

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 103/2001
DATED THE 7th DAY OF Nov 2001**

**CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)**

Tarun Krishna Bhattacharjee,
JE (E/M),
MES No. 104803
D.G.N.P. (M.B.)
Accommodation Complex,
Lion Gate, Naval Dockyard,
Mumbai - 400 023.

... Applicant

By Advocate Shri Peter Lobo

V/s.

1. Union of India,
through Defence Secretary,
Ministry of Defence,
North Block,
New Delhi - 110 011.
2. Station Commander,
Station Headquarters,
Colaba, Mumbai - 400 005.
3. Station Staff Officer,
(Accommodation)
Adm. Commandant,
Station Headquarters,
Colaba, Mumbai - 400 005.
4. Chief Engineer(Navy),
24, Assaye Bldg,
Colaba, Mumbai - 400 005.
5. Garrison Engineer(North),
Santacruz (East),
Mumbai - 400 029.
6. A.A.O. G.e.(North),
Santacruz (East),
Mumbai - 400 029.
7. D G N P,
Accommodation Complex,
Building,
Naval Dockyard,
Lion Gate,
Mumbai - 400 023.

... Respondents

By Advocate Shri R.K. Shetty.

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(O R D E R)

Per Smt. Shanta Shastry, Member(A)

The applicant is aggrieved by the impugned orders dated 2/12/99 and 10/1/2000 whereby the applicant has been declared as an unauthorised occupant of quarter No.167/4, Kalina and has been told that his request for retention of the aforesaid quarter cannot be granted.

2. The applicant is a civilian employee in the Military Engineering Service (MES in short) working as a Junior Engineer (Electrical/Maintenance) Grade-I also known as Superintendent (Electrical/Maintenance). The applicant was transferred to Bombay and posted at GE(North) Santacruz on 13/1/95. He was allotted quarter no.P/167/4 KP-III, Kalina, Type-III accommodation where he is residing currently. Thereafter, the applicant was posted to DGNP vide letter dated 5/10/98 and movement order dated 5/8/99. He was relieved on 31/8/99 and reported for duty to the DGNP at Mumbai on 2/9/99. Thereafter, on 9/9/99 he submitted an application for allotment of Government married accommodation to the DGNP, Mumbai and also inter-alia, requested to consider his application for allotment of Government accommodation from the Unit Pool of DGNP at the earliest. Thereafter, the impugned order dated 2/12/99 was passed by the GE(N) calling upon the applicant to vacate the allotted quarters forthwith. The applicant made two representations on 14/12/99 and 15/12/99 requesting to withdraw the impugned order and to allow him to retain the quarters. However, the respondents passed a further order dated 10/1/2000 by which he was informed that his representation would not be entertained since the Rule for allotment of accommodation to Navy and its allied units has now been changed. The applicant was asked to vacate the quarters

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forthwith and to pay the damage rent with effect from 21/1/2000. Applicant made a further representation on 15/2/2000 for re-consideration. In November, 2000, the respondents started recovering the damage rate of rent from the applicant's salary directly. The applicant has made a further representation on 20/12/2000 against the recovery.

3. The respondents submit that the quarter allotted to the applicant was because the applicant happened to be a key personnel in the GE(North). Such accommodation is allotted to key personnel whose services and who presence on the premises are essential for maintaining essential services round the clock and in emergencies. Since the applicant was identified as a key personnel, he was allotted the quarter. Now that the applicant has been transferred to the D G N P, though in MES, he is no longer a key personnel as far as GE(N) unit is concerned and as such the applicant is required to vacate the quarter. It was for the applicant to have applied for a regular accommodation from the General Pool. As per the accommodation policy for MES key personnel, an individual when posted or transferred out of the Unit/Establishment is bound to vacate the key personnel accommodation. If the applicant is therefore allowed to continue in the aforesaid accommodation then the entire key personnel accommodation policy would be a wreck. Therefore the respondents have correctly directed vide letter dated 10/1/2000 that he was bound to vacate the quarter and would be liable to pay damage rent w.e.f. 21/1/2000. The applicant is fully aware of the Rule and policy meant for key personnel accommodation. The applicant did not apply or try for alternative accommodation from the

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CPWD/CGHS/General Pool accommodation. He apparently was not serious about vacating the accommodation.

