

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**O.A.No.129/2007
Dated the 15th day of July, 2008**

**CORAM :
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

K Venkappa Naik
Assistant (Retd), CPCRI, Kasaragod
Now residing at
Sivagi Nagar, Nakkarakadu, Vittal,
574 243, D.Karnataka. Applicant

By Advocate Mrs.K.Girija

V/s.

- 1 Union of India represented by Secretary, I
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi-110 001.
- 2 The Director,
Central Plantation Crops Research Institute,
Kasaragode.
(Indian Council of Agricultural Research),
Kasargode-671 124.
- 3 The Administrative Officer
Central Plantation Crops Research Institute,
Kasaragode.
(Indian Council of Agricultural Research),
Kasargode-671 124. Respondents

By Advocate Mr.T.P.Sajan

This application having been heard on 15th July, 2008, the Tribunal on the
same day delivered the following

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

The applicant is an ex-allottee of Public premises owned by
the CPCRI, Regional Station, Vittal. He was transferred from there to





Regional Station, Kidu in public interest from 11.6.2002. He was permitted to retain the accommodation on payment of normal licence fee/double the licence fee for six months in accordance with the relevant Allotment Rules for the period from 14.5.2002 to 13.11.2002. Applicant did not vacate the premises even after the expiry of the said permitted period and the respondents held his continued occupation as unauthorised. Meanwhile, the applicant was re-posted to CPCRI, Regional Station, Vittal and he reported for duty on 22.7.2003. On re-allotment of the quarter in his name, he requested the department to exempt him from paying the licence fee at damage rate but the respondents did not accede to his request. Meanwhile the applicant retired from service on 31.12.2006. Thereafter, the respondents, therefore, quantified the damage rent payable by the applicant provisionally as Rs.24,000/- for the period of his unauthorised occupation and withheld the said amount from DCRG.

2. Applicant in the OA has sought a direction from this Tribunal to quash the orders regarding levying of damages for the period from 14.11.2002 to 21.7.2003. Applicant's counsel has relied upon an order passed by a Co-ordinate Bench of this Tribunal dated 17.1.2007 in OA 636/05 T.Krishnan V/s. The Director General, ICAR. In the said case, the applicant therein, on his transfer was permitted to retain the accommodation upto 31.12.2002. Thereafter, the applicant requested the Department to permit him to retain the accommodation for another year on educational grounds, but the same was rejected as it was not covered under the rules and directed him to vacate it within 15 days. He was also

2

informed that he will be liable to pay damage rent from 1.1.2003. However, the very same accommodation was re-allotted to him w.e.f. 6.2.2004 on his reposting to his earlier office. Thereafter, the department informed him that he was required to pay Rs.4,181.25 per month as damage rent and quantified the total amount payable as Rs.52,849/. By the time the applicant retired from service and the said amount was withheld from Death-cum -Retirement Gratuity payable to him. In the said OA, the Tribunal passed the following order:-

"9. In view of the above, the controversy is congealed to the following extent:-

a. Subject to the respondents ex-post-facto sanction for regularisation of accommodation from 01.01.2003 to 13.06.2003 the applicant would be liable to pay normal/double the normal rate of licence fee for the relevant period as may be decided by the competent authority .

b. For regularisation of accommodation by way of re-allotment from 06.10.2003 to 6.2.2004 the competent authority may pass necessary post-facto sanction and charge only normal rent for the said period.

c. For the intervening period from 14.6.2003 to 05.10.2003 whether the applicant has to pay the damage rate of licence fee as the Department has rejected his application for extension of whether the applicant has to pay the damage rate of licence fee as the Department has rejected his application for extension of further retention vide order dated 13.06.2003, is to be considered.

