

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 421/2001
T.A. No.

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DATE OF DECISION

Dr. D.C. Gupta

Petitioner

Mr. R.P. Sharma

Advocate for the Petitioner(s)

Versus

ICAR through Secretary, New Delhi and 2 others.

Respondent

Mr. V.S. Gurjar

Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman.

The Hon'ble Mr. A.K. Bhandari, Administrative Member

(A.K. Bhandari)
Administrative Member.

(G.L. Gupta)
Vice Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement?

✓ 2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the Judgement?

✓ 4. Whether it needs to be circulated to other Benches of the Tribunal ?

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH: JAIPUR.

C.A. No.421/2001.

Date of Decision: 27-8-03

Dr. D.C. Gupta, aged 50 years, S/o late Shri J.N. Gupta, r/o 93/36, Agrawal Farm, Mansarovar, Jaipur, presently working as Sr. Scientist (Stat.) Central Sheep and Wool Research Institute, Avika Nagar (Tonk).

: Applicant.

VERSUS

1. Indian Council for Agricultural Research through its Secretary, Krishi Bhawan, New Delhi.
2. The Director, Central Sheep & Wool Research Institute, Avika Nagar, Jaipur.
3. Dr. Dinesh Kumar, Scientist, House No. 1260, Sec. 13, Karnal, Haryana

: Respondents.

Mr. R.P. Sharma : Counsel for the applicant.

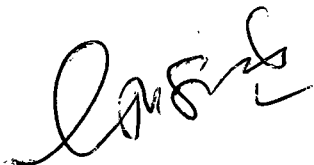
Mr. V.S. Gurjar : Counsel for the respondents 1 & 2.

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

□

The Hon'ble Mr. A.K. Bhandari, Administrative Member.



O R D E R

Per Mr. Justice G.L.Gupta.:

The reliefs claimed in the instant O.A are these:

i) the application of the applicant may be allowed and the order dated 04.01.2001 read with the order dated 07.06.2001 may be quashed and set aside.

ii) xx xx xx xx
 xx xx xx xx

deleted.

iii) the respondents may further be directed to refund the Meter Security Deposit in respect of Quarter No. IV/17 and further be restrained not to recover any amount on account of penal rent in furtherance of the impugned orders; or in alternate, the respondents 1 & 2 may be directed to take appropriate action against the respondent No. 3 and recover penal rent from him in accordance with the rules.

2. The applicant while working as Scientist (S-I) was allotted Quarter No. IV/ 17 at the campus of the Central Sheep and Wool Research Institute vide order dated 08.12.86(Annex. A.4). After the allotment of the residential quarter to the applicant, rules for the allotment of the residential quarter at the Central Sheep and Wool Research Institute, Avika Nagar, Rules, 1992 (hereinafter referred to as the Rules) were promulgated. Rule 19 of the said Rules permitted sub-letting and sharing of the residence by an Officer who is the allottee of the residence.

2.1 The applicant vide his application dated 22.01.96 sought permission from the Competent Officer to sub-let the accommodation allotted to him i.e. Qr. No. IV/17, to Shri Dinesh Kumar Scientist. The Estate Officer was pleased to permit the applicant to sub-let the accommodation allotted to him to Shri Dinesh Kumar vide communication dated 13.02.96 (Annex. A.5). The said permission, however, was cancelled vide communication dated 30.06.98(Annex. A.7) and Mr. D.C. Gupta (the applicant herein) was advised to get the premises vacated by Shri Dinesh Kumar. Shri Dinesh Kumar did not vacate the premises, therefore, the



order Annex. A.1 dated 04.01.2001 was issued wherein it was ordered that the applicant would pay penal rent at the rate of Rs.1164/- per month with effect from 15.10.98, failing which the said amount would be recovered from his salary. Through this O.A the applicant has called in question this order.

3. The say of the applicant is that the Supreme Court judgement in the case of Shiv Sagar Tiwari vs. Union of India and others [1996 (3) SLR 609] did not apply to his case and the Memorandum dated 12.06.98(Annex. A.6) did not have any effect on the permission granted to him and therefore the cancellation of the permission of sub-letting was not legal. It is his further case that the order dated 12.06.98 was subsequently freed vide communication dated 31.07.99 (Annex. A.13). It is averred that pursuant to the order dated 09.09.98 (Annex. A.9) the applicant vacated the premises within the stipulated time and he was not responsible when Shri Dinesh Kumar did not vacate the premises. It is stated that the applicant made all efforts to persuade Shri Dinesh Kumar to vacate the premises, but in vain.

4. In the counter, the official respondents have come out with the case that the applicant was fully responsible to have the premises vacated allotted to him including the portion of the premises occupied by Shri Dinesh Kumar (R.3) the sub-lettee. It is stated that when the allotment of the accommodation was cancelled by the competent authority vide communication dated 09.09.98, the applicant ought to have handed over the vacant ^{possession} of the quarter and when he did not do so, he is liable to pay penal rent.

5. Private Respondent No. 3 has filed reply denying his liability to pay penal rent.

6. We have heard the learned counsel for the parties and perused the



documents placed on record.

7. During the course of arguments, it was brought to our notice by Mr. Gurjar, learned counsel for the official respondents that vide order dated 28.09.2001, the competent authority has regularised the allotment of quarters to the applicant for the period from 30.09.98 to 27.07.2000 and now only the normal rent would be charged and the penal rent would not be charged from the applicant. It is evident that the order dated 28.09.2001, was issued after the applicant filed this O.A. On 13.09.2001.

