

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.89/04

Wednesday this the 16th day of February 2005

C O R A M :

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

N.Sreekumar,
D.12/9 K.S.H.E.Colony,
Puthiya Paramba, Alavil P.O.,
Kannur District – 670 008.

..Applicant

(By Advocate Mr.Antony V Paul)

Versus

1. Controlling Officer,
Deputy Central Intelligence Officer,
O/o.the D.C.I.O., Kannur.

2. The Joint Director,
Subsidiary Intelligence Bureau,
Thiruvananthapuram.

3. Union of India represented by Secretary,
Ministry of Home Affairs, North Block,
New Delhi.

..Respondents

(By Advocate ~~Mr.T.A.Unnikrishnan~~ Mr. T.P.M.Ibrahim Khan,SCGC *)

This application having been heard on 16th February 2005 the Tribunal on the same day delivered the following :

ORDER

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

The applicant while working as Junior Intelligence Officer Grade II (Motor Transport) at Trichur was transferred to office of the D.C.I.O. Kannur. He immediately on receipt of the order of transfer addressed the D.C.I.O, Kannur for allotment of quarter and attached with it the format duly signed. After taking charge at Kannur on 31.5.2002 the applicant requested for allotment of quarter. The 1st respondent allowed the applicant to occupy the quarter No.D-12/9

* Corrected as per
order dated.18.3.2005

which remaining vacant. The applicant occupied the quarter on 5.6.2002. His application for formal allotment of the quarter was forwarded on 6.6.2002 by the competent authority to the SIB. However by Annexure A-5 letter dated 22.11.2002 the applicant was directed to vacate the quarter immediately. He again submitted representation to the Joint Director which was also rejected. The Additional Deputy Director issued a letter to the D.C.I.O, Kannur on 10.12.2002 (Annexure A-7) to ensure eviction of the applicant from the quarter and similar order was issued on 22.1.2003 (Annexure A-8). Ultimately the applicant vacated the quarter on 22.3.2003. But, however, by order dated 12.5.2003 (Annexure A-11) the same quarter was formally allotted to the applicant which he reoccupied. However Rs.4176.00 as over drawn HRA during 8.6.2002 and 22.3.2003 and Rs.711.00 as over drawn TPA for the same period was deducted from the applicant's pay as stated in Annexure A-10. The applicant was served with Annexure A-14 impugned order for recovery of Rs.10,189/- being the market rate of rent for the period between 5.6.2002 to 22.3.2003, the period of alleged unauthorised occupation of the quarter by the applicant. Aggrieved by that the applicant has filed this application seeking to set aside the impugned order Annexure A-14 and for a direction to the respondents not to charge market rent from the applicant for the said period. It is alleged in the application that the occupation of the quarter was with the approval of the 1st respondent and therefore the occupation of the quarter by the applicant was not unauthorised.

2. The respondents contend that the applicant was allowed to occupy the quarter already allotted to Shri.A.Gopalakrishnan, who did not occupy it on humanitarian grounds and provisional basis and since in spite of specific order the applicant did not vacate the quarter action taken for recovery of market rate of rent is perfectly in order. It is also contented that had the applicant vacated the quarter when directed the quarter could have been allotted to a senior person who has been waiting for allotment.

3. The applicant has filed a rejoinder in which he indicated that since P.Gopalakrishnan the so called senior who was waiting for allotment had applied for only a different quarter i.e. Quarter No.E-9-7 the case of the respondents that the senior could not be allotted the quarter on account of the occupation by the applicant is not true to fact. The applicant has produced a copy of the letter written by P.Gopalakrishnan for allotment of Quarter No.E-9-7 to establish this contention.

4. I have heard Shri.Antony V Paul learned counsel of the applicant and Shri.T.A.Unnikrishnan learned counsel of the respondents. From the facts and circumstances emerging from the pleadings and materials on record and from the submissions of the learned counsel on either side I find little justification for the respondents in calling upon the applicant to pay market rate of rent. Market rate of rent can be charged from a person who is on unauthorised occupation. It is an admitted fact that the applicant occupied the quarter as approved by his official superior although formal allotment order was not issued. He therefore cannot be characterised as a trespasser or unauthorised occupant. That he did not vacate immediately when he was called upon to do so also does not make his occupation willfully unauthorised because a Government servant who has a family cannot without sufficient notice be asked to move out of a residential accommodation. He cannot go to the streets. There was no demand for this quarter also because as is evident from the letter of P.Gopalakrishnan produced along with the rejoinder P.Gopalakrishnan had asked for allotment of a different quarters only. It is evident from the pleadings that the quarter was remaining unoccupied, that there was objection from the audit in keeping the quarter unoccupied, that had the applicant not occupied it, the quarter would have remained unoccupied as there was no claimant for the particular quarter. It is also evident that no senior official has raised any complaint about occupation of the quarter by the applicant against the ~~her~~ claim. Under these circumstances the action of the respondents in calling upon the

applicant to pay market rate of rent is wholly unjustified.

5. In the light of the above discussion I am of the considered view that there is absolutely no justification for recovery of market rent from the applicant. In the result, the application is allowed. The impugned order is set aside and respondents are directed to refund to the applicant a sum of Rs.10,189/- which has been recovered from the pay and allowances of the applicant within a period of two months from the date of receipt of a copy of this order. No order as to costs.

(Dated the 16th day of February 2006)


A.V. HARIDASAN
VICE CHAIRMAN

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