10. Counsel for the applicant referred to OM dated 27.02.2001 issued by the Ministry of Urban Development in the wake of judgment of the Apex Court in CWP No. 585/94, Shiv Sagar Tiwari Vs. Union of India wherein certain specific procedures have been provided for. This order is found to have been circulated by the Indian Council of Agricultural Research to the 3rd respondent, vide endorsement dated 06-06-2001. Thus, the provisions contained in the said order dated 27-02-2001 are fully applicable to the case of the applicant's organization as well. There is a clear set of procedure



provided for in respect of communication of cancellation of allotment, demand of damage rent etc. This order was passed in the wake of a decision of the Calcutta Bench of the Tribunal which emphasized the legal right to be put to notice before any amount is fixed as damage rent etc. The applicant relies upon the same in respect of that part of his overstay in the accommodation allotted to him. In addition, learned counsel for the applicant also relied upon the decision of the Apex Court in the case of Gorakpur University v. Shitta Prasad Nagendra (Dr.) (2001) 8 SCC 591. The dictum therein is that, when the authorities have accepted the normal rate of rent, they cannot have the right to recover damage rate of rent. That case is distinguishable from the fact that, in the said judgment it has also been observed that, "the facts disclosed such as resolution of the Universities resolving to waive the penal rent from all teachers as well as that of executive counsel dated 18.07.1994 and the actual such waive made in the case of several others cannot be easily ignored." In the instant case at one stage the committee recommended that cases where retention of quarters at the normal rate by relaxing the rules has been allowed, may not be reopened (as contained in the reply statement), such a relaxation is available upto the permitted period of retention, i.e. 31.12.2002). And thereafter too, in view of non communication of the details of damage rent etc, on the strength of order dated 27-02-2001, as submitted by the learned counsel, no damage rent could be realized from the applicant. As such, on account of the non following of the procedure by the respondents, there is no scope for recovery of damage rent from the applicant for the period beyond 31-12-2002 till the same accommodation was re-allotted to the applicant. If the applicant had paid the normal rent during this period, then the decision of Shitta Prasad (supra) also supports the case of the applicant. Thus, it is the authorities who are to be blamed for bringing a situation, whereby they could not raise any demand in respect of damage rent against the applicant. It is appropriate to quote the observation of Hon'ble Justice R.C.Lahoti, as his Lordship then was in Lakshmi Ram Bhuyan v. Sai Prasad Bhuyan (2003) 1 SCC 107 wherein the Apex Court has held:-

"3. An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is



a typical example wherein a stitch in time would have saved nine."

11 In the result the OA is allowed. It is declared that the respondents are not entitled to withhold any amount towards damage rate of licence fee from the DCRG payable to the applicant. Orders at Annexure A-1 dated 16-02-2004, Annexure A-2 dated 09-03-2004, A-9 dated 14-07-2005, Annexure A-11 dated 20-08-2005 and Annexure A-12 dated 26-08-2005 in so far as these relate to the applicant in respect of charging of damage rent are all quashed and set aside. Respondents are directed to release the DCRG, if any, withheld by them within a period of two months from the date of communication of this order.

12 Under the circumstances, there shall be no orders as to costs."

3 I have heard counsel for both the parties elaborately. The learned counsel for the applicant in this OA has argued that the aforesaid order fully covers the present case and, therefore, the same is also to be allowed. However, in my considered view the aforesaid order of this Tribunal has not been passed after taking the entire rule position and appreciating the other relevant judgments on the issue. The Coordinate Bench has not considered the provisions of the Allotment Rules governing the parties. Therefore, it is necessary that this matter be heard by a Bench of two Members. I, therefore, direct the Registry to place this OA before the Hon'ble Chairman to transfer it to a Bench of two Members in terms of Rule 18(c) of the Central Administrative Tribunal, Rules of Practice, 1993 read with Appendix I order dated 18.12.1991.


GEORGE PARACKEN
JUDICIAL MEMBER

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 129 OF 2007

Dated the 11. day of December, 2008.

