

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 3 of 2001.

Dated this Thursday the 19th day of April 2001.

Shri B. B. Dhamija, Applicant.

Shri P. A. Prabhakaran, Advocate for the
Applicant.

VERSUS

Union of India & Another, Respondents.

Shri V. S. Masurkar, Advocate for the
Respondents.

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

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other X Benches of the Tribunal ?
- (iii) Library. Yes.

B.N. BAHADUR
MEMBER (A).

os*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 3 of 2001.

Dated this Thursday the 19th day of April, 2001.

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

Shri B. B. Dhamija,
Employed in the office of
Chief Engineer,
Military Engineer Services,
Pune Zone, Pune 411 001
as Superintending Engineer
(Indian Defence Services of Engineers) ... Applicant.

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. Flag Officer Commanding-In-Chief
Head Quarters Western Naval
Command, Shahid Bhagat Singh Road,
Mumbai - 400 001 representing
the Union of India.
2. Senior Staff Officer (Quartering)
Head Quarter Western Naval Command,
Shahid Bhagat Singh Road,
Mumbai - 400 001. ... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case, Shri B. B. Dhamija, comes upto the Tribunal seeking the relief for the quashing of order dated 22.12.2000 made by the Respondents, directing the vacation of the quarter allotted to Shri Dhamija. The Applicant



... 2

also seeks a direction to the Respondents to permit him to continue to occupy the quarters allotted to him till the end of the current academic year, expected to last till 30.06.2001. A prayer is also made for a direction to the Respondents that only normal licence fee will be charged for two months and thereafter an amount increased in terms of the prayer at para 8 (c).

2. The facts of the case, as brought forth by the Applicant, are that the Applicant was posted to Mumbai in 1994, and was allotted quarters at 72, Gemini, Nofra Colaba, Mumbai - 400 005. He was transferred to Jammu & Kashmir, and was permitted to retain the aforesaid quarters for the period of his probable service at Srinagar w.e.f. 27.05.1998 to 26.05.2000, such posting being normally limited to two years (order at exhibit A-2). The Applicant further states that his family was asked to shift to a lower category quarter before 26.05.2000, which though he feels aggrieved against, he obeyed and shifted to his present quarters. He was finally posted out of the hard station (Jammu & Kashmir) to Pune and after issue of the transfer/posting/movement order, he handed over charge on 14.12.2000, and thereafter joined in Pune.

3. The Applicant thereafter refers to sub-rule (2) of 308 of 1978 and the orders of Ministry of Defence (Annexure A-2, A-3 and A-4) to make the point that since his transfer took place in the middle of an academic year, the Applicant is entitled to retain

...3



the quarter upto six months on payment of double the licence fee, beyond the period of first 1/2 two months. The Applicant further avers that the defence taken by the Respondents to the effect that there is no rule to combine the two grounds relating to children's education and non family station is not correct and he is aggrieved by the same. It is with this grievance that the Applicant approaches the Tribunal seeking the relief as stated above.

4. The Respondents have filed a Written Statement stating that the Applicant was allotted a Service Quarter, meant for Navy Service Personnel, since he was working for Navy Project Works in Mumbai. These works were being carried out by the Department of Indian Army. It is contended that M.E.S. is the department of Indian Army and not of the Indian Navy. It is further stated that M.E.S. Department has transferred the Applicant from Mumbai to Jammu & Kashmir and the Applicant therefore had no right to retain the accomodation of Indian Navy. The Applicant is presently posted in Pune and hence he has no right to retain the house in any case. Support is also sought vide para 4 of the Respondents' order dated 16.07.1998 where it was stipulated that non vacation of the flat on 27.05.2000 will attract action under the provisions of the Navy Act, 1957 / Public Premises Act, 1971. The above stand of the Respondents is amplified and expounded in the further part of the detailed Written Statement, where it is also stated that there was accomodation available in Srinagar and 1/2

the Applicant ~~can~~ ^{could} well have taken his family there. It is also pointed out that other officers are suffering without a house and that the accomodation is needed. In para 18 of the Written Statement the relevant Navy Order No. 16/92 is quoted to state that - on posting out, an officer has to decide within two months as to which ground i.e. academic or N.A.C. is being taken and the option will have to be determined.

5. The Applicant has filed a rejoinder. A Miscellaneous Petition was filed towards the closing stages before argument and a reply thereto had also been filed by the Respondents. Through M.P. the Applicant has sought certain amendments. It was decided by consent by both sides that while no formal amendments were necessary, the ^{contents of} M.P. and the reply thereto, would be considered on the points that are relevant to the case.

6. The Learned Counsel on both sides have been heard at length. The Learned Counsel for the Applicant, Shri P.A. Prabhakaran, took us over all the facts of the case and the relevant orders / instructions on which the Applicant seeks to support his case. In the first instance, the Learned Counsel referred to the Movement Order at Exhibit A.7.i., page 19 to state that the release of the officer actually took place on 14.12.2000, and hence the impugned order dated 14.12.2000 and hence the impugned order dated 22.12.2000 treating him as unauthorised occupant from an earlier date is *prima facie* wrong.

