

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.NO. 277 of 1997.

13-10-1999.
DATE OF DECISION.....

Shri Banbir Das

(PETITIONER(S))

Shri B.K.Sharma.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Shri B.S.Basumatary, Addl.C.G.S.C.

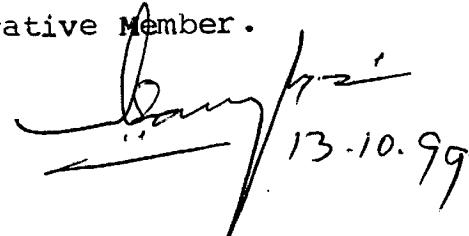
ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member.


13-10-99

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 277 of 1997.

Date of Order : This the 13th Day of October, 1999.

The Hon'ble Mr G.L.Sanglyine, Administrative Member.

Shri Banbir Das,
Additional Chief Engineer, HQ,
Shillong Zone, Spread Eagle Falls,
Shillong-793001.

... .Applicant.

By Advocate Shri B.K.Sharma.

- Versus -

1. The Union of India,
represented by the Secretary to
the Government of India,
Ministry of Defence,
New Delhi.
2. Commanding Officer, Headquarters,
Training Command, Indian Air Force,
Hebbal, Bangalore-560006.
3. AAO, ESO, Air Force, Bangalore.
4. Controller of Defence Accounts (Pay Section)
Guwahati.

... .Respondents.

By Advocate Shri B.S.Basumatary, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMIN. MEMBER,

In this application the applicant prays to quash the eviction proceeding initiated by Annexure-VII order dated 21.10.1997, letter dated 6.10.1997, Annexure-VI, imposing damage rent and letter dated nil, Annexure-IX, directing recovery of market rent and to direct the respondents to allow him to continue occupation of Quarter No.P/45 at Hebbal, Bangalore.

2. The applicant is a civilian employee of Military Engineering Service (MES). He was posted as Commander Works Engineer, Air Force, Bangalore since 28.8.1995. He was allotted Quarter No.P/45 at Air Force Complex, Hebbal, Bangalore on

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5.7.1996 and he occupied the quarter. He was promoted to Additional Chief Engineer on 23.4.1997 and posted to Chief Engineer (Air Force), Bangalore. Thereafter he was transferred to Chief Engineer, Shillong Zone (North Eastern Region) on 9.5.1997. In the meantime he was assigned training and had undergone Senior Defence Management Course at Secunderabad from 14.7.1997 to 27.8.1997. He had joined his new post in Shillong on 5.9.1997. On 23.6.1997 HQ Training Command (U) AF Hebbal, Bangalore wrote to the applicant as below :

"You were allotted with SMQ at this unit when you were CWE(AF) at Hebbal. Since you are posted out from CWE(AF) and taken over as ACE at CE(AF) Bangalore, you are not entitled to continue to occupy the House allotted to you. Only one ACE of CE(AF) Bangalore is entitled for SMQ at this unit as per the rules framed by HQ Trg Comd, IAF and ACE Shri PV Ramachandran is already in occupation of a house.

You are, therefore, requested to vacate SMQ No. P-45 immediately failing which action to charge damaged rate of rent and others will be initiated."

On 7.7.1997 the applicant submitted a letter to the Command expressing his desire to retain quarter No.P/45 in HQTC IAF Campus at Hebbal, Bangalore for the bonafide use of the members of his family and requesting for sanction for retention on the ground that he was being posted in North Eastern Region. Correspondances were going on in the matter of occupation of the quarter by the applicant and on 18.8.1997 the applicant submitted that he was ready to shift to any type V accommodation within HQ Training Command area at Hebbal if it is so desired. Some time later between 20.8.1997 or September 1997 by order at Annexure-VIII to the written statement the applicant was allotted alternative quarter at No.2 DC Area, MES Road, Bangalore-22 CE (AF) Complex as a change over from SMQ No.P-45 above. The applicant did not occupy the alternative accommodation allotted to him. On

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8.9.1997 he submitted representation to allow him to retain the quarter at P/45. On 6.10.1997 the Command directed to take necessary action to charge damage rent and other charges with effect from 1.9.1997 from the applicant on account of his occupation of quarter P/45. Some time later by Annexure-XI order recovery of market rate of rent for the period from 1.9.1997 to 4.10.1997 was issued. Also a show cause notice why an order of eviction should not be made against him was issued on 21.10.1997. On 24.10.1997 the applicant made representation to the Secretary, Ministry of Defence, New Delhi through proper channel requesting for retention of accommodation on his posting to North Eastern Region. On 5.11.1997 he had replied to the show cause for eviction. The Air Headquarters, Directorate of Air Force Works, New Delhi issued a letter dated 5.12.1997 stating that the applicant was in illegal possession of the accommodation and charging of market rent as well as initiation of eviction proceedings are in order.

3. The above are the facts in brief. I have heard learned counsel of both sides. The applicant relies on Headquarter letter No.10562/03(B) dated 24.10.1960 wherein, according to Annexure-IV, it was clarified that once accommodation was allotted to the Defence Civilian employees they will not normally be asked to vacate the accommodation allotted to them but if exigency of service so demand they will be shifted to alternative accommodation appropriate to their status. According to the applicant he is entitled to Type VI accommodation but is actually occupying Type V accommodation. The alternative accommodation allotted to him is of Type IV. Therefore, the alternative accommodation allotted to him in No.2 DC Area was not appropriate to his status. The other contention of the applicant is that he is posted to North Eastern Region and according to policy,

if the accommodation in occupation of the officer is below his entitlement, retention of the accommodation would be permissible. He claims that as the quarter in Hebbal occupied by him is below his entitlement retention of the quarter on his posting to North Eastern Region is permissible. The issue whether the applicant is entitled to retain the quarter in Hebbal on his posting to North Eastern Region is secondary in this case. The foremost question is whether the applicant was in illegal possession of the quarter P/45 in Hebbal, Bangalore for if he is illegally occupying the quarter this Tribunal will not issue any direction for retention of the quarter by the applicant during his tenure of posting in North Eastern Region. In this particular case the settled position is that both the respondents and the applicant have agreed that alternative accommodation was to be allotted to the applicant. The respondents had allotted the alternative accommodation at No.2 DC Area. It may be noted that the allotment of this quarter was made before the applicant joined his post in North Eastern Region. The applicant had not accepted it on the ground that the alternative quarter was not appropriate to his status. This, in fact, is the root of the dispute. The respondents did not address themselves to the question whether the type of accommodation allotted to the applicant as alternative accommodation is appropriate to his status as Additional Chief Engineer. It is expected of the respondents that they act fairly and reasonably and to support their action with reason. But the Air Force authority in Bangalore had arbitrarily stated that in case the applicant did not want to take the alternative accommodation allotted to him then he was at liberty to hire accommodation in the civil area as per his entitlement. The Air Force Headquarters in New Delhi also without assigning any reason held that

the applicant was in illegal possession of the accommodation at Hebbal. In this case there is no clarification or reason assigned whether the type IV quarter at No.2 DC Area allotted to the applicant is appropriate to the status of the applicant. Further determination whether the quarter at Hebbal was below the entitlement of the applicant or not was necessary. This matter was not considered by the respondents. It may be true that in Hebbal camp there was no accommodation constructed for residential purposes of the officers which are equivalent to the civilian quarters classified as Type-VI, Type