

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.566/2005

..Wednesday.....THIS THE^{1st} DAY OF MARCH, 2006

CORAM

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

Joseph George, aged 47 years
S/o Shri George Joseph,
Assistant Finance & Accounts Officer,
CMFRI, Mandampam,
residing at Type III/4,
CMFRI Quarters,
Kasturba Nagar, Kochi.

.....Applicant

(By Advocate Mr. TC Govindaswamy)

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- 1 Indian Council of Agricultural Research
through its Secretary, Krishi Bhavan,
New Delhi.
 - 2 Director General,
Indian Council of Agricultural Research
Krishi Bhavan, New Delhi.
 - 3 Director, Central Marine Fisheries Research
Institute, Post Box No.1603, North Post Office,
Kochi.
 - 4 Scientist in charge, Central Marine Fisheries
Research Institute, Fisheries Post, CMFRI
Mandapam Camp.
 - 5 The Deputy Director General
Indian Council of Agricultural Research
Krishi Bhavan, New Delhi.
- Respondents

(By advocate Mr.P.Santhosh Kumar)

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The application having been heard on 16.2.2006, the Tribunal on 01.3.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

This is the second round of litigation on the very same issue of retention of Government accommodation Type III/4 CMFRI Quarters, Kochi allotted to the applicant while he was working as Assistant Financial Accounts Officer, Central Marine Fisheries Research Institute (CMFRI for short), Kochi. He was transferred to Mandapam Regional Center, w.e.f 11.12.02 (Annexure.R.I). Thereafter, he was placed under suspension w.e.f. 10.2.2003. Vide order dated 18.7.03, the Headquarters of the applicant was declared as Mandapam instead of Cochin. The Applicant filed OA 783/03 before this Tribunal challenging the order of suspension dated 10.3.03 as well as the order dated 18.7.03 shifting his Headquarters from Cochin to Mandapam. Both these orders were set aside by the Tribunal vide order dated 4.11.03. Thereafter, the respondents vide Annexure.A3 order dated 30.12.2003 revoked the suspension w.e.f. 25.11.03. He was also directed, vide Memorandum dated 26.11.03, to report for duty at Mandapam forthwith as he was already transferred w.e.f. 11.12.2002 prior to his suspension dated 10.2.2003.

2 Consequent upon his transfer to Mandapam w.e.f 11.12.2002, the Applicant has requested the respondents to permit him to retain



the accommodation allotted to him for the bonafide use of his family. His contention was that pursuant to the judgment of this Tribunal dated 4.11.2003, he was reinstated in service vide order dated 30.12.2003 and, therefore, he was entitled to continue in the residence allotted to him till that date. He has further contended that since his elder daughter was doing her M.Sc, 2nd daughter was preparing for the Board Examination and third daughter was preparing for her 8th standard examination, he was not in a position to vacate the accommodation and requested the Respondents vide Annexure.A5 letter dated 21.1.2004, to permit him to further retain the accommodation. Vide Annexure.A6 Memorandum dated 15.6.2004, the respondents informed the Applicant that the permissible period of retention has already been over and the Applicant is required to make payment of higher licence fee for the unauthorized occupation of the house beyond the permissible period. He was also advised to vacate the accommodation within one month and to furnish compliance report. The Respondents have vide Annexure.A10 letter dated 3.2.05 informed the Applicant that the allotment has already stood withdrawn from him w.e.f. 18.3.2004 and ordered to recover the licence fee @ Rs. 7249.50 pm from him with effect from the same date. He had again made the Annexure.A9 representation dated 4.2.05 to the third respondent. Thereafter, the Applicant approached this Tribunal vide OA 111/05 challenging the

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Annexure.A10 order dated 3.2.05. Since the OA 111/05 was filed during the pendency of the said representation dated 4.2.05, this Tribunal vide Annexure.A11 order dated 22.2.05 disposed of the OA with the direction to the third respondent to consider the representation of the applicant in the light of the facts, rules and instructions on the subject and to give him an appropriate reply as early as possible and to keep the implementation of the impugned order pending till then. The request of the applicant in all his representations was that he should be permitted to retain the accommodation allotted to him beyond the permissible period on different grounds including educational ground of his children. In the representation dated 4.2.05 he has submitted that in the next academic session his second and third daughters would be promoted to 12th and 10th standards respectively; they are studying in Kendriya Vidyalaya, Naval Base; they are very good in studies; they are leaders of the respective classes; the youngest one is one of the nominated trained Counselor of the school; they are involved in many school activities including Youth Parliament and the Principal has advised the applicant not to disturb their studies and shift them from the school as the ensuring academic year is very crucial in their life; there are no schools of requisite standard in the district of Ramanathapuram where he can admit his children and taking a suitable house at Kochi will put him to unbearable financial hardship.

