

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 249/2001

Date of Decision : 30th September 2002

B.G.Khairkar

Applicant

Shri S.P.Saxena

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

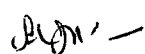
Smt.H.P.Shah

Advocate for the
Respondents

CORAM :

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

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library yes


(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.249/2001

Dated this the 30th day of September 2002.

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

Bhaurao Gulabrao Khairkar,
Post Graduate Teacher (Com.),
Kendriya Vidyalaya, N.D.A.,
Khadakwasla, Pune.

...Applicant

By Advocate Shri S.P.Saxena

vs.

1. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, I.I.T.,
Powai, Mumbai.
2. The Principal,
Kendriya Vidyalaya Sangathan,
K.V.No.1, Colaba,
Mumbai.
3. The Principal,
K.V., N.D.A.,
Khadakwasla,
Pune.

...Respondents

By Advocate Smt.H.P.Shah

O R D E R

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

The applicant impugns order passed by Kendriya Vidyalaya Sangathan Regional Office, Mumbai No.F.17 (ii) 11/2000 KVS(MR) dated 6.2.2001 by which the Principal, Kendriya Vidyalaya, N.D.A. Khadakwasla, Pune has been ordered to recover Rs.50,594/- in 15 equal instalments from the salary of the applicant.

Sign -

...2/-

2. The applicant is a civilian employee of Kendriya Vidyalaya Sangathan. While posted at Mumbai was allotted quarter No.B-13, Acharya Niwas, Navy Nagar, Colaba, Bombay-5 which he was occupying. He was transferred to Pune w.e.f.16.9.1998. His family continued to stay in the said quarter till 20.1.2001. He was charged normal rent @Rs.49/-p.m. for the month of October & November,1998, @Rs.98/-p.m. for the month of December,1998 to May,1999, June,1999 and onwards @Rs.1812/-p.m.-the market rate. On the said basis, he paid Rs.15,175/- upto 31.5.2000 vide Ex.'A-10' and Rs.19,969/- were recovered from his salary. This amount was paid/recovered from the salary of the applicant in view of letter dated 13.10.1999.

3. The applicant applied for extension of retention of the quarter vide his letter dated 9.3.1999 (Ex.'A-2'), 4.5.2000 (Ex.'A-8) and 26.5.2000 (Ex.'A-9'). By letter dated 5.5.2000 the Respondent No.1 had extended the stay of the applicant upto 30.5.2000.

4. The respondents informed the applicant vide letter dated 22.1.2001 (Ex.A-12) regarding the revised order for payment of damage rent @Rs.3,260/-p.m. instead of Rs.1,812/-p.m. payable w.e.f. 1.12.1998. Thereafter passed the impugned order dated 6.2.2001. The applicant represented against the same vide his representation dated 21.3.2001. Thereafter, filed OA. on 3.4.2001. Vide order dated 4.4.2001 operation of the impugned order was stayed by the Tribunal which is extended from time to time and is operative till today, as such no recovery is made from the applicant so far in this respect.

Sign

..3/-

5. The Quarter No.B-13, which was in occupation of the applicant after allotment and till 20.1.2001 belongs to Kendriya Vidyalaya Sangathan.

6. The applicant claims that no amount on the basis of unauthorised stay in the Quarter No.B-13, Acharya Niwas, Navy Nagar, Colaba, Mumbai-5 remains to be paid. Hence, this OA. for the above said relief.

7. The respondents have resisted the claim of the applicant stating the fact that since Kendriya Vidyalaya Sangathan quarters are available in different localities, it is decided by the concerned local authorities in different localities for fixing rent such as M.E.S., C.P.W.D. of corporation etc. In the present case, the quarters are in the locality which comes under the Western Naval Command and the rent which has been fixed w.e.f. 1.12.1998 is on the basis of letter received from the Naval authorities on 28.1.2000 resulting passing of the impugned order. The said revision of rate of rent is based on recommendation of Vth Pay Commission. Kendriya Vidyalaya Sangathan has no departmental set up of its' own to fix the market rent and depends on Government agencies competent to fix the rent depending on location of staff quarters. The said market rent has been fixed as per C.P.W.D. guidelines for General Pool accommodation applicable to Central Government quarters.

