

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 87/2000

the 20th day of September 2001

CORAM: Hon'ble Shri S.L. Jain, Member(J)

1. OM Prakash Prasad
Residing at
Qrtr.No. 50/3,
Air Force Station, Deolali.
2. Joseph Peter Bagul
Residing at
Qrtr. No. 50/4.
Air Force Station, Deolali.
3. Rajendra Prasad
Residing at
Qrtr. No. 44/2,
Air Force Station, Deolali.
4. Bare Lal,
Residing at
Qrtr. No.41/1
Air Force Station, Deolali.
5. Ramjeet Ram
Residing at
Qrtr. No. 161/5,
Air Force Station, Deolali.
6. Dulare Ram
Residing at
Qrtr. No. 154/2,
Air Force Station, Deolali.
7. Ramblhau Rajaram Dalv
Residing at
Qrtr. No. 48/1,
Air Force Station, Deolali.
8. Shankarrao Jairam Samudre
Residing at
Qrtr. No. 155/7,
Air Force Station, Deolali.
9. Rampher Yadav
Residing at
Qrtr. No. 95/8,
Air Force Station, Deolali.

...Applicants.

By Advocate Shri A.I. Bhatkar

V/s

1. Union of of India through
The Secretary, Min. of Defence
Sena Bhavan, New Delhi.

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2. The Controller of Defence Accounts
Southern Command, Pune.
3. The Garrison Engineer (Air Force)
Ojhar Air Force Station
PO Ojhar, Dist. Nasik.
4. The Air Officer Commanding
25 Equipment Depot,
Air Force Station, Deolali,
Nasik.

By Advocate Shri R.K. Shetty.

5. The Commissioner
Kendriya Vidhyalaya Sangathan
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

6. The Principal
Kendriya Vidhyalaya
Air Force Station, Deolali.

...Respondents

By Advocate Smt. H.P. Shah.

O R D E R

{Per Shri S.L. Jain, Member(J)}

This is an application under Section 19 of the Administrative Tribunal's Act 1985 seeking a declaration that the applicants are entitled to pay normal licence fee and not licence fee at special rate from the date of occupation of the Government accommodation, the respondents are not entitled to recover any arrears towards licence fee from the applicants at special rate with a direction to the respondents to refund the excess amount recovered from the applicants at special rate from January 1997 with interest.

2. The applicants are employees of Kendriya Vidhyalaya Sangathan and serving as teachers with Kendriya Vidhyalaya, Air Force Station, Deolali. They are residing in the defence pool

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residential accommodation as allotted to them by the Air Force Station, Deolali. Kendriya Vidhyalaya Sangathan is an autonomous body fully financed by the Central Government. The Kendriya Vidhyalayas are opened at various places in India to provide educational facilities to the children of Central Government Employees of various departments. They are generally opened on the demand of the concerned departments / Organisations and for this purpose the demanding organisations have to provide certain basic amenities such as land, temporary accommodation to run the school and living accommodation for staff etc.

3. Kendriya Vidhyalaya, Air Force Station, Deolali was opened at the request of the Air Force Station, Deolali in 1982. The Air Force Authority Air Force Station Deolali had agreed to the terms and conditions as intimated by Air Force Station, Deolali vide their letter dated 28.5.1982 to Kendriya Vidhyalaya Sangathan, Delhi. The terms of the said agreement includes necessary residential accommodation to be provided to the staff of Kendriya Vidhyalaya, Air Station, Deolali on usual terms and conditions as applicable to their own staff in accordance of corresponding status (Annexure-II). The relevant portion of the letter dated 28.5.1982 signed by Group Captain, Station Commander Deolali is as under:

It is also confirmed that the terms and conditions of Kendriya Vidhyalaya Sangathan as per Annexure II forwarded vide your above quoted letter are acceptable to us. A certificate to that effect is enclosed in quadruplicate as desired by you.

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A certificate is appended to the said letter sent by Group Captain, Station Commender is as under:

C E R T I F I C A T E

It is hereby confirmed that the terms and conditions for opening a Kendriya Vidyalaya under Defence Sector as circulated vide Annexure II are acceptable to this Station.

4. The accommodation which are held by the applicants are from the quota allotted to Kendriya Vidhyalaya Staff. Applicant No.1 to 9 are in occupation of the accommodation from 9.5.1983, 17..121.1983, 7.11.1987, 2.12.1992, 15.8.1992, 9.12.1991, 7.5.1993, 18.4.1996 and 12.3.1998 respectively.