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He has, therefore, requested the respondents to permit him to retain the quarter for a further period of one year which also expired on 3.2.06. He again made the another Annexure.A14 representation dated 5.5.05 to the second respondent ie., Director General, ICAR, New Delhi to permit him to retain quarters up to 30.6.05 for the bonafide use of his family members. During this period it appears that the applicant had made an 'appeal' to the Estate Officer , ICAR, IIHR, Bangalore on 1.8.2005 for retention of accommodation. Vide Annexres. A18 and A19 Memroanda dated 8.7.05 and 12.7.05 respectively the applicant was conveyed the decision of the concerned authorities rejecting his request on the ground that there was no merit for permitting him to retain the quarters beyond the permissible limit of eight months and he is liable to pay the damage rent of Rs. 7249.50 per month from 25.7.04 onwards till the date of vacation.

3 The Applicant has impugned the aforesaid Annexure.A.10, A18 and A19 Memoranda in this Original Application. The grounds taken by the applicant are that the impugned Memoranda are arbitrary, discriminatory and contrary to law and therefore, violative of constitutional guarantees enshrined in Articles 14 and 16. Even though there was a specific direction of this Tribunal to the 1st respondent to consider the representation of the applicant with due application of mind, the Annexure.A.18 and Annexure.A.19

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Memroanda have been issued without due application of mind which is contrary to the directions of this Tribunal contained in Annexure. A13 order. He has further submitted that the Annexure A12 Memroanda which states that the applicant is entitled to retain the quarter only for a period eight months is not applicable to him. The contention of the respondent No.3 for rejecting the representation of the applicant as he had no power for relaxation is not correct. The applicant has not been allotted any residential accommodation at Mandapam, where he has been posted now and he has also not been paid any HRA since August, 2004. He has further contended that in terms of Rule 11(v) and Rule 11(b) of the Allotment Rules, he is entitled to retain the quarter for a period of one year and additional six months on educational ground as the applicant has been transferred to a remote area. The impugned orders are illegal for the reason that Rule 29 of the Allotment Rules provides that in case of unauthorized occupation, full standard licence fee under FR 45B or twice the standard licence fee under FR 45B or twice the standard licence fee under FR 45A if the licence fee has been pooled, or 15 per cent of the emoluments of the officer whichever is higher only is chargeable from the applicant. There is no provision in the Allotment Rules of respondent No.3 to recover licence fee at the prevailing market rate of Rs. 7249.50 per month. He has further stated that in the Annexures.A16,A10 and A19 Memoranda different dates of

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17.9.03, 18.3.04 and 25.7.04 have been shown as the date from which he is stated to be in unauthorized occupation. The different dates given by the respondents clearly shows that the respondents themselves do not know what is the rule position. He has also disputed the calculation of the amount arrived at as market rent as neither the ICAR nor CPWD is empowered to assess the same. He has also taken the plea that there are large number of quarters remaining vacant, and they are all occupied continuously by other ineligible persons and there is no compelling reasons or any administrative exigency which demand the applicant to vacate the quarter at present. He has also contended that the Annexure.A20 and A21 allotment Rules are in force and there is nothing in Annexure.A 20 to show that the same excludes Annexure.A21 or that the same is in supersession of Annexure.A21.

