

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.214/2003

Thursday this the 25th September 2003

C O R A M

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

T.Mathai
T-2, B & N Division
Central Institute of Fisheries
Technology, Kochi-29

Applicant

(By Advocate Sh.George Cherian)

Vs.

1. The Indian Council of Agricultural Research
Krishi Bhavan
New Delhi, represented by its Secretary.
2. The Director
Central Institute of Fisheries Technology,
Kochi-29
3. G.Omanakuttan Nair, T-3,
Central Institute of Fisheries Technology,
Kochi-29.
4. P.Sankar
Hindi Translator
Central Institute of Fisheries Technology
Kochi-29.
5. Central Institute of Fisheries Technology,
Employees Federation,
represented by its Secretary
P.S.Nobi, Central Institute of
Fisheries Technology,
Matsyapuri, Cochin.

Respondents

(By Advocate Sh.P.Jacob Varghese, R1 & R2)

(By Advocate Sh.P.V.Mohanan, R3, R4 and R5)

The application having been heard on 25th Sept.2003 and on the same day the Tribunal delivered the following:


O R D E R

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

The applicant T2(JLA) working in Nutrition Division, Central Institute of Fisheries Technology (CIFT for short) has filed this application challenging the Annx.A6, order dated 27.2.2003 issued by the Administrative Officer of the second respondent with the approval of the 2nd respondent, calling upon

the applicant to move to Type II quarter which is lying vacant to facilitate allotment of the Type III quarter to the 4th respondent.

2. The background leading the application can be briefly stated as follows. The applicant on the basis his pay was eligible to be allotted only a Type II quarter. While so on 19.7.01, a notification was issued by the Administrative Officer of the 2nd respondent stating that some Type III and Type IV quarters were lying vacant and as there was no waiting list of eligible staff for allotment, the same would be allotted to those who are in occupation of lower type quarter on their willingness to pay the enhanced rate of rent. Pursuant to the above, the applicant submitted Annx.A2, requesting for allotment of Type III quarter expressing his willingness to pay higher rent. Accordingly, the Quarter Allotment Committee which met in November 2002 allotted Type III Quarter No.17 to the applicant and another Type III quarter to the 3rd respondent. On the date of allotment the 3rd respondent was receiving higher pay than the applicant. While, the applicant was in occupation of the quarter, it appears that a complaint was made by the 5th respondent Union, alleging that there has been irregularities in allotment of quarters that higher type quarters have been allotted to ineligible persons overlooking the priorities of persons who are eligible specifically pointing to the allotment of Type III quarter to the applicant. Similarly, the case of allotment to one Smt Bindu overlooking the priority of Shri Devasya for Type IV quarter was also mentioned. The Sr.Administrative Officer, gave a reply to the 5th respondent on 25.2.2003 admitting that some mistakes had been committed by overlooking some superior claims, like allotment of Type III quarter to the applicant as also the allotment of Type IV quarter to Smt Bindu and undertaking that the errors would be



rectified when a Type III quarter would become vacant and that future allotment would be made strictly in accordance with the guidelines. However on the very next day i.e. on 27.2.03, the Administrative Officer issued Annx.A6 order calling upon the applicant to vacate the quarter Type III when a type II quarter would fall vacant for allotment of the quarter to the 4th respondent. Aggrieved by that the applicant has filed this application alleging that the order is arbitrary, irrational and unjustified and issued only at the behest of the 5th respondent Union even though no person aggrieved by the allotment has raised any dispute especially when no one has requested for allotment of Type III quarter.

3. The official respondents seek to justify the impugned order on the ground that the allotment made to the applicant being irregular because even without an application the quarter had to be first offered to the eligible official, what has been done is only rectification of the mistake.

4. Respondents 3 and 4 have contended that as the 4th respondent was the only person eligible for allotment of a Type III quarter when allotment to the applicant was made, the impugned order is perfectly justified and that as the 3rd respondent was drawing more pay than the applicant, if any one is to be evicted from Type III quarter it is the applicant only.


5. The 5th respondent has in its reply denied the allegation of malafides and has stated that the Union had only brought the mistakes in allotment to the notice of the authorities



6. The applicant in his rejoinder contended that Annx.R5, amendment to the Quarter Allotment Rules having not obtained the assent of the Council is not enforceable, that in any case a Type III quarter has become vacant on the retirement of Sh.K.C. Baby as is seen from Annx.A10 order. The mistake if any committed in allotting the Type III quarter to the applicant could be rectified without putting the applicant to any hardship by allotting the quarter which has become vacant to the 4th respondent. It has further been contended that when a Type II quarter fell vacant on 1.4.2003, only a Type I Quarter was allotted to Sh.P.S.Nobi by order dated 12.6.2003 even though he was eligible for Type II Quarter and that was done with malafide intention.