5. The applicants claimed that as the said accommodation is allotted to them by the competent Authority on the usual terms and conditions as applicable to other civilian staff on the basis of the terms and conditions the respondents are entitled only to charge normal rent. At no point of time the applicants were informed that they will be charged higher rate or special rate of licence fee. They were asked to pay licence fee in respect of the said accommodation at special rate as applicable to "Private Party" as intimated vide Air Force Station Deolali letters dated 25.1.1997 and 11.7.1997 on the basis of Ministry of Defence letter dated 27.5.1988 (Exhibit 3). They cannot be treated as "Private Party" as they are not ineligible persons, are not liable to pay special rate of licence fee and the respondents are not entitled to recover the same. In view of the order dated 16.12.1996 issued by the Government of India, Ministry of Defence, whereby the licence fee has been revised, it has been

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clearly stated "for civilian paid from the defence services estimated and teachers and staff of Kendriya Vidhayalaya who are in occupation of General pool accommodation" (Exhibit 4). The applicant are governed by CCS (CCA) Rules 1965, CCS(Conduct) Rules 1964 and also granted same pay scales which are granted to Central Government employees.

6. The Air Force Station, Deolali took up the matter vide letter dated 12.2.1998 with Controller of Defence Accounts, Pune clarifying the position, Kendriya Vidhyalaya Air Force Station Deolali also wrote a letter dated 31.3.1998 to charge the normal licence fee (Exhibit 6). In the meanwhile the Garrison Engineer, Ojhar wrote a letter dated 20.5.1998 in which he clarified that the teachers and staff of Kendriya Vidhyalaya are treated on par with other civilian from 1.7.1996 and prior to that they are to be treated as Private Parties (Exhibit 7). The Garrison Engineer, Air Force Station, Ojhar vide letter dated 10.8.1998, further correspondence exchanged between 25, Equipment Depot, Air Force Station, Deolali and Garrison Engineer, Air Force Station, Ojhar, on this subject wherein 25 Equipment Depot, Air Force Station, Deolali maintained the stand that the teachers and staff of Kendriya Vidhyalaya are at par with civilian and the licence fee at a special rate cannot be charged from them whereas Garrison Engineer, Air Force Station, Ojhar maintained the stand that the licence fee at special rate is required to be charged from them (Exhibit 9) {Copies of letter dated 10.1.1999, 21.1.1999, 20.2.1999, 11.6.1999 and 16.10.1999}. After the notice dated 29.4.1999 from the Advocate of applicants (Exhibit 10) which was replied by Garrison Engineer, Air Force Station,

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Ojhar vide their letter dated 22.6.1999 (Exhibit 11) the same stand was maintained. The matter was also taken up by Kendriya Vidhyalaya Teachers Association vide Exhibit 13 (letters dated 20.8.1997, 8.12.1997, 27.1.1998, 9.7.1998 and 19.12.1998) but in vain. Number of staff and teachers of Kendriya Vidhyalaya has been occupying Air Force Accommodation during their tenure in 1982. Concerned authorities have not charged any special rate of licence fee from them and therefore it is discriminatory treatment to the applicants. The respondents recovered special rate licence fee from the applicants, hence this OA for the above said relief.

7. The claims of the applicant is resisted by the respondents which have been dealt with hereinafter.

8. There is no dispute in respect of Exhibit 2 para 3 and certificate attached to it which is referred to in para 3 of this order.

9. In rejoinder the applicants have placed on record the letter No. PC (2) to MF No. 125/25/ADM/L&C/808 - C/D (GS II) of India, Ministry of Defence, New Delhi dated 24.5.1976 (Exhibit A-1 page 143). The perusal of the same makes it clear that the subject is "facilities to be provided to the Kendriya vidyalaya Sangathan in respect of Central Schools in Cantomments etc." The letter begins with "In supersession of all previous orders on the above subject..." The previous orders which are superseded by this letter are also noted in this letter which is as under:

Ministry of Defence letter No. F25(3)/63/D (GS II) dated 13.3.64, Amendment No. 25(3)/53/D/(GS II) dt. 2.7.65, Amendment No. F, 25(3)/63/D (GS II) dt. 10.3.70, letter No. 3(10)/70/D/(GS II)dt. 25.1.71 as amended vide Corrigendum No. 3(1)/72/403-C/D (GS - II) dt. 24.2.76 and letter No. 3(10)/70/D(GSII) dated 22.8.1974.

