing the accommodation with Shri Sashi. After considering his reply, the respondents passed the impugned order dated 17.3.89 at Annexure-I imposing a standard licence fee of Rs. 383 per month for the period from 1.2.88 to 31.12.88. In April 1989 the applicant represented (Annexure-IV) indicating that he did not sublet his quarter to Shri Chelly, that he was at his home town between 16.8.88 and 2.9.88 and that when the surprise check was conducted Shri Chelly stayed at his quarter as a caretaker. He regretted for the lapse on his part for not taking prior permission for the period from November 1988 and sought permission to share the accommodation with Shri Chelly from November 1988 till he left the quarters on his transfer to Cochin instead of from January 1989. The appeal was rejected on 24.4.89. He filed another appeal on 25th May 1989 (Annexure-VI) denying the sharing of the accommodation with Shri Sashi who had been allotted Government accommodation since 1987. This was also rejected by the impugned order dated 29.9.89. The applicant has argued that deducting penal rent from his pay and allowances is administratively arbitrary and violative of Articles 14 and 43 of the Constitution.

2.. According to the respondents, on the basis of the admission of the applicant himself that he was sharing the accommodation with Shri Chelly and when it was found on two different surprise checks that the applicant was sharing the accommodation with non-allottees, action was taken in accordance with Rule 19 of the Allotment Rules for levying standard rent under FR 45A. His explanation was evasive. He sought permission only on 19.12.88 after the second surprise check and accordingly sanction was accorded with effect from 1.1.89. The competent authority could have imposed a penal rent upto the maximum of four times the standard rent of Rs. 383 under FR 45A, but taking a lenient view, only the standard rent was imposed.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We are satsified that the applicant has been sharing the accommodation, according to his own showing, with non-allottees. His plea that he was sharing the accommodation only with Shri Chelly from November 1988 cannot be accepted as, on the day of the first surprise check on 16.8.88, it was found that the premises were occupied by Shri Chelly. The applicant sought permission only after he was caught red-handed on 16.8.88. The view of the counsel for the applicant that imposition of a penal rent is a sort of punishment which cannot be imposed without action under the Disciplinary and Appeal Rules, is not valid. In accordance with the Allotment of Government Residences (Defence Accounts Department Pool) Rules 1986 [Annexure-R2(c)], subletting and sharing of residence without permission is prohibited. These rules were framed under Article 309 of the Constitution and the applicant is bound by them. FR 45A read with the aforesaid rules authorises the competent authority to impose a penal rent upto 4 times the standard licence fee under FR 45A. The applicant has been treated rather leniently by being called upon to pay only the standard rent and not a multiple thereof. He was also granted the permission to

share the accommodation with Shri Chelly when he sought for such permission in December 1988. However, the respondents could not indicate why in the impugned order at Annexure-I the penal rent has been imposed from 1.2.88. For the first time sharing of the accommodation was detected by the respondents by surprise check on 16.8.88 and no ground has been indicated by the respondents for charging the standard rent from 1.2.88. Even in accordance with the applicant's own showing, the statement of the applicant at the time of the second surprise checking was to the effect that his house was shared with Shri Sashi since two months prior to the surprise checking. Accordingly, there is no reason why the penal rent should be imposed from a date prior to 16.8.88.

4. In the facts and circumstances, we allow this application in part and direct that the standard licence fee under FR 45A should be imposed on the applicant only from 16.8.88 to 31.12.88. Excess amount, if any, recovered should be refunded to the applicant within a period of 3 months from the date of communication of this order.

31.8.90

(A.V.Haridasan)
Judicial Member

31.8.90

(S.P.Mukerji)
Vice Chairman