CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1008/95

Transfer Application No.

Date of Decision 19.3.96

Shri N.J.Sawant — Petitioner/s

Shri R.P.Saxena — Advocate for the Petitioners

Versus

Union of India & Ors. — Respondent/s

Shri V.S.Masurkar — Advocate for the Respondents

CORAM :

Hon'ble Shri. V.Ramakrishnan, Member (A)

Hon'ble Shri.

(1) To be referred to the Reporter or not ? no

(2) Whether it needs to be circulated to other Benches of the Tribunal ? no

19/3/96

(V.RAMAKRISHNAN)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 1008/95

Shri Nathuram Jaisingh Sawant ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (A) Shri V.Ramakrishnan

Appearance

Shri R.P.Saxena
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for the Respondents

JUDGEMENT Dated: 19/3/96

(PER: V.Ramakrishnan, Member (A)

The applicant herein is aggrieved by the order of the department cancelling allotment of residential quarters to him and also by their decision to charge him damage rent w.e.f. 21.7.1995.

2. The applicant is a civilian employee of the Indian Navy and is working in I.N.H.S. Asvini. He was allotted quarter - R.No. 6 Hari Niwas, Colaba by the authorities by the order dated 22.1.1983 (Annexure-'A-3'). It was made clear in the allotment order that it was on a temporary basis and the applicant would have to vacate the quarter at short notice without claiming any alternative accommodation.

.. 2/-

Subsequently, the Army authorities have cancelled this allotment vide their order dated 5.7.1995 (Annexure-'A-1') on the ground that the said accommodation is required for allotment to serving personnel of the Army. The applicant was given 15 days time to vacate the accommodation and it was also stipulated in that order that damage rate of rent w.e.f. 21.7.1995 will be charged if the individual fails to vacate by 20.7.1995. On getting this order the applicant submitted a representation dt.15.7.95 to the Army authorities Station Headquarters, Colaba, Bombay wherein he brought out his difficulties in vacating the quarter and requesting for permission to retain the present quarter till such time he was given an accommodation from the Navy Pool (Annexure-'A-5'). This representation was turned down by the Army authorities by their order dated 25.7.1995 (Annexure-'A-2'). Hence, the present application.

3. The respondents have filed reply and the applicant has filed a rejoinder.

4. The Tribunal by its interim order dated 6.9.1995 had restrained the respondents from evicting the applicant from the quarter and also from charging penal/damage rent.

5. I have heard Shri R.P.Saxena for the applicant and Shri V.S.Masurkar for the respondents.

6. Shri Saxena contends that the action of the Army authorities in cancelling the allotment and seeking to evict the applicant without providing him with alternative accommodation is arbitrary. He also urges that the authorities cannot charge penal/damage rent when proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 have not been initiated and the applicant has not been served with show cause notice etc. It is argued that the Estate Officer cannot recover damage rent without following the provisions contained in F.R. 45, 45-A and 45-B along with the relevant supplementary rules. He highlights that the applicant is occupying the quarter for the last 12 years and he has not breached the conditions of allotment. He does not agree that the quarters in Hariniwas building is exclusively under the Army pool and he asserts that the allotment of the quarters have been made in accordance with the provisions of Allotment of Residence (Defence Pool Accommodation for Civilians in Defence Services) Rules,1978. These rules apply to all civilian employees and does not make any distinction between those who serve in the army and those who serve in the Navy. He has also brought out that some quarters in the same building have been allotted to civilians after issuing notice to the applicant to vacate his quarters. Shri Saxena submits that on these grounds the Tribunal should quash the orders of the respondents at Annexure-'A-1' & 'A-2'.

.. 4/-

7. Shri Masurkar for the respondents opposes the application. It is the stand of the respondents that the applicant was provided with temporary accommodation from Army Pool since Army at that time was having excess accommodation in Bombay. During the years 1983-1986 accommodation was available in the Station Pool to be allotted to the civilians serving under the Defence Department even though they were not serving under the Army. This position has undergone a drastic change with the decision of the Govt. of India in compliance with the direction of the Supreme Court to de-hire 140 hired houses out of 217 private houses hired by the Army and which formed part of the Army Pool. The respondents also submit that in view of this subsequent development, it had become inevitable for the Army authorities to ask civilians belonging to Navy to vacate the quarters so that the same could be made available to Army personnel. As regards allotment of quarters of Hariniwas building to some civilians subsequent to issue of notice at Annexure-'A-1' Shri Masurkar submits that these were civilians attached to the Army and their cases are clearly distinguishable from that of the applicant who belongs to the Navy. It is also contended that the initial allotment order had contained a clear stipulation and the allotment was for a temporary period and the applicant would have to vacate the quarter at short notice without claiming any alternative accommodation.