CORAM:-

HON'BLE Mr. JUSTICE M.RAMACHANDRAN, VICE CHAIRMAN

HON'BLE Dr. K.S.SUGATHAN, ADMINISTRATIVE MEMBER

K.Venkappa Naik
Assistant (Retired)
CPCRI, Kasargode
Residing at - Sivgi Nagar, Nakkarakadu, Vittal
574 243 D.Karnataka

... Applicant

(By Advocate Mrs. K. Girija)

-Versus-

1. Union of India represented by Secretary
Indian Council of agricultural; Research
Krishi Bhavan
New Delhi - 110 001

2. The Director
Central Plantation Crops Research Institute
Kasargode
(Indian Council of Agricultural Research)
Kasargode

3. The Administrative Officer
Central Plantation Crops Research Institute
Kasargode
(Indian Council of Agricultural Research)
Kasargode - 671 124

... Respondents

(By Advocate Mr.T.P.Sajan)


The application having been heard of 14th November, 2008, the Tribunal
delivered the following :

ORDER

[HON'BLE Dr. K.S.SUGATHAN, A.M.]

The applicant in this OA is aggrieved by the action of the respondents in unilaterally withholding an amount of Rs.24000 towards licence fee at damage rate from the retirement gratuity. The applicant was transferred from Central Plantation Crop Research Institute (CPCRI) Regional Station Vittal, Karnataka to CPCRI Research Centre, Kidu, Karnataka. The applicant was relieved of his duties at Vittal on 14.5.2002. He was permitted to retain his government accommodation at Vittal from 14.5.2002 to 13.7.2002 on payment of normal licence fee and from 14.7.2002 to 13.11.2002 on payment of double the licence fee (Annexure A/1). Vide his letter dated 13.11.2002 the applicant submitted a further request to retain the accommodation for another six months from 14.11.2002. The said representation was considered and rejected by communication dated 21.6.2003. The applicant was also directed to vacate the accommodation within 15 days (A/4). However he did not vacate the accommodation. He was transferred back to Vittal by order dated 27.5.2003 and he reported at Vittal on 22.7.2003. After he reported for duty at Vittal the same accommodation was allotted to him. There is thus a period of about 8 months between 14.11.02 to 21.7.03 for which no permission has been granted. The representation made by the applicant on 30.9.2003 for waiving the payment of licence fee at damage rate for the aforesaid period between 14.11.02 to 21.7.03 was forwarded to the Competent authority on 4.11.2003 along with the remark that pending receipt of details of damage rate from CPWD, rent at double the rate will be recovered from the applicant's salary for the period from 14.7.2002 to 21.7.2003 (A/7 and A/8). The competent authority however did not accept the representation of the applicant. The applicant was asked to pay licence fee at damage rate for the period from 14.11.2002 to 21.7.2003 vide communication dated 24.2.2004. The subsequent representation dated 25.11.2004 was also rejected by the authorities vide communication dated 3.2.2005 (A/13). The applicant retired from service on 31.12.2006. As the applicant had not paid the licence fee at damage rate in accordance with the



decision of the competent authority, the respondents decided to recover an amount of Rs.24000 on a provisional basis from the DCRG. The applicant has prayed for the following reliefs:

- (a) Call for the records leading to Annexures A-6, A-11, A-13 and A-17 and quash the same as being illegal and arbitrary.
- (b) Declare that the respondents are not entitled to withhold any amount towards damage rate of licence fee from the DCRG of the applicant.
- (c) Direct the respondents to disburse Rs.24,000/- arbitrarily withheld from the DCRG of the applicant with 12% interest till the date of payment.
- (d) Pass such other orders or directions deemed just, fit and necessary in the facts and circumstances of the case.

2] It is contended on behalf of the applicant that the respondents have not followed the procedure prescribed in the OM dated 27.2.2001 issued by the Ministry of Urban Development concerning the issue of recovery of dues towards overstaying of Government accommodation.. The said OM was issued pursuant to the judgment of the Hon'ble apex Court in CMP No.589 of 1994. The applicant has not been given an opportunity to explain his case. It is also not known how they have arrived at the figure of damage rate of licence fee. The first order issued on 28.7.2003 (A/6) has been cancelled by the subsequent order dated 16.2.2004 (A/10). The order at A/10 would show that it has been decided to cancel the recovery of licence fee. The recovery has been waived in respect of other employees. The applicant has been discriminated against. The dictum laid down by the Hon'ble Supreme Court in 2001 6 SCC 591 is applicable to this case. Even after the permitted period the applicant has paid rent at double the rate. Therefore the benefit of the dictum laid down in the aforesaid case by the Hon'ble apex Court is available to the applicant. The applicant's representation for continued retention was not responded to for several months. By the time the response was received the applicant has been transferred back to the same station. The applicant was under *bona fide* belief that his request would be considered. The respondents are not entitled to withhold any dues from the DCRG. Similar proceedings initiated by the respondents in respect of another employee has been quashed by this Tribunal in OA636 of 2005.