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10. In view of this letter the orders mentined as superseded contained in the said order is not of any assistance to any of the parties.

11. The applicants have placed on record Exhibit -3 A issued by Government of India, Ministry of Defence, New Delhi dated 27.5.1990 (.OA page 33) and in the said letter in para 8 it is mentioned " Applicability of special licence fee which is as under:

The type of cases, to be covered/ categorised for the purposes of Special Licence Fee shall be as under:

(a) In all cases when Defence Pool accommoudation is allotted or allowed to be retained on existing market rate of Licence fee either on superannuation from the Service or on permanent transfer, such as the service officeres who have proceeded on deputation to Sports Authority of India, IRDG and other public Sector, Undertakings and other autonomoous bodies and Projects under Ministry of Defence.

(b) When a Govt. building is let out to a private purposes for residential or business purpose as per the exisiting orders such as allotment of accommodation to MES construction fro storage etc.

(c) Accommodation occupied over and above the scales by the Regimental shop contractors in terms of Govt. of India Ministry of Defence letter No. 59645 / Q3 (Policy) / 44 / B,Works) dated 11.1.60

(d) Lecture cum Cinema building (Govt. owned used for the screening of entertainment films on commercial basis.

12. On perusal of para 6 of the said letter makes it clear that when Defence pool accommodation is allotted and are allowed to be retained on payment of existing 'market rent of' Licence fee, Licence fee to be recovered will now be catogarised as Special licence fee.

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13. Exhibit 4 issued by Government of India Ministry of Defence, New Delhi letter dated 16.12.1996 clearly mentions that Staff of Kendriya Vidyalaya were in occupation of General pool accommodation specially constructed for Defence Civilian surplus Defence Pool Accommodation allotted on temporary basis and from MES Key personnel quarters all over the country as shown Annexure I to this letter. The President was pleased to sanction the revision of licence fee for residential accommodation contained in this Ministry's letter dated 1(2)/93 (I) O&C dated 3.1.1994.

14. (Exhibit A 1 letter issued by the Government of India Ministry of defence letter dated 24.5.1996 (OA page 143) of which para 161 is as under:

161. Quarters in Cantonment and Factory Areas - Rent for.

The Ministry of Defence have agreed to charge rent under para 16 of "Quarters and Rent" for surplus accommodation, if any, allotted to teachers of Kendriya Vidyalaya, i.e. rent will be recovered as from entitled persons.

Perusal of the same makes it clear that it was agreed to charge rent under para 16 of "Quarters and Rent" for surplus accommodation if any allotted to teachers of Kendriya Vidyalaya i.e. rent will be recovered as from entitled persons. Certainly this para applies when surplus accommodation is allotted to teachers of Kendriya Vidyalaya.

15. This was the position based on instructions of the Government of India, Ministry of Defence, New Delhi dated 24.5.1976. The instructions do operate when there is no contract. When there exists the contract between the parties,

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the contract superseded the instructions in absence of provision that " notwithstanding any contract to the contrary". As stated above the respondents have agreed vide Annexure 2 to the terms and conditions proposed by Kendriya Vidyalaya according to which "at least 50 residential accommodation will have to be provided by the sponsorin authority on priority basis in the terms and conditions as applicable to their own staff of corresponding status". In view of the said position when the accommodation is to be provided on priority it cannot be said that the accommodations allotted to the applicants, the respondents can charge the special licence fee as the said facility is available even to them on the terms and conditions as applicable to their own staff. As the staff is not charged the special licence fee, the applicants cannot be charged with the special licence fee. surplus accommodation and the provision contained in para 161 of the said letter cannot be put to surface.

16. As discussed above I am of the considered opinion that the applicants are liable only to pay the normal rent in view of the terms contained in Annexure II (OA page 29).

17. In the result OA is allowed and it is declared that the applicants are entitled to pay normal licence fee and not licence fee at special rate from the date of occupation of the government accommodation. The respondents are not entitled to recover any arrears towards licence fee from the applicants at special rate and the amount recovered at special rate be refunded to the applicants within one month. No order as to costs.

S.L. Jain
(S.L.Jain)
Member(J)