4 The applicant's counsel has relied upon the judgments of the Apex Court in **S.C Bose Vs. Comptroller and Auditor General of India and others, 1995 SCC (L&S) 1114** and **Chandra Prakash Jain Vs. Principal/DIG of Police Training College II, Moradabad and another, 2005 SCC (L&S) 117** and also the order of the Full Bench of the Patna Bench of this Tribunal in **Shri Ram Balak Vs. Union of India and others, 2003(2) ATJ 1**. In the case of S.C.Bose (surpa) the Hon'ble Supreme Court has held that when an allottee of a departmental pool accommodation is transferred and is entitled for


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allotment of accommodation from general pool, if no such accommodation is allotted from the general, for the continued stay in the departmental pool of accommodation, recovery of penal rent and damages is unjustified. In the judgment of Chandra Prakash Jain (supra) the Hon'ble Supreme Court held that the deduction of a sum of Rs. 2,07,979/- from the retiral benefits of the appellant therein is erroneous because the calculation thereof was based on a circular which was not applicable in his case. In Shri Ram Balak's case (supra) the Railway authorities have charged damage rent for the unauthorized occupation of the quarter. In that case the applicant was holding a lien in the open line and he was transferred to a construction organization and was not permitted to retain the quarter allotted to him. The Tribunal justified the action of the Respondents holding that occupation of the quarter during the aforesaid period is unauthorized and it is not necessary for the authorities to pass any specific order relating to cancellation of the allotment of the quarter and the applicant is liable to pay damage rent. However, the Tribunal has directed the concerned Respondents to consider the reduction in the amount of damage rent so charged keeping in mind certain observations made by the Hon'ble Member (Administrative) while giving a descending note.

5 The respondents in their reply submitted that the applicant was allotted quarter No.Type III/4 vide Annexure.A3 Memorandum dated 28.6.2001 according to which "the general conditions laid



down in the allotment rules as amended from time to time and Government of India circulars and instructions regrading the allotment of quarters, recovery of licence fee etc. will be applicable regrading this allotment. The applicant is aggrieved by the "Central Marine Fisheries Research Institute Allotment of Residences Rule, 2001" along with IMC proceedings dated 4.10.2001 and Council's letter dated 12.11.2000 which were annexed with the reply as Annexures.R.4,R5 and R6 respectively. According to Rule 14(v) of the said Allotment Rules, the permissible period of retention of the residence in the event of transfer of an employee to a place outside the station of allotment of residence is only two months. As per Note.1 below Rule 14 "on expiry of the concessional period mentioned above, the allotment shall be deemed to be cancelled and full vacant possession of the residence shall be restored to the Office. Rule 31 provides that the "The Director CMFRI may for reasons to be recorded in writing relax any or all of these rules in individual cases or residence depending upon the merit of the case." As regards granting the maximum period of eight months for retention of accommodation including the permissible period of retention of two months in relaxation of the rules, the respondents relied upon the Government of India, Department of Posts letter dated 15.9.2004 (Annexure R.8) according to which no request for retention beyond 8 months will be entertained. As regards the orders for charging damage rent from the unauthorized occupants, the




respondents have relied upon the Annexure.R9 OM dated 10.12.2004 by which the CPWD has fixed the rate of damage from 1.5.2002 for comparable types of quarters in General Pool Residential Complex in Kakkanadu, Cochin.

6 We have heard Shri T.C.Govindaswamy, learned counsel for the applicant and Shri P.Santhoshkumar, learned counsel for the respondents. We have also perused the entire documents made available for our perusal. The undisputed fact of the matter is that the Applicant was transferred from Kochi to Mandapam on 11.12.2002 and it is February, 2006 now. Even after more than three years from the date of transfer, the applicant has not vacated the residential accommodation allotted to him while he was posted in Kochi. He had filed the earlier OA 111/05 when his Annexure.A9 representation dated 4.2.2005 was pending. His request in the said representation was to permit him to retain the quarter for a further period of one year which has already expired on 3.2.2005. The direction of this Tribunal in order dated 21.2.2005 in OA 111/05 to the respondents was to consider his representation in the light of the facts, rule and instructions on the subject and to give him an appropriate reply as early possible. Without waiting for the reply of the Respondents, the applicant went on making further representations. He had in fact made an 'appeal' to the Estate Officer, ICAR, IIHR, Bangalore on 8.2.2005 itself and another representation to the Director General, ICAR on 5.5.2005 as seen

