

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.418/99

Dated this, Friday, the 15th Day of December, 2000

Shri Subhash Chander Sood Applicant.

(Applicants by Shri G.S.Walia, Advocate)

Versus

Kendriya Vidyalaya Sangathan & 2 Ors.. Respondents
(Respondents Shri V.G.Rege, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

- (1) To be referred to the Reporter or not? Yes
- (2) Whether it needs to be circulated to No other Benches of the Tribunal?
- (3) Library. No BnB

(B.N. Bahadur)
Member (A)

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(15-12-2000)

CORAM: HON'BLE SHRI B.N. BAHADUR, MEMBER (A)

Shri Subhash Chander Sood,
Education Officer,
Kendriya Vidyalaya Sangathan,
Mumbai Region,
I.I.T Compound,
Powai, Mumbai 400 076
Residing at D-I, Kendriya Vidyalaya,
I.N.S. Hamla, Marve Road,
Malad West,
Mumbai 400 095.

..... Applicant

(By Shri G.S. Walia, Advocate)

Vs.

1. Kendriya Vidyalaya Sangathan,
A Society, registered under the
Societies Registration Act
Regd. Office at 18, Institutional Area,
Shaheed Jeetsingh Marg,
New Delhi 110 016.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeetsingh Marg,
New Delhi – 110 016.
3. Asst. Commissioner,
Kendriya Vidyalaya Sangathan,
Mumbai Region I.I.T,
Compound,
Powai, Mumbai – 400 076.

..... Respondents

(Respondents by Shri V.G. Rege, Advocate)

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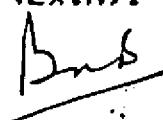
ORDER

(Per: B.N. Bahadur, Member (A))

This is an Application made by Shri Subhash Chander Sood, seeking the relief from this Tribunal, for quashing and setting aside the impugned letter dated 27.7.1998 (Ex. "L"). The Applicant also seeks direction to Respondents to refund to him the amounts (with interest) deducted from September, 1998 onwards from his salary towards damage rent, in respect of Quarter No. D-1, K.V. I.N.S., Hamla, Mumbai.

2. The applicant, in his Application, has given the details of the reasons that he considers as justifiable for his continuing to stay on in the official house allotted to him when he was working as Principal of the Kendriya Vidyalaya at I.N.S. Hamla. On 6.10.1994 he was transferred to Kendriya Vidyalaya at Colaba, Mumbai and, from there after a short stay, transferred on promotion on 29.12.1994 as Education Officer in Respondent's Organisation and posted in the office of Respondent No.3 at Powai in Mumbai. The Applicant has since retired on 30.6.1999.

3. The Applicant, who was allotted Quarter No.D-1 K.V. I.N.S. Hamla stayed in that house, since it was earmarked for the Principal of the said Vidyalaya. It is averred that on promotion as Education Officer on 29.12.1994, he had requested the Chairman of Vidyalaya Management Committee (VMC) to allow him to use/occupy the Principal's Quarter at 'Vidya Niwas' in IIT compound which was lying vacant since 1992 on the condition that if and when required by the Principal/IIT it would be vacated (Ex.A). It is averred that advice was given to approach the



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Allotment Committee and that the then Commissioner had verbally consented to the same. Also attention is drawn to Exhibit B contending that Asst.Commr. allowed retention of Dr. at INS Hamla.

4. The details of the progress in the case is then described event by event and the main contention taken is that at no time was the request dtd. 13.1.1995 (Ex.A at page 16). Applicant for continuing in the Quarter at INS Hamla rejected. It is contended that the matter took a turn in March, 1995, when Internal Audit had pointed out that Applicant was retaining Principal's accommodation at I.N.S. Hamla without orders of the Competent Authority. Copies of the Audit Objection are also appended and contentions regarding this aspect also discussed in the O.A.

5. The Applicant is aggrieved by the Orders of the Respondents, asking him to pay Damage Rent and ordering recovery. Thus, he challenges the orders of the Respondent dated 27th July, 1998 communicated vide letter from Assistant Commissioner, KVS (copy at Ex. "L") where recoveries of Rs.1,34,542/-, over the amount already paid, has been ordered.

6. In fact in regard to the calculation and break-up of this amount, the Learned Counsel for the Applicant had stated that this amount of Rs.1,34,542/- has been calculated as per calculation at page 34 of the Paper Book, appended to the aforesaid Statement at Ex."L".

7. The Respondents in the case has filed a Written Reply, taking, at the outset, the objection regarding limitation. It is averred that information regarding the Audit Objection was conveyed by letter dated 16.1.1997, whereas the Application has come to be filed on 3.5.1999 and is thus hit by limitation. The Respondents resist the claims of the Applicant, and avers further

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that it is not correct, as claimed by the Applicant, that the Audit objections stood settled in view of the endorsements made by Shri Ram Lal, then Assistant Commissioner, K.V.S. on the application of the Applicant on 13.1.1995 (Exh B at 16). Applicant's requests for retention of the quarters was not agreed to by second Respondent as is clear from the letter dated 20th October, 1997 (Ex."F").

8. The facts of the case are then elaborated by the Respondents and it is averred that the continuance of occupation of the KVS Quarters was totally unauthorised and wrong. Applicant was fully aware of the Rules of allotment of houses, and his contention that he was permitted to occupy the house by Shri Ram Lal, Assistant Commissioner is not tenable. In fact Shri Ram Lal had called upon the Applicant to vacate the Quarters vide letter dated 17.2.1997. Even otherwise he had no powers.

9. At one place in the Written Statement, it is stated that it is not correct that the Quarters were never required by anyone else. Even Smt. Vasantha, the Principal, had stated that she had requested Shri Sood to move to an alternate accommodation. Letters of Smt. Vasantha dated 30.5.1995 and 20.7.1997 are referred to. It is further stated in the Written Statement (Page 44) that in any case "assuming without admitting that Smt. P.K. Vasantha did not occupy the Quarters of K.V. I.N.S. Hamla, one Shri Mangilal, who was posted at K.V. I.N.S. Hamla as Vice Principal on transfer from Rajkot could not occupy the said quarters in question since the Applicant failed and neglected to vacate the same." The letter of Shri Mangilal dated 25.6.1997 is referred to in this connection.

10. I have heard the Learned Counsels on both sides and have had the benefit of a perusal of the Respondent's file produced

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at the time of argument's (i.e. File No. 1-8/97-KVS (Admn.I)). All other papers in the case and the communications depended upon for facts and arguments have been perused.

11. Learned Counsel for the Applicant, Shri G.S. Walia took me over the facts of the case in great detail, drawing attention to all the communications etc. set out in the D.A. These are, not being repeated. Shri Walia contended that a proper request for continuation of occupation of quarters was made by the Applicant, and that this was never rejected. In fact, Shri Ram Lal had permitted the Applicant to continue to occupy the quarters. It was strongly argued with reference to pages 34 A & B, that the dependance on the Audit Objection is misplaced and that the matter had been settled in view of report of A/C cum Inspection Officer in the document placed at page 34 B of the Paper Book.

12. Learned Counsel for Applicant stressed the fact that he had replied to the letter dated 6.3.1998 endorsed to him (Ex."B") and a copy of the reply is placed at Ex."H" where the Applicant had asked for withdrawal of letter dated 6.3.1998 giving reasons. Time and again the point was made that the Principal's Quarters which were occupied by INS. Hamla were not required by Principal of INS. Hamla and no loss was suffered by the Respondent Organisation.