He further made the point that it was clear from the certificate issued by the College of the Applicant's son that the academic year would end in June 2001 and there is no hostel facility in the college and this was a basis to show that the need was genuine.

7. The Learned Counsel took me over to the instructions contained in the communication dated 17.10.1978 (Annexure A-2 page 29 of the Paper Book) and made the point that as per the table appended with this document, the event of transfer during the middle of academic year of children provided for retention of official residence "upto six months beyond the permissible period of two months or till the end of the School or College academic year of their children, whichever is earlier, on payment of double the assessed rent."

8. Arguing the case on behalf of the Respondents, their Learned Counsel drew attention to the various defence taken in the Written Statement, and specially to the document annexed at exhibit R-1 where a pointed reference was made to para no. 12. *that of these are (consolidated) one* It is stated in the preamble ~~as~~ rules governing the provision of accomodation and allied services to officers and recovery of licence fee, furniture charges and damages from Service Officers. *and* The point made by the Learned Counsel was that M.E.S. ~~Civilian~~ Officers were Civilians, and had to be governed by rules accordingly. He also drew our attention to the provisions of this document at para 63 whereby two months time was allowed to

decide the ground of retention of accomodation. This point has been made in the Written Statement and has been referred to above. He also similarly made a reference to exhibit R-4 (i.e. page 89) where he contended that an application made by the Applicant for retention of the accomodation also contained an undertaking about this being the final choice and no further change would be made or extention sought. It was argued by the Learned Counsel that rules of the Armed Forces would be applicable and not the normal Civilian rules in this case.

9. Rearguing on the last point regarding the undertaking in the application briefly, Shri P. A. Prabhakaran stated that undertaking was subject to rules and that the para 11 of the letter to corrigendum issued by the Ministry of Defence (page 32 of the Paper Book) would be relevant.

10. The basic facts in this O.A. are clear and not disputed, in that the Applicant who is a Member of the M.E.S. was serving the Respondents' organisation i.e. the Navy in Mumbai and was transferred out to a Field Station for a probable period of two years and as per rules, admittedly, his family was provided accomodation which he was allowed to keep for two years. Now the point of dispute comes only as to what happens thereafter. While basic facts, as stated above, are clear enough, the interpretation of rules and instructions cited and the arguments taken ^{by the rival sides,} ~~of course,~~ vary. The various rules and documents annexed and



cited have been seen in the overall context of the facts of the case.

11. In the first place one thing that is clear is that the Applicant was allowed to stay on for a period of two years as per a conscious provision in the rules. To state that he is a civilian and that the accommodation is of the Navy, etc. as has been argued, is besides the point. His family has been allowed to retain the accommodation in view of a decision by the Government for a person who is sent to serve in Jammu & Kashmir, etc. He happened to be serving the Navy in Mumbai and therefore, occupying the accommodation legally granted to him in this process. Peculiar facts of the M.E.S. civilians in this regard cannot be ignored, as they serve the Navy, Air Force or the Army as per their posting. The overall instructions for retention of accommodation have been made by the Government in the Ministry of Defence/competent authorities therein. An overall view would be necessary in terms of the instructions, and a fragmented view of the rules cannot be taken. Now another thing that happens is that the Applicant is relieved from the station (as per page 19) on 14.12.2000 and to mechanically take a view that his period ended on a date in November, would be taking a very technical view without reference to the background of why such an accommodation is allowed to be retained in the place of previous station. It was not as though that it was the Applicant's decision to stay on till certain date, say 14.12.2000.



12. We now come to the second part i.e. after December, 2000. The Applicant gets posted to Pune and admittedly this is a time where the Applicant's children are in the midst of the academic session. This point is not disputed. It is an admitted fact. The question that arises before the Tribunal is, whether we should view the two concessions offered for relaxation of quarters as mutually exclusive. It is also a clear position as seen from the rules that upto six months time is given upto the academic year end and that till such time (barring two months) the concerned persons are allowed to retain the accomodation at twice the normal assessed rent. Will it be fair to take a view, as asserted by the Respondents, that these two facilities / concessions made available by Government should be taken as clinically different from each other!

13. In the background of the overall consideration of the instructions and the facts of the case, it is clear that it would be illogical to take a stand that once the two years are over or once the Applicant is released from his station in Jammu & Kashmir, he cannot at all take the benefit of the concession given for completion of academic term of the children. This would be a highly artificial view and it would seem to be contradictory to the very spirit of the provisions, through which concession on these two different counts are envisaged.

14. In the facts and circumstances of this case, the O.A. is therefore allowed in terms of the following orders:



... 9

(i) The Applicant is allowed to retain his present accomodation for his family till the end of June, 2001.

(ii) The Applicant will be required to pay twice the rent normally paid by him from the period between 15.12.2000 upto the date of vacation or 30.06.2001.

(iii) Should the Applicant not vacate the accomodation latest by 30.06.2001, he will be liable to all action envisaged and permitted as per rules.

(iv) There will be no order as to costs.

B. N. Bahadur

(B. N. BAHADUR)
MEMBER (A)

os*