3] In the reply statement filed by the respondents it has been contended that the respondents have received legal advice to file an appeal against the order of the Tribunal in OA636 of 2005. As per rules the accommodation can be retained for period of two months on payment of normal licence fee. Further retention of four months/six months on payment of double licence fee is also admissible. The applicant was granted permission to retain the accommodation for the maximum time under the rules. He was allowed the first two months on payment of normal licence fee and another four months at double the licence fee. He is liable to pay damage rate for the period beyond that. As the exact amount of damage rate was not yet fixed, double the rate of licence fee was recovered provisionally by the head of the regional station. The applicant was in unauthorised occupation of the accommodation between 14.11.2002 to 21.7.2003. Delay in replying to his representation is not a valid ground for justifying continued retention of the accommodation beyond the permissible period. Though the first order levying damage rate issued on 28.7.2003 (A/6) was cancelled, it was specifically mentioned in the cancellation order (A/10) that "orders on specific cases, if any, follows". The allotment of the accommodation is deemed cancelled on expiry of the permitted period. Any outstanding dues to government can be recovered from the retirement gratuity. The provisional recovery of Rs.24000 from the DCRG is therefore valid.

4] We have heard the learned counsel for the applicant Smt. K.Girija and the learned counsel for the respondents Shri T.P.Sajan. We have also carefully perused the documents on record.

5] This OA was earlier heard by a Single Bench of this Tribunal and referring to the order passed by this Tribunal in OA 636/05, the following order was passed on 15.7.2008:


" I have heard counsel for both the parties elaborately. The learned counsel for the applicant in this OA has argued that the aforesaid order fully covers the present case and, therefore, the same is also to be allowed. However, in my considered view the aforesaid order of this Tribunal has not been passed after taking the entire rule position and appreciating the other relevant

judgments on the issue. The Coordinate Bench has not considered the provisions of the Allotment Rules governing the parties. Therefore, it is necessary that this matter be heard by a Bench of two Members. I, therefore, direct the Registry to place this OA before the Hon'ble Chairman to transfer it to a Bench of two Members in terms of Rule 18 (c) of the Central Administrative Tribunal, Rules of Practice, 1993 read with Appendix 1 order dated 18.12.1991."

6] Pursuant to the aforesaid order the matter was considered and heard by this Division Bench. There are two issues for consideration in this OA, namely (a) whether the recovery from DCRG, of outstanding dues in respect of licence fee is legally valid and (b) whether the respondents have followed the prescribed procedure stipulated by the Ministry of Urban Development for imposing the damage rate.

7] We shall first deal with the issue of recovery from DCRG. This issue is governed by Rule 71 of the CCS Pension Rules. The said Rule reads as follows:

"Recovery and adjustment of Government dues:

(1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2) The Government ^{dues} as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the (retirement gratuity) becoming payable.

(3) The expression 'Government dues' includes -

(a) dues pertaining to Government accommodation including arrears of licence fee, if any;

(b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrear of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961)."

Further Rule 72(5) of the CCS Pension Rules stipulates that:

72. "Adjustment and recovery of dues pertaining to Government accommodation :

5...If, in any particular case, it is not possible for the Directorate of Estates to determine the outstanding licence fee, that Directorate shall inform the Head of Office that ten per cent of the gratuity or one thousand rupees, whichever is less, may be withheld pending receipt of further information."