13. Regarding limitation, the learned Counsel for the Applicant argued that the damage rent was deducted after the retirement of Applicant, and, therefore, the cause of action arises from 3.7.1998, which is the date of the letter written by the Dy. Commissioner from K.V.S. Headquarters, in New Delhi to the Assistant Commissioner, K.V.S. Mumbai Region conveying the

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decision and asking Shri sood to vacate the house, and for recovery of rent/damage rent as per Rules.

14. Learned Counsel for the Respondents, Shri Rege strenuously argued the case, first to say that cause of action arised in 1994 and even assuming that he is permitted to retain the Quarters, the letter addressed to the Applicant by Principal, K.V.S. INS Hamla dated 16.10.1997, Ex. "B" shows that the Applicant is hit by limitation. Further actions are only in continuance, it was argued.

15. Shri Rege further argued that recovery was ordered as per Rules, and as per the law settled by this Tribunal, in *Rampoonjan's case [1996 (32) ATC 761]* recovery from D.C.R.G. is permissible. It was argued that only VMC can make the allotment of Quarters and no one else has the authority in this respect. It was also argued that retention of Quarters beyond permissible limit is not in consonance with the allotment rules, and that even if permission were to be granted to retain the Quarters, it could not be at normal licence fee. The communication/s by the Audit were reiterated, and the argument made, that audit paras never got settled as alleged by the Learned Counsel for Applicant. Learned Counsel for Respondents made the point that it was not true that the Quarters at INS Hamla were not needed, and stated that the file produced may be seen in this regard. He concluded by saying that the Applicant had been asked to vacate the House in 1997, and he has disregarded the instructions and was thus liable for damage rent as imposed.

16. I have gone through the various communications depended upon by both the sides to trace the line of arguments, which are based on the chronology of developments. In the first place, the


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calculations at page 34, referred to above, should be noted here. The period from 6.10.1994 to 5.12.1994 has been treated to be at normal Licence Fee. The period from 6.12.1994 to 5.6.1995 is assessed at double Licence Fee i.e. Rs. 418/- per month. The period from 6.6.1995 to 31.7.1998 has been at Rs. 3723/- per month.

17. The Applicant has in deed been seeking permission to allow him to stay on in the Principal's Quarters. An important ground taken is that the Principal posted was not going to occupy the said Quarter as she was living in another house. Great stress is also placed by the Applicant on the point that the Assistant Commissioner of Respondent Organisation (Shri Ram Lal) had in fact agreed to the request of the Applicant to stay on in the aforesaid Quarters at INS Hamla, and had made an endorsement in this regard and had permitted the Applicant accordingly. Reliance is placed on Ex. "B" (Page 18) on which endorsement is shown as made in the typed copy filed. The Respondents have stated that the said Asst. Commisioner was not competent to grant permission in the first place, and tht he himself, on behalf of the Respondents, had been writing to the Applicant to vacate the Quarters.

18. One thing that is clear from a perusal of the file of the Head Office in Delhi is that request of the Applicant has been continuously considered in the file of the Office over a considerably long period of time. Different notings have been made, some recommending the case, others not recommending it but no clear decision has been taken for all this time, thus contributing in a sense to allowing a situation, where the said Applicant continued to stay in the quarters as described. A perusal of the file also shows that the considerations developed

speed, after the aforesaid Shri Mangilal applied for the Quarters in view of his posting as Vice Principal. Shri Mangilal is stated to have joined at K.V. INS Hamla from Rajkot w.e.f 20.5.1997 and to have been facing great difficulties in not having quarters in Mumbai. It is in 1997 that a tone of finality asking the Applicant to vacate the house comes about and it is ordered on file that "allotment be cancelled and damages recovered as per Rules by A.C. Bombay." Reply at Ex. F dated 20.10.1997 communicates that applicant should move out from Qrs, at Kendriya Vidyalaya INS, Hamla, to a specified Quarter at IIT Powai. It is true that barring the permission stated to have been granted on the application itself by the Assistant Commissioner, Shri Ram Lal there is no specific permission granted to the applicant for continuing in the aforesaid quarters. On the other hand, it is also true that no direct orders of finality have been made on the Applicants requests and, as noted above, the matter continued to drag on.