8. The main grievance of the applicant i.e. charging of penal rent from him has been redressed. It is now admitted position of the parties that the premises was vacated by the applicant on 30.09.98 and the portion occupied by respondent No. 3 was vacated and handed over to the official respondents on 27.07.2000.

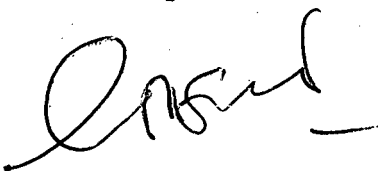
9. The following question arises for determination:

(i) whether the official respondents had erred in revoking the permission granted to the applicant for sub-letting the accommodation.

(ii) Whether the applicant is not responsible to pay rent/licence fee of the accommodation after 30.09.98 because he had sub let the premises with the permission of the competent authority.

10. Point No. (i):

It is seen that there was a provision of sub letting and sharing of residence by the person who was allotted accommodation by the Institute. Rule 19 (i) of the Rules, permitted sharing of residence by other employee of the Institute eligible for allotment and Rule 19 (ii) provided that sub letting of the residence could be made by the officer proceeding on leave with the permission of the competent authority. Rule 19 (iii) provided that any officer who shared or sublet his residence as provided under sub-



rule (i) and (ii) of Rule 19 of the Rules, without permission of the Director would do at his own risk and responsibility. This Rule 19 was deleted vide circular dated 16.03.2000.

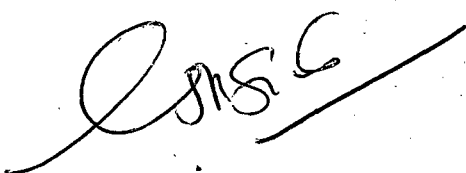
10.1 It is seen that pursuant to the order passed on 29.11.96, in W.P. (Civil) 585/94 Shiv Sagar Tiwari (supra) a provision was made in the Central Civil Services (Conduct) Rules, 1964, making sub-letting and not vacating the Government premises is mis-conduct. The Government of India issued Memorandum on 31.12.97 and the same was endorsed by the Central Sheep & Wool Research Institute, Jaipur vide communication dated 12.06.98. Pursuant to this communication, letter Annex. A.9 dated 09.09.98 was issued directing the applicant to get the premises vacated which was sub-let by him to Shri Dinesh Kumar.

10.2 It may be that the interim order of the Apex Court in Shiv Sagar Tiwari's case (supra) was not applicable to the case of the applicant, yet the competent authority had the power to re-call the permission given earlier and direct the applicant to get the premises vacated by respondent No. 3. There is no effect of freezing of the order dated 12.06.98 for sometime. If the authority is empowered to grant permission to sub-let, it is inbuilt that the same authority can withdraw the permission granted for sub-letting. Therefore, even without the orders dated 12.06.98, the competent authority could re-call the permission granted to the applicant for sub-letting vide communication Annex. A.5.

10.3 That being so, the order Annex. A.7, dated 30.6.98, cannot be said to be illegal, whereby the permission for sub-letting was recalled.

11. Point No. 2:

Rule 13 of the Rules, 1992, provides that an officer to whom residence is allotted shall be personally liable for the licence fee. It is provided therein that if the allotment is cancelled and the premises is

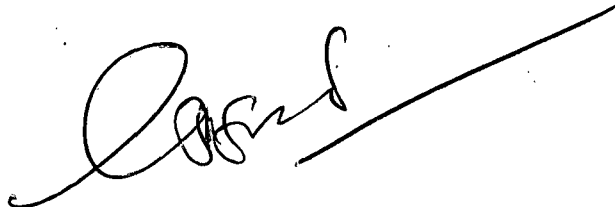


not vacated, liability to pay licence fee continues. Rule 13 (a) is reproduced hereunder:

The officer to whom a residence has been allotted shall be personally liable for the licence fee thereof and for any damage beyond fair wear and tear caused thereto or to the furniture, fixtures of fittings, or services provided there in during the period for which the residence has been remains allotted to him or where the allotment has been cancelled under any of the provisions in these Rules, until the residence alongwith the outhouses appurtenants thereto, if any have been vacated and full vacant possession thereof restored to the Estate Officer.

11.1 The Rule is very clear and even if the allottee sublets the premises with the permission of the competent authority, the liability to pay licence fee always lies with the officer who was allotted the premises. If, after the cancellation of the allotment the premises is not vacated, the liability to pay rent or damage rent is of the officer who was allotted the residence.

12. Keeping in view Rule 13 of the Rules, it has to be accepted that after the revocation of the permission vide communication Annex. A.7, if R.3 did not vacate the portion occupied by him, the liability to pay licence fee rested with the applicant. It may that the applicant vacated the portion occupied by him pursuant to the order Annex. A.11 dated 29.09.98, but because a part of the accommodation occupied by R.3 was not vacated by him, the applicant cannot escape from his liability to pay the licence fee. It is different matter that the applicant may recover the amount paid by him on account of non-vacation of the portion occupied by respondent No. 3 in accordance with law. But so far the liability of paying the licence fee under the Rules of 1992, rests with the applicant and he cannot succeed in this O.A in defeating the claim of the official respondents to recover normal licence fee from him uptill 27.07.2000.



13. Consequently, the O.A is partly allowed. It is directed that the official respondents shall not recover the penal rent from the applicant for the period from 30.09.98 to 27.07.2000. Instead they shall recover the normal licence fee from the applicant as per order dated 28.09.2001. The applicant may represent to the respondents for the refund of Meter Security Deposit in respect of Quarter No. IV/17 and the respondents would pass appropriate order in that regard.

14. No order as to costs.


(A.K. Bhandari)

Administrative Member.

jsv.


(G.L. Gupta)

Vice Chairman.