.. 5/-

7. The standing counsel also argues that the applicant should pursue with the Naval authorities for allotment and he has no vested right to continue in the quarter which belong to the Army Pool. Shri Masurkar further submits that the reliance by the applicant on the Allotment of Residence (Defence Pool Accommodation for Civilians in Defence Services) Rules, 1978 (Annexure-'R-1') is not relevant as these rules do not apply to quarters in the Army Pool.

8. I have carefully considered the rival contentions. The main issue that needs to be determined is whether the quarter in question belongs exclusively to Army pool or whether it would come within the purview of Allotment of Residence (Defence Pool Accommodation for civilians in Defence Services) Rules, 1978. Para 2 of these rules reads as under :-

> "2. They shall apply to all civilians paid from Defence Services Estimates, other than Military Engineering service key personnel and these entitled to rent free accommodation, serving with the Army/Navy/Air Force establishments in the matter of allotment of residence specifically constructed for civilians employees in defence services. (emphasis supplied)

It is, therefore, clear that these rules will apply only in respect of quarters constructed specifically for civilian employees in defence services.' From the allotment order dated 22.1.1983 (Annexure-'A-3'), it is seen against the column Type, it has been shown JCO (Junior Commissioned Officer) Other Ranks etc. Room No. 6 of Hariniwas allotted to the applicant is meant for Other Ranks.' Clearly, therefore, it is not a quarter specifically constructed for civilians

employees but for uniformed personnel in the Army. Shri Masurkar contends that the respondents have stated with all responsibility that the quarter in question belongs to Army Pool and the allotment order will substantiate this position. In view of this, I see no reason to doubt the assertion of the respondents that the quarter in question belongs to Army Pool and that it does not come within the purview of Allotment of Residence (Defence Pool Accommodation for Civilians in Defence Services) Rules, 1978.

9. Once this position has been settled, it follows that the applicant who is a civilian in Navy has no vested right to continue in the quarter when the same is required for serving personnel in the Army who in terms of their service conditions are entitled to be given accommodation. However, the applicant had stayed in the quarter for 12 years and should have been given reasonable time to vacate the quarter instead of granting time of 15 days. This aspect has however been taken care of in terms of the interim orders of the Tribunal referred to above. In the light of this position, the applicant cannot be granted the relief sought for in para 8.02 of the OA. in so far as it seeks quashing of the order which cancels the earlier allotment. However, as regards payment of penal/damage rent, the department has to take action as per law under the relevant rules and instructions and, in particular should take note of the principles laid down in the Ministry of Urban Development O.M. dated 27.8.1987 and 1.4.1991 and 23.4.1991 which are reproduced in Govt.

of India Order No. 12 below F.R. 45-A in Swamy's Compilation 12 Edition. The Department should also follow the principles laid down by the Bombay Bench of the Tribunal in this regard in Urman Singh vs. Union of India & Ors., OA.NO. 439/95 decided on 25.7.1995.

10. As regards his prayer for alternative accommodation, he has to take his chance on his application for quarter in Navy pool and he has no legal right to claim alternative accommodation under the Army pool.

11. In the light of the foregoing, the present OA. is finally disposed of with the following directions:-

(1) The applicant is not entitled to the relief as sought for so far as it relates to retaining the present quarter allotted to him in terms of Annexure-'A-3'. The order of the respondents cancelling the allotment is sustained. He is also not entitled to claim alternative accommodation under the Army Pool.

(2) As regards rent to be recovered, the respondents should take action in accordance with the law and under the relevant rules and instructions.

(3) There is no order as to costs.

19/3/98

(V.RAMAKRISHNAN)
MEMBER (A)

mrj.

Tribunal's Order Dated : 19.03.1996.

Original Application No.:1108/95 AND 1011/95.

Heard Shri R. P. Saxena for the applicant, who prays for stay of the judgement for a period of four weeks for review/appeal. A formal written petition to that effect is also filed, which is taken on record.

Shri V. S. Masurkar for the respondents, opposes the prayer for stay of the judgement, as he states that the implementation of the judgement would not have any immediate adverse effect on the applicant.

In the circumstances, and for the reasons stated by the Learned Counsel for the applicant, the order of the Tribunal dated 19.03.1996 is stayed for a period of four weeks from today.

19/3/96

(V. RAMAKRISHNAN)
MEMBER (A).

os*

CENTAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.No.6, PRESCOT ROAD, 4TH FLOOR,

MUMBAI - 400 001

REVIEW APLICATION No.60/1996 IN

ORIGINAL APPLICATION No.1008/1995

FRIDAY, THIS THE 10TH DAY OF MAY, 1996

CORAM : HON'BLE SHRI V. RAMAKRISHNAN .. MEMBER (A)

Shri Nathuram Jaisingh Sawant,
Quarter No.6, HARINIWAS,
New Maude Lines, Colaba,
Bombay - 400 005. .. Applicant

Vs.

1. Union of India, through
The Estate Officer,
Station Headquarters,
24, Assaye Building, Colaba,
Bombay - 400 005.

2. The Barrack Stores Officer (West),
Navy Nagar, Colaba,
Bombay - 400 005.

3. The Unit Accountant,
Barrack Stores Office (West),
Navy Nagar, Colaba,
Bombay - 400 005. .. Respondents

O R D E R

This review application seeking a review of the orders passed by me in Mumbai Bench is disposed of by circulation.

2. The applicant, a civilian employee of the Indian Navy seeks a review of the order of the Tribunal dated 19.3.1996, in O.A. No.1008/1995. In that O.A., he had challenged the action of the Army authorities in cancelling allotment of residential quarters to him in Hari Niwas Building and also their decision to charge him damage rent with effect from July, 1995. The O.A. was

contd. ..2..

disposed of with a direction that the applicant was not entitled to retain the present quarter allotted to him by Army authorities but as regards the rent to be recovered, the respondents should take action in accordance with the law and under the relevant rules and instructions.

3. The main ground urged by the applicant for retention of the quarters in Hari Niwas Building was that this was not exclusively under the Army pool and that the allotment of the quarters having been made in accordance with the provisions of the Allotment of Residence (Defence Pool accommodation for Civilians and Defence Services) Rules, 1978, which applied to all Civilian employees without any distinction between those who serve in the Army and those who serve in the Navy. After hearing both sides, the Tribunal held that the quarter in question belonged to the Army Pool and it did not come within the purview of the Rules for allotment of residence for Defence Civilians.

4. In the present Review application, it is stated that the Tribunal's finding in this regard is based on an error apparent on the face of the record. It is contended that the observation of the Tribunal that these quarters were not specifically constructed for the civilians but for uniformed personnel in the Army is not correct as some of the quarters are under the occupation of non-combatants who are not uniformed personnel. The

contd. ..3..

Review applicant also argues that the ground for cancellation was that the accommodation was required for allotment to serving personel of Army. But later on, the quarters in this building were allotted to Civilians and as such the cancellation order was not issued for the purpose mentioned but for extraneous reasons.

5. The main issue before the Tribunal was whether the quarters would come within the purview of the Allotment of Residence (Defence Pool accommodation for Civilians and Defence Services) Rules, 1978. It was noted that such rules apply only for allotment of residence specifically constructed for Civilian employees in Defence services. The Tribunal, held that such quarters were not specifically constructed only for Defence civilians but were under the Army Pool. The fact that quarters were allotted to Civilians even subsequent to issue of the cancellation order was considered and the stand of the respondents that such Civilians were attached to the Army and that their cases were clearly distinguishable from that of the applicant who belonged to the Navy was kept in view. As such, the fact that the quarters were allotted to Civilians in the Army and that all these quarters are not earmarked for uniformed personnel in the Army does not advance the case of the review applicant who belongs to the Navy. The reference to serving personel of Army has been interpreted to include Civilians attached to the Army and that such a view is not unreasonable.

contd. ..4..

6. The review applicant also has referred to the letter dated 10.11.95 of Head Quarters Southern Command, Engineering Branch. This was enclosed as Annexure-A8 to O.A.1008/1995 and refers to the need for providing alternative accommodation if the Defence Civilians are asked to vacate their existing quarters. This letter, however, has been issued in the context of the representation from the Staff Associations that in the event of their posting from one unit to another in the same station, the employees were asked to vacate their accommodation in their occupation and that such a step caused hardship to them. It was mentioned that where quarters had been allotted temporarily to Civilians on the specific condition that they must vacate at short notice, they cannot claim to be provided with alternative accommodation.

In the present case, the cancellation of the allotment was made not because the applicant was transferred from one unit to another in the same station, but because he belonged to the Navy and was occupying the quarter under the Army Pool.

7. In the light of the foregoing, I find no error apparent on the face of the record in respect of the judgment rendered on 19.3.1996 and there is no merit in this Review application. The Review applicant has enclosed with the present Review application a copy of the letter dated 25.9.1995, which reads as follows:

contd. ..5..

"1. Refer to your DO letter 2271/7/SB/ACCN, dated 31 Aug, 95.

2. I appreciate the difficulties faced by your Headquarters due to occupatioin of some quarters by Civilians working in Naval formations, however, it is not possible to allot alternative accommodation immediately from our pool as vacant quarters are not available. Further, this Headquarters is not aware of the rules which do not permit further retention of rented quarters.

3. In view of the above, I would once again request that the individual may be permitted to stay untill we are in a position to allot alternate accommodation."

In the light of the above, I hope the Naval authorities will exert themselves and ensure alternate accommodation is found for the applicant from out of the quarters under the Naval pool and that the Army and Naval authorities will sort out the matter in a satisfactory manner.

8. The Review application is dismissed with the above observations.

(V. RAMAKRISHNAN)

MEMBER (A)

psp.

10/5/96

Order/Judgement despatched to Applicant/Respondent (s) on 14/6/96

14/6/96