19. In view of the facts and circumstances of the case, while it will be difficult to decide whether Smt. Vasantha was agreeable or was really keen to stay in the aforesaid Quarters, it is clear that the matter really acquired some finality with the communication dated 20.10.1997 (Ex.F) the statement at page 34 it is to be concluded that the Applicant vacated the house on 31.7.1998.

20. A view will have to be taken on the relief sought by the Applicant in the background of the facts of the case and the rules. While strictly speaking perhaps the Applicant should have himself vacated the house after a reasonable time from the date of his transfer from INS Hamla, it is also true that his requests was pending clearance and no decision was taken one way or the other till the communication dated 20.10.1997.



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21. In the facts and circumstances discussed above we can arrive at a broad position where we could break up the period, between 6.10.1994 to 31.7.1998 as follows: (Ref Page 34 of Paper Book).

(a) Period between 6.10.1994 to 20.10.1997

(b) Period between 20.10.1997 to 31.7.1998

We note that 20.10.1997 is the date on which the important letter to the Applicant as discussed above. Rounding off we can take this date as 31.10.97/ 1.11.1997.

22. It is clear in the circumstances discussed above that there is no excuse for the Applicant in continuing to occupy the accommodation in question beyond 1.11.1997. Hence the levy of damage Licence fee for the period 1.11.1997 to 31.7.1998 is held to be justifiable. The amount for this period shall be paid by the Applicant to the Respondents within a period of one month from the date of receipt of a copy of this Order. If not paid in this time, it can be deducted from Applicant's dues as per Rules, by the Respondents.

23. As regards the period between 6.10.1994 to 31.10.1997, we observe that there are a number of issues/ facts that have appeared. The first point is that a request had been made by the Applicant. Then another point that is to be considered is the endorsement of Shri Ram Lal, Assistant Commissioner, permitting the applicant to stay on in the Quarters at INS Hamla. We must state here that we have only a typed copy of this document, and do note that the document itself has not been doubted in reply, although the point has been made more than once, by Respondents that Shri Ram Lal had no authority to accord such a permission. This is another point that would need reconsideration. We then have copies of notings on the files, which we shall not cite in detail, where no decision has been taken till the communication

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of the letter dated 20.10.1997 as referred to above. There are other aspects about the house being needed by the Principal or not, on which we cannot arrive at any definite conclusion in the absence of full facts. Nor would it be necessary for a Tribunal to do so if the Administration itself can do it. And finally the question as to whether the audit objections raised were relevant and what the detailed papers in this regard are also, it would be needed to check up and go into the point whether the audit objections got settled as contended by the Applicant in view of a communication dated 27.12.1995, which is a letter signed by Accounts-cumInspecting Officer (Ex.C) to make the point that the Audit Para had got settled. In these circumstances we would feel that it would be justifiable if the matter regarding treatment of period between 6.4.1994 to 31.10.1997 is gone into again by the Administration not only with reference to the observations above but with reference to full facts of the case, and a decision taken after such reconsideration.

24. In view of the above discussions, this O.A. is disposed of with the following Orders.

(a) Respondent No.2 shall consider the case of the Applicant with regard to the imposing of normal Licence Fee/ Damage Licence Fee for the period between 6.4.1994 to 31.10.1997, in the light of the observations in para (23) above, and take a decision, on merits and as per rules, within 3 months from the date of receipt of a copy of this Order. The decision shall be communicated to the Applicant, stating reasons, in brief.

(b) The Applicant is held liable to the payment of damage rent as per Rules for the period from 1.11.1997 to the date of vacation of the quarters by him. The modality of payment shall be as recorded in para (22) above.

(c) There will no orders as to costs.

B.N.Bahadur

(B.N.Bahadur)
Member (A)

15/12/2000

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