

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.83/2000

Thursday, this the 16th day of November, 2000.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

1. P.Gangadharan,
Assistant,
Defence Security Corps Records,
Mill Road,
Cannanore-670 013.
2. G.S.Pillai,
Upper Division Clerk,
Defence Security Corps Records,
Mill Road,
Cannanore-670 013.
3. M.D.Pillai,
Upper Division Clerk,
Defence Security Corps Records,
Mill Road,
Cannanore-670 013.
4. K.P.Vanaja Bai,
Upper Division Clerk,
Defence Security Corps Records,
Mill Road,
Cannanore-670 013.
5. K.Bhama,
Upper Division Clerk,
Defence Security Corps Records,
Mill Road,
Cannanore-670 013.
6. K.K.Venugopalan,
Lower division Clerk,
Defence Security Corps Records,
Mill Road,
Cannanore-670 013.
7. K.Vijayakumar,
Upper Division Clerk,
Defence Security Corps Records,
Mill Road,
Cannanore-670 013.
8. Lalithamma Subran,
Upper Division Clerk,
Defence Security Corps Records,
Mill Road,
Cannanore-670 013.

9. Meenakshi Nambiar,
Assistant,
Defence Security Corps Centre,
Cannanore-670 013.
10. K. Rema,
Assistant,
R & A Coy,
Defence Security Corps Records,
Mill Road,
Cannanore-670 013.
11. C.M.Lakshmanan,
Upper Division Clerk,
Defence Security Corps Records,
Mill Road,
Cannanore-670 013.
12. P.C.Chinnamma,
Upper Division Clerk,
Askoa Coy,
Defence Security Centre,
Cannanore-670 013.
13. K.Sarada,
Upper Division Clerk,
Defence Security Corps Centre,
Mill Road,
Cannanore-670 013.

- Applicants

By Advocate Mr C.S.G.Nair

Vs

1. Station Commander,
Station Headquarters,
Defence Security Corps,
Mill Road,
Cannanore-670 013.
2. Officer Commanding,
Defence Security Corps Centre,
Cannanore-670 013.
3. Chief Records Officer,
Defence Security Corps Records,
Cannanore-670 013.
4. Deputy Director General,
Defence Security Corps,
General Staff Branch,
Army Staff Branch,
Army Headquarters,
West Block, R.K.Puram,
New Delhi-110 066.

5. Union of India
represented by Secretary,
Ministry of Defence,
South Block,
New Delhi.

- Respondents

By Advocate Mr K Govindh K Bharathan, SCGSC

The application having been heard on 16.11.2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicants are Civilian Employees of the Defence Security Corps working in the Defence Security Corps Centre at Cannanore. They were allotted residential accommodation in the year 1995 according to the provisions of Allotment of Residences (Defence Pool Accommodation for Civilian in Defence Services) Rules 1978 (hereinafter referred to as 'Rules') promulgated under proviso to Article 309 of the Constitution of India in which it is specifically provided in paragraph 8(1) that the allotment shall continue in force until:

"(a) The expiry of the concessional period permissible under Sub Rule (2) after the officer ceases to be on duty in an eligible office at that station;

(b) It is cancelled by the Allotting Authority or is deemed to have been cancelled under any provision in these Rules;

(c) It is surrendered by the Officer; or

(d) The Officer ceases to occupy the residence."

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The present grievance of the applicants is that contrary to the stipulation contained in para 8(1), the first respondent has issued Standing Operative Procedure(SOP for short), A-2 on 23.12.94 wherein at para 15 it is stated thus:

"Residences built for the Civilian Defence Employees at Cannanore will be allotted for a period of five years to the entitled personnel from the date of allotment."

and that basing on the above instructions of the Station Commander contained in A-3, the applicants have been called upon by the orders A-4, A-5, A-7 and A-9 to vacate the premises by 31st January, 2000. The case of the applicants is that since as per the rules promulgated under Article 309 of the Constitution, the applicants are entitled to continue in occupation of the quarters until they are transferred/ retired or allotment cancelled and the stipulation contained in para 15 in A-2 is repugnant to the provisions contained in para 8(1) of the Rule is illegal and ultravires and that the orders issued pursuant thereto are unsustainable.

2. The applicants therefore seek to have the impugned orders set aside.

3. The respondents seek to justify the impugned clause in A-2 on the ground that in exercise of power of relaxation contained in the Rule A-1, the competent authority has issued

standing orders with a view to see that every employee is given an opportunity to occupy the quarter taking into account of the fact that the number of residential accommodation is limited, while the employees waiting for allotment are large.

4. I have heard Shri C.S.G.Nair, learned counsel of the applicants and Shri C.S.Ramanathan, learned counsel appearing for the Senior Central Government Standing Counsel. The short question that needs an answer in this application is whether the paragraph 15 of the SOP(A-2) limiting the period of allotment to five years is valid and enforceable.

5. The S.R.O.308, called Allotment of Residence (Defence Pool Accommodation for Civilians in Defence Services) Rules, 1978 promulgated in exercise of powers conferred by the proviso to Article 309 of the Constitution of India is statutory in nature. It is well settled by now that administrative instruction while can supplement statutory provisions, cannot supplant it. In other words, no administrative instruction which is repugnant to statutory provisions can be validly issued. Para 8(1) of the Rule do not permit the restriction of occupation of the quarter by an allottee for a specific period of five years. The stipulation in paragraph 15 of A-2 is repugnant to the provision contained in paragraph 8(1) of the Rule. The contention of the respondents that this instruction has been issued in relaxation of the rule is untenable because it far from being a relaxation is a restriction which is repugnant to the spirit

of the Rule. In Union of India Vs Somasundaram Viswanath { (1988) 3 JT 724}, the Apex Court has held as follows:

"It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under the proviso to Article 309 of the Constitution of India prevail and if there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law, the law made by the appropriate legislature prevails."

6. Since the paragraph 15 of SOP(A-2) is repugnant to the provisions contained in paragraph 8(1) of the Rules, the said paragraph is unsustainable and is liable to be struck down. The impugned orders, A-3, A-4, A-5, A-7 and A-9 issued under

the authority of A-2, paragraph 15 also is required to be set aside.

7. In the result, the application is allowed and the impugned orders are set aside. No costs.

Dated, the 16th of November, 2000.


A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of the SRO 308 dated 17.10.78 of the Government of India.
2. A-2: True copy of the Standing Operative Procedure dated 23.12.94 of the 1st respondent.
3. A-3: True copy of the Memo No.3002/8/Q dated 22.11.99 of the 1st respondent.
4. A-4: True copy of the Memo No.LA Civ/1301/284 dted 3.12.99 of the 2nd respondent.
5. A-5: True copy of the Memo No.Q/49.ACC OM/CIV/DSC dated 29.11.99 of the 2nd respondent.
6. A-7: True copy of the Memo No.LA Civ/1301/287 dated 8.12.99 of the 2nd respondent.
7. A-9: True copy of the memo No.LA Col/1301/235 dated 4.1.2000 of the 2nd respondent.