7. I have carefully gone through the pleadings and materials on record and have heard the arguments of Sh.George Cherian, the learned counsel for the applicant, Mr.P. Jacob Varghese, the learned counsel for respondents 1 and 2 and Mr.P.V.Mohanan, the learned counsel for respondents 3, 4 & 5.

8. The only question in this case is whether it is just and necessary to call upon the applicant to move to a Type II Quarter as and when it would fall vacant for facilitating the allotment of the Type III quarter to the 4th respondent? It is not seriously disputed by any of the parties that on the date on which the quarter in question was allotted to the applicant, the applicant was not eligible for such allotment and that the 4th respondent had acquired the eligibility for allotment. It is also not in dispute that at the time of Annx.A1 notification was issued, no request for change of quarter from Type II to Type III from the 4th respondent or from any other eligible employees was pending. Annxs.A3 and A3(a) show that as on 12.9.2002 to 30.11.2002, no request for allotment of Type III quarter was




pending. Annx.A1 notification was issued by the 2nd respondent seeing that two type III quarters were lying vacant as there was no request for allotment of those quarters by any person who was eligible for allotment. It was under such circumstances, a decision was taken to allot the quarters to those who were not eligible but willing to pay enhanced rate of rent. Pursuant to Annx.A1, the applicant as also the 3rd respondent applied. The Quarter Allotment Committee took a decision to allot the quarters to the applicant and respondent No.3 and allotted the same to them. The learned counsel for the respondents have brought to my notice Annx.R5 Rules and stated that Rule 9-B therein stipulates that if a person entitled to a higher quarter is available, even without his application he should be asked to shift to that quarter that this provision was lost sight of by the Quarter Allotment Committee which met in November 2002 and therefore, the 4th respondent although had not applied should have been asked to shift to Type III quarter. He argued that it was only to set right that mistake that the impugned order was issued. The counsel for the applicant on the other hand argued that Annx.R5 the amendment rules have not been made with the approval of the Council as is required and therefore, the respondent cannot enforce the said condition. He also argued that the 4th respondent having not raised any grievance the rectification of mistake if any could have been made without disturbing the applicant when a Type III Quarter became vacant. He further argued that the respondents have not rectified this mistake in allotting Type IV Quarter to Bindu overlooking the claim of Devasya and therefore, the order against the applicant alone is arbitrary and discriminatory.

9. What emerges from the material on record and the submissions of the learned counsel for all the parties is that Type III Quarters were allotted to the applicant and the 3rd



respondent who are not entitled for allotment on the basis of their pay because at that time no application for allotment of eligible officer was pending, even though the 4th respondent was really entitled for allotment on that date. It is also evident from the plaeadings that the allotment to the applicant was made on his application, pursuant to a notification in which it was stated that no eligible officers had sought allotment. The applicant had not misrepresented any facts and was not at all responsible for overlooking of the rules if any by the Allotment Committee - either when the notification Annx.A1 was issued or thereafter when the allotment of the quarter to the applicant and the 3rd respondent were made the 4th respondent did not make any claim for allotment. Even as on date no claim or complaint has been made by any eligible officer seeking cancellation of the allotment in favour of the applicant and allotment to 4th respondent or any other. In reply to the complaint of the 5th respondent, the official respondent had stated that the mistake could be rectified when a Type III Quarter would fall vacant. The official respondents should have therefore waited till a Type III quarter become vacant with the retirement of Sh.K.C.Baby especially when there was no urgency to rectify this irregularity even if there was any, as no body including the 4th respondent was claiming immediate allotment of Type III quarter. The respondent could not have allotted the self same Type II quarter which he was occupying earlier to the applicant compelling the applicant to shift to any Type II Quarter which would fall vacant could put the applicant and his family to undue hardship as the situation did not arise on account of any fault on his side. The respondent also has not issued a similar order as Annx.A6 to Bindu as to when they had allotted Type IV quarter overlooking the priority of Sh.Devasya. Under these circumstances I find that the impugned order was not just and proper.



10. In the result, in the light of what is stated above, the application is allowed and the impugned order (Annx.A6) is set aside. The official respondents would be free to set right the mistake if any committed as and when Quarter Type III and Type IV would become available without disturbing the occupation of the Type III quarter by the applicant. No costs.



(A.V. Haridasan)
Vice Chairman.

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