8] It is clear from the above extract that the Pension rules provide for adjustment of the outstanding dues in respect of government accommodation from the retirement gratuity. However where the amount of the outstanding dues is yet to be determined the maximum amount that can be withheld is restricted to 10% of the gratuity or Rs.1000 whichever is less. The said rule is designed to prevent the authorities from withholding arbitrary amounts on a provisional basis. In the present case the respondents have provisionally withheld an amount of Rs.24000 from the gratuity. While we are unable to accept the contention of the applicant that the outstanding dues in respect of government accommodation cannot be recovered from gratuity, we also find that the amount provisionally withheld by the respondent is not in accordance with the provisions of Rule 72(5) of the CCS Pension Rules.

9] We now come to the second issue, namely the procedure to be followed before determining the amount of damage rate liable to be paid for unauthorised occupation. The allotment of accommodation in the respondent's organisation is governed by CPCRI (Allotment of Residences) Rules 1991. Rule 13(2) specifies the period for which the accommodation can be retained on transfer of the employee or on the occurrence of various other events such as resignation, medical leave, retirement, etc. As per this rule an employee can retain the accommodation for a period of two months, after he is transferred to another place, on payment of normal licence fee. Rule 24 further provides that the employee can be permitted to retain the accommodation for further period of 4 and 6 months on educational or medical grounds, respectively. These Rules are identical to the SR 317-B-22 applicable to all Government employees. It is further provided in Rule 13(3) that where the accommodation is retained under sub rule (2) the allotment shall be deemed to be cancelled on the expiry of the admissible concessional periods unless immediately on the expiry thereof the officer resumes duty at the institute. Similarly it is also provided in Rule 24 that after the



allotment is cancelled or deemed to be cancelled the employee is liable to pay licence fee at damage rate. In the present case, the applicant was permitted to retain the accommodation for the first two months on payment of normal licence fee and for another period of four months on payment of double the licence fee. There is therefore merit in the contention of the respondents that the applicant was allowed retention for the maximum period admissible under the rules. The retention of the accommodation beyond the permitted period is clearly unauthorised. The applicant is therefore liable to pay licence fee at damage rate for the period of ^{un}authorised occupation i.e. between 14.11.2002 to 21.7.2003. But before imposing the licence fee based on damage rate it is incumbent on the respondents to follow the procedures stipulated in the OM dated 27.2.1991. As per the said OM the government servant should be given an opportunity to represent against the proposed damage rate. Such a procedure does not appear to have been followed by the respondents in the present case. The applicant has relied on the judgment of the Hon'ble Supreme Court in 2001 6 SCC 591 to argue that since the respondents have already recovered licence fee at twice the normal licence fee for the disputed period, they cannot now levy damage rate. The facts of the case cited by the applicant are however distinguishable. There are references in that judgment to the resolutions passed by the University for waiving penal rent from all teachers. Besides, the respondents in this case have recovered twice the normal licence fee on a provisional basis pending consideration of the applicant's representation. In view of these differences the said judgment cannot be pressed into service to support the claim made by the applicant.

10] To sum the above discussion we are of the considered view that the Pension Rules clearly provide for recovery of outstanding dues in respect of government accommodation from the retirement gratuity. But recovery of licence fee at damage rate on provisional basis has to be restricted to the limit prescribed in Pension Rule 75(2). The applicant was allowed to retain the accommodation for the maximum period that is permissible under the



rules. He is therefore liable to pay damage rate for the period of unauthorised occupation for the period between 14.11.2002 to 21.7.2003. However the respondents are required to follow the procedure prescribed in the OM dated 27.2.1991 before imposing the damage rate. This OA can therefore be disposed of with certain directions.

11] For the reasons stated above, this OA is disposed of with the following directions:

- [1] The respondents shall modify the order dated 1.1.2007 by which an amount of Rs.24000 was provisionally withheld from the gratuity (A/17) and restrict the amount to be withheld in accordance with the provisions of Rule 72(5) of CCS Pension Rules. Excess amount withheld shall be refunded to the applicant.
- [2] The respondents shall follow the procedure prescribed by OM dated 27.2.1991 before deciding the actual amount of damage rate payable by the applicant.

The aforesaid directions shall be implemented within a period of three months from the date of receipt of copy of this order. No costs.



Dr. K.S. SUGATHAN
ADMINISTRATIVE MEMBER



JUSTICE M.RAMACHANDRAN
VICE CHAIRMAN