Page / -

..4/-

8. The respondents have filed an affidavit dated 16.8.2001 opposing the admission and I.R., further affidavit dated 28.9.2001, additional reply dated 7.3.2002 and additional affidavit dated 26.6.2002 in compliance of the order of the Tribunal dated 11.4.2002.

9. In additional affidavit dated 26.6.2002 in view of order of the Tribunal dated 11.4.2002, it is being stated that Kendriya Vidyalaya Sangathan is an autonomous body fully financed by Ministry of H.R.D., Government of India, registered as Society under Societies Act, 1860, hence their Rules and Regulation Codes etc. are not published in the Gazette as the Gazette is for Central Government only. All the staff members of Kendriya Vidyalaya No.1, Colaba were informed regarding Kendriya Vidyalaya Sangathan (Allotment of Residences) Rules, 1998 through a notice dated 31.7.1998 under the signature of Principal of Kendriya Vidyalaya displayed at the Notice Board of Vidyalaya-R-1.

10. Kendriya Vidyalaya Sangathan (Allotment of Residences) Rules, 1998 are said to be made available for perusal of the employees vide R-1 dated 31.7.1998.

11. Even inspite of the fact that the revision of the market rate of rent has taken place on 28.1.2000 said to be effective from 1.12.1998, the Principal, Kendriya Vidyalaya No.1 charged the market rate @Rs.1,812/-p.m. vide his letter dated 15.5.2002 (Ex.A-11), issued letter dated 12.1.2001 (Ex.A-12) stating the fact that Market rate/damage rent is Rs.3,262/- instead of Rs.1,812/-p.m. Thus, for the first time on 12.1.2001 this fact

Sign

..5/-

was communicated to the Principal, Kendriya Vidyalaya, N.D.A. Khadakwasla, Pune with a revised statement charging @Rs.3,262/-p.m. in respect of the applicant. The applicant was never informed regarding the revised Market rate/damage rent prior to 12.1.2001. He has vacated the quarter on 20.1.2001.

12. Rule 19 of Kendriya Vidyalaya Sangathan (Allotment of Residence) Rules, 1998 which came in force immediately, i.e. w.e.f. 23.7.1998 deals with the situation of overstayal in residence after cancellation of allotment which is extracted below :-

"Where after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residents remains or has remained in occupation of the employee to whom it was allotted or of any persons claiming through him, such employee shall be liable to pay damages for use and occupation of the residences, services, furniture and garden charges etc. as may be determined by the Govt. or the Sangathan from time to time. This is without prejudice to the right of the competent authority to evict him from the residence and the disciplinary action that may be initiated against such defaulting employee."

13. The perusal of the same makes it clear that the damages for use and occupation of the residences, determined by the Government or Sangathan from time to time is payable. There is no provision which authorises the authorities to send the matter after resolution to Western Naval Command for determining the damages. The delegated powers cannot be redelegated.

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14. The word "Sangathan" is defined in Rule 3(11) of the Kendriya Vidyalaya Sangathan (Allotment of Residences) Rules, 1998 which is extracted below :-

"3 (11) 'Sangathan' means Kendriya Vidyalaya Sangathan including its Headquarters office, Regional Offices, Kendriya Vidyalayas and any other establishment under it."

15. The perusal of the same makes it clear that Kendriya Vidyalayas are included in the definition of word 'Sangathan'. Kendriya Vidyalaya No.1 vide Annexure-A-5 dated 13.10.1999 (OA. page 22), Annexure-A-11 dated 15.5.2000 (OA. page 32) has after determination of damage rent Rs.1812/-p.m. has asked the Principal, Kendriya Vidyalaya, N.D.A.Khadakwasla, Pune to recover the same from applicant's salary. The Sangathan - Kendriya Vidyalaya No.1 cannot now claim a different rate about damages vide letter dated 12.1.2001 (Annexure-A-12).

16. The enhanced damage rent from Rs.1812/- to Rs.3262/-p.m. with retrospective effect from 1.12.1998 vide letter dated 28.1.2000 can not be claimed for the reason that the liability, if any, can not be saddled with retrospective date.

17. In the result, OA. is allowed. Impugned order dated 6.2.2001 is quashed and set aside. No order as to costs.

(S.L.JAIN)

MEMBER (J)

mrj.