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from the Annexure.A19 Memorandum dated 12.7.2005. The applicant was informed vide Annexure.A18 Memorandum dated 8.7.2005 that the respondents have considered his representation dated 5.5.2005 and there was no merit in it to permit him to retain the quarter beyond the permissible limit of 8 months. The Annexure.A.19 Memorandum dated 12.7.2005 is a more detailed reply and the gist of it is also that there is no merit in his 'appeal' dated 8.2.2005 and representation dated 5.5.05 to permit him to retain the accommodation beyond the permissible period. The Applicant still not satisfied by the Annexure.A10 order dated 10.2.2005 and Annexures.A18 and A19 Memoranda dated 8.7.2005. But the fact is that after the expiry of the period of retention sought by the Applicant vide Annexure.A9 representation dated 4.2.2005 which expired on 3.2.2006, there is no justification on his part not to vacate the accommodation thereafter by making repeated representations and filing the present OA. Interestingly even in this OA also the main payer of the applicant is to direct the Respondent No.3 to reconsider his Annexure. A14 representation dated 5.5.2005 with due application of mind and to pass a speaking order thereon. When the Respondents in their impugned order/Memoranda have clearly stated that there was no merit for permitting him to retain the quarter beyond the permissible limit of 8 months, no further detailed explanation is required to be given by the Respondents in the background of the various correspondences between the Applicant



and the Respondents. Now the question is the liability of the applicant to pay licence fee/damage rent @ Rs. 7249.50 from 25.7.2004 onwards. The respondents have adopted the comparable rates fixed for the general pool accommodation in Kakkanadu, Cochin by the Directorate of Estates and CPWD. The accommodation occupied by the applicant is within the Cochin Corporation itself at the CMFRI Residential Complex, Kasturba Nagar, Thevara, Cochin. Obviously the rate of licence fee/damage rent could only be higher in Thevara and definitely not less in Kakkanadu. Therefore, we do not find any fault with the respondents fixing the licence fee/damage rent at the rates comparable with the general pool accommodation at Kakkanad. Further, we do not find any merit in the contention of the Applicant that the rule of maximum period of retention of accommodation of eight months admissible under the allotment rules/orders/instructions is not applicable to him because his case not an exceptionable one. The Allotment Rules permit only 2 months period of retention on payment of normal rent, after an official has been transferred. In relaxation of the said provision, he was permitted to retain another six months by the Respondents relying upon similar instructions issued by the P&T Department in respect of the pool of accommodation under their control. The contention of the Applicant that different dates have been indicated in various letters by the Respondents for retention of accommodation is also without any merit as the Applicant has not



been vacating accommodation after the time he sought for, from time to time and the Respondents have been asking him to vacate the accommodation by a specific date, in reply to his requests. Such directions to vacate the accommodation issued from time to time cannot be considered as orders permitting him to retain the accommodation beyond the permissible period of eight months as provided in the Allotment Rules. We have gone through the judgments of the Apex Court and the order of the Full Bench of this Tribunal relied upon by the counsel for the Applicant. In our considered view none of these judgments/orders have any application in the present case. In S.C.Bose's case the Hon'ble Supreme Court has only held that if an allottee of a departmental pool accommodation fails to vacate his quarter on the failure of the department to allot a general pool accommodation to which he is entitled, he is not liable to pay any market rent/damages for the period of his occupation of the departmental pool accommodation beyond the permissible period. In Chandra Prakash Jain's case calculation of penal rent was found to be erroneous and, therefore, the Respondents were directed to charge only standard rent taking into account the last pay drawn by the appellant before his retirement. In Shri Ram Balak's case this Tribunal in fact held that the applicant was liable to pay damage rent for the period of his unauthorized occupation of the quarter with a direction to consider slicing of damage rent amount to some extent. The case of the



applicant is entirely different. The penal rent fixed by the respondents for the unauthorized occupation of the accommodation allotted to him beyond the permissible period is based on the comparable rate of rent that has been fixed by the CPWD/Directorate of Estates for the General Pool Accommodation in Kakkanad. In fact the accommodation allotted to the applicant was within the city limits of Cochin Corporation and the quarters compared with it is in Kakkanad which is situated in a Panchayat area. The rent so fixed in comparison cannot be termed as excessive by any standard.

7 In the above conspectus of the case, we do not find the action of the Respondents arbitrary, discriminatory or contrary to law in any manner as alleged by the Applicant. The Respondents are well within the rules and instructions to allow the applicant to retain the accommodation allotted to him only for the permissible period of 8 months and in demanding the rate of licence fee/damage rent at comparable rates for the period the Applicant has retained the accommodation beyond the permissible period. We, therefore, hold that this Original Application is devoid of any merit and accordingly the same is dismissed. No costs.

Dated this 1st the day of March, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN