

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.351/2000

Monday, this the 19th day of November, 2001.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.N.Gopalakrishnan,
CP/IV/10,
'Sowparnika',
Kanichira Colony,
P.O.Kureekad-682 305,
via Thiruvamkulam,
Dist. Ernakulam.

- Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. Union of India represented by
the Secretary to Government of India,
Ministry of Home Affairs(ANL),
North Block,
New Delhi-110 001.
2. The Administrator,
Union Territory of Lakshadweep,
Kavarathi.
3. Executive Engineer and Chairman,
Local Accommodation Board,
Lakshadweep, P.W.D. Division,
IIIrd Floor, Administration Building,
Indira Gandhi Road,
Wellington Island Road,
Kochi-3.
4. The Member Secretary,
Local Accommodation Board,
O/o the Executive Engineer,
Lakshadweep Public Works
Department Division,
Jos Trust Building,
Chittoor Road,
Ernakulam, Cochin-35.

- Respondents

By Advocate Mr PMM Najeeb Khan, ACGSC(for R-1)


By Advocate Mr PR Ramachandra Menon(for R.2 to 4)

The application having been heard on 19.11.2001 the Tribunal
on the same day delivered the following:

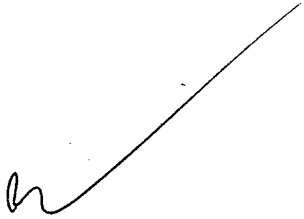
O R D E R

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

This is the fourth round of litigation between the applicant and the Administration of U.T. of Lakshadweep as also the Union of India regarding withholding of a sum of Rs.7821/- from the DCRG of the applicant towards damage rent for alleged unauthorised occupation of quarter by him for certain period. The facts which are absolutely essential for the disposal of this application can be stated in a nutshell as follows: Government Quarter No.C5 is the Lakshadweep Housing Complex at Panampilly Nagar which was allotted to the applicant by order dated 13.11.92 while he was serving as Secretariat Assistant in the office of the Administrator, Lakshadweep. On his transfer to Amini on promotion as Block Development Officer and Ex-officio Sub Divisional Officer vide order dated 1.2.95, he was not allotted a quarter in Amini. Therefore, he retained his quarter at Cochin and made a representation on 15.2.95 to the third respondent seeking permission to retain the quarter for a period of two months. On 27.3.95, the applicant made another representation seeking permission to retain the quarters till 16.6.95, pointing out that he was to retire from service on 30.6.95. The applicant applied for 60 days leave from 23.2.95 but leave was granted to him only in the last week of April, that too for 15 days. The applicant submitted another representation on 5.6.95 to the first respondent seeking permission to retain the quarter at Panampilli Nagar till 31.8.95 pointing out that his children were continuing their studies in the mainland at

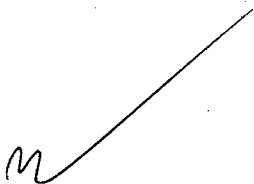


Hyderabad and it was difficult for him to shift the household articles to Amini during the monsoon. No reply was received by the applicant to these representations. However, he received a telegraphic message on 29.6.95 asking him to vacate the quarter immediately after paying all the dues including damage rent for the period beyond 17.4.95. The next day the applicant sent a reply telegram to the first respondent requesting him to permit the applicant to retain the quarter till 31.8.95 as a special case, but there was no reply. Apprehending that he would be evicted from the quarter, the applicant filed O.A.955/95 which was disposed of by order dated 8.8.95 permitting the applicant to remain in the quarter till 21.8.95 and directing him to move out on the morning of 22.8.95. The applicant vacated the quarter on 16.8.95. He retired on superannuation on 30.6.95. An amount of Rs.7821/- was withheld from the DCRG of the applicant. Regarding the withheld amount, there has been successive litigations and ultimately in obedience to the orders of this Bench of the Tribunal in O.A.852/98, on reconsideration of the representation submitted by the applicant, his liability for payment of licence fee/damage rent for the period during which he occupied the quarter beyond 2 months of his transfer was ultimately decided and by the impugned order it was ordered that an amount of Rs.5185/- was due from the applicant. Aggrieved, the applicant has filed this application seeking to set aside the impugned order A-1, for a declaration that he is not liable to pay any damage rent and for a direction to the respondents to draw and disburse the withheld amount from his pensionary benefits to the applicant with interest at 18% per month.