4. The learned counsel for the applicant submits that he had applied for accommodation for married people immediately on his joining DG(NP) at Colaba. However, he could not secure any accommodation. According to him DG(NP) does not have any separate pool of accommodation for civilians, the same has to be shared with ^{GE} ~~DE~~(N). In this connection, the applicant has produced a letter dated 7/12/98 from the office of the Additional Directorate General of LW/Q3(B-1) Quartermaster General Branch, Army Headquarters, New Delhi regarding re-organisation of MES and married accommodation for Chief Engineer (Navy). Para-2 of this letter which is relevant is reproduced below:-

The matter was reviewed in VCC meeting on 03 Nov 98, Extract of minutes on decision is attached. In view of the above following be ensured:-

- a) Status quo be maintained till 01 Apr 99.
- b) No Officer, JCO, OR or MES pers posted to CE(Navy) and Addl CE (Naval Projects) Mumbai, be denied accn as per their entitlement till final decision is communicated.

5. The applicant submits further that the DG(NP) Mumbai has strongly recommended his case for consideration to the Chief Engineer(Navy) and GE(N) vide letter dated 15/10/2000. The GE(N) also has recommended the case of the applicant to the Headquarters Mumbai for re-consideration on 1/4/2000. In his rejoinder the applicant has pointed out that being a Superintendent (E/M) he is categorised as MES Key Personnel for

being provided key personnel accommodation. According to him the list of MES employees categorised as key personnel for the purpose of being provided accommodation has been issued by the Deputy Director General of Works, Engineer in Chief Branch, Army Headquarters, New Delhi vide letter dated 23/2/99. It is clearly established therefrom that the post of Superintendent (E/M) is a key personnel for the purpose of providing accommodation. The applicant is further fortified in his stand in view of a letter dated 10/11/94 issued by the Headquarters, Southern Command, Engineers Branch, Pune notifying all offices and units under their command as follows:-

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"To ensure that no action ^{is taken} to get the accommodation vacated once allotted to the civilian employees or charging damage rent/penal rent is taken against the civilian employees until they are allotted alternative accommodation by the new units."

6. The applicant has further stated that as per the terms and conditions of service for MES employees as laid down in the Appendix to the Ministry of Defence letter dated 20/10/59, MES employees are entitled to free quarters. This has been further clarified vide letter dated 20/10/60 from the Headquarter, Quartermaster Branch that once an accommodation has been allotted to a civilian employee, he will not be normally asked to vacate it and in exigencies alternative accommodation is to be provided. On the basis of these provisions, the applicant claims that he is entitled to retain the quarter No.167/4 at Kalina allotted to him by GE(N) earlier.

7. On facts the applicant submits that there are six key personnel quarters in building No.167 at Kalina. Three quarters are being occupied by persons who are non key personnel and two

quarters are lying vacant, one quarter is occupied by the applicant. According to him there is no exigency of service or pressing demand, there is no one in the waiting list for the type-III key personnel quarter at GE(N) Kalina.

8. The learned counsel for the applicant relied on a judgement and order in OA Nos.390/99 and 947/99 which were allowed by this Tribunal on 8/6/2000. There are applicants therein were similarly placed as the applicant. The following operative order was passed in the aforesaid OAs:-

ORDER IN OA-390/99.

The order of cancellation of accommodation dated 1/1/1999 of staff quarter as allotted to Shri Kheora (Annexure 14) is quashed and set aside. Orders reg. penal/damage rent are also quashed and set aside.

The applicant shall be allowed to continue in his present accommodation on payment of normal rent till he is allotted another alternate accommodation as discussed above. Three weeks are granted to the applicant (from the date of receipt of this order) to make an application through proper channel to the appropriate authority pointed out in the order above.

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ORDER IN O.A.947/99

The order dated 2/2/1997 (Annexure A-1) is quashed and set aside in so far as Applicant Pooranchandra is concerned. Similarly, the Order dated 15/6/99, Annexure A-2 regarding imposition of damage rent, is also quashed and set aside. The applicant will continue in possession of accommodation on normal rent until allotted alternate accommodation as discussed above.

9. In those OAs, the applicants therein were not even key personnel whereas the present applicant maintains that he is a key person and therefore he is entitled to retain the accommodation presently occupied by him.

10. The learned counsel for the applicant has also cited number of judgements for example in the matter of K.I. Shepard V/s. Union of India AIR 1988 SC 686, Dwarkadas Marfatia & Sons V/s Bombay Port Trust AIR 1989 SC 1642, Commissioner of Police V/s. Gordhandas AIR (39) 1952 SC 16, Mohinder Singh V/s. Chief Election Commissioner AIR 1978 SC 851, regarding fair play and non arbitrariness in the action of the Executive Authority and proper exercise of powers vested in public authorities. The applicant armed with these judgements as well as the recommendations of the DG(NP) as well as GE(N) vehemently urges that he should be allowed to retain the accommodation.