2. The respondents seek to justify the reduction of the amount from his DCRG on the ground that the applicant was charged damage rent for the period beyond two months from the date of his transfer in accordance with the Order 12 under FR-45 at the rate calculated by the CPWD.

3. We have heard the learned counsel on either side and have gone through the material placed on record. Learned counsel for the applicant with considerable tenacity argued that as the first time the applicant was called upon to vacate the premises was only on 29.6.95 by a telegram the occupation of the quarters by the applicant prior to that period could not have been treated as unauthorised and therefore the computation of damage rent for the period from 17.4.95 onwards is wholly unjustified. Though at the first blush the argument may appear to be persuasive it does not stand a closer scrutiny in the light of ruling of the Apex Court in Amithabh Kumar and another Vs Director of Estates and Another [(1997) 3 SCC 88]. The applicant was well aware that beyond the period of 2 months from the date of his transfer he has to get permission for retention of quarters and that was why he applied for extension. The competent authority should have issued order either permitting the applicant to retain the quarter for the period as requested or refusing to grant such permission. The applicant could not have taken it for granted that permission would be granted. If on the eve of expiry of 2 months the applicant did not receive an order, he should have immediately contacted the competent authority and sought an order. That having not been done, the occupation of the



quarters by the applicant from 17.4.95 onwards is undoubtedly unauthorised and for that he has to pay the damage rent. The damage rent in this case has been quantified by the respondents on the basis of the Order No.12 under FR-45 and as calculated by the CPWD. We do not find any reason to interfere in the matter. Therefore, the respondents are justified in withholding a sum of Rs.5185/- towards the amount due from the applicant by way of normal licence fee, damage rent as also electricity charges. However, as the amount has been computed at Rs.5305/- in the order dated 25.9.96 we find no justification for not disbursing the balance amount to the applicant. We are of the considered view that the respondents are liable to disburse to the applicant a sum of Rs.2033/with interest at 12% per month from 25.9.96.

4. In the result the application is disposed of directing the respondents to disburse to the applicant a sum of Rs.2033/- with interest at 12% per month from 25.9.96 within a period of two months from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 19th November, 2001.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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APPENDIX

APPLICANT'S ANNEXURE

1. Annexure A1: True copy of the Order F No.4/2/1620/95-AE(C) dated 26.12.1999 issued by the 2nd respondent.
2. Annexure A2: True copy of the order in OA 955/95 dated 8.8.1995 of the Honourable Tribunal.
3. Annexure A3: True copy of the letter dated 16.8.1995 submitted by the applicant to the 4th respondent.
4. Annexure A4: True copy of the telegraphic message dated 22.12.1995 issued by the 4th respondent.
5. Annexure A5: True copy of the representation dated 25.12.1995 submitted by the applicant to the 2nd respondent.
6. Annexure A6: True copy of the order No. F.No.4/2/95-A.E(C) (Partfile-2)/2726 dated 25.9.1996 issued by the Executive Engineer, O/o 4th respondent.
7. Annexure A7: True copy of the representation dated 30.12.1996 submitted by the applicant to the 2nd respondent.
8. Annexure A8: True copy of the order No.F No.4/2/95-A.E(C) (Part-2)/298 dated 27/28.2.1997 issued by the Executive Engineer and Chairman, Accomodation Board, U.T. of Lakshadweep Ernakulam.
9. Annexure A9: True copy of the final order dated 20.8.1997 in OA-523/97 of this Honourable Tribunal.
10. Annexure A10: True copy of the show cause notice dated 11.2.1998 No.F.No.4/2/307/95-AE(C) issued by the 3rd respondent.
11. Annexure A11: True copy of the explanation dated 18.2.1998 submitted by the applicant to the 3rd respondent.
12. Annexure A12: True copy of the order F.No.4/2/399/95-AE(C) dated 24.3.1998 issued by the 2nd respondent.
13. Annexure A13: True copy of the order dated 28.10.1999 in OA 852/98 on the file of this Honourable Tribunal.

RESPONDENT'S ANNEXURE

Nil.

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