10. Coming to the damage rent that has been deducted from his salary towards the quarter being occupied by him, the learned counsel for the applicant has drawn our attention to an order

dated 12/11/86 issued by the CDA (Southern Command Pune) in one case of Tulsidas Mulji Supr B/S II, wherein it has been held that "no authority exists for charging of market rent in event of transfer of an individual from one unit to another unit located at the same station. The individual can only be charged normal rent and allied charges."

11. The applicant being similarly placed as the applicant in Tulsidas Mulji's case, urges that he too should not have been charged the damage rate of rent but allowed to pay normal rent. As already stated by him, he is also supported by the letter of Headquarter, Southern Command dated 10/11/94 mentioned earlier.

12. The learned counsel for the respondents in turn maintained that the applicant is not a key personnel as far as accommodation at Kalina is concerned. The learned counsel also produced a letter from the GE(N) Mumbai showing the position of occupation of the quarters at Kalina. It shows that at present quarter No.167/1 is occupied by key personnel, quarter nos 167/2 and 167/3 are occupied by General pool employees, quarter no.167/4 is occupied by the applicant, quarter no.167/5 is vacant w.e.f. August 2001 is earmarked for the AGE (E/M) and is under repair and is reserved for key personnel so also quarter no.167/6 is reserved for key personnel and is in occupation of one Shri K.P.Kurup. The learned counsel for the respondents strongly objected to the retention of the accommodation by the applicant on the ground that these quarters are meant for key personnel and since the applicant is no longer a key personnel in GE(N), his request for retention of the quarter cannot be considered. He should have applied for the General Pool.

13. The applicant has not produced any certificate from the DG(NP) stating that he is a key personnel for purposes of being provided accommodation under the control of GE(N). In the circumstances, we cannot hold that the applicant is entitled to the key personnel accommodation under the control of the GE(N). The judgements in OA 390/99 and 947/99 have been perused by us. In those cases, the concerned respondents themselves had categorically stated that the applicant in that OA Shri Kheora would be continued in the accommodation of the Army Pool which he was occupying. However, he was asked to apply to Western Naval Command for grant of accommodation from Naval Pool. In view of the categorical statement, the applicants therein were allowed to continue in the accommodation in their occupation at the relevant time. This judgement cannot be applicable in the present case as there is no such assurance from the respondents. The further judgements cited by the learned counsel for the applicant deal with general principles governing the policy and actions of the Executives. They only harp on fair play and would apply to any case. We are not convinced about the applicant being a key personnel under the GE(N). Therefore, applicant cannot be allowed to continue in the quarter presently occupied by him. At the same time in view of the instructions/guidelines issued from time to time, by the authorities as stated by the applicant we do feel that the applicant has to be provided alternate accommodation. It is seen that by and large the policy is not to disturb the defence civilian employees once they are granted accommodation and in exigencies of administration if they are to be shifted out

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they should be provided alternate accommodation. It is also not denied that the DG(NP) does not have any separate pool of accommodation. Both GE(N) and DG(NP) are units of MES.

14. We also see from the statement submitted by the respondents vide their letter dated 13/10/2001 that at present one quarter no.167/1 is occupied by key personnel and two more have been earmarked for key personnel namely 167/5 and 167/6. Two quarters are occupied in general pool. The quarter occupied by the present applicant does not seem to have been earmarked for any key personnel. There is no averment that there are any Officers in the waiting list for the ^{said} quarters. According to the respondents 50% of the quarters i.e. three quarters are meant for key personnel. If the applicant's quarter is also to be vacated for a key personnel then the number of quarters for key personnel would go up to four while the respondents submit that the accommodation is to be shared on 50 - 50 basis between the general pool and the key personnel. This being so, in our considered view at present there is no immediate ^{situ} necessary to prevail upon the applicant to vacate the quarter allotted to him. He can therefore be allowed to continue in the present accommodation. We therefore dispose of the OA with the following directions:-

1. The respondents shall allow the applicant to retain the accommodation i.e. quarter no.167/4 at Kalina for a period of six months from the date of receipt of a copy of this order.

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2. The applicant in the meantime shall apply for the general pool accommodation, also the respondents shall try to provide alternative accommodation to the applicant.
3. The applicant shall not be made to pay any damage rent, whatever damage rent has already been recovered from his pay shall be adjusted towards⁴ normal rent to be paid by the applicant for the quarter no.167/4

We do not order any costs.

Shanta S

(SMT. SHANTA SHASTRY)
MEMBER(A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

abp

or Judge *7/11/01*
to *respondent(s)*
on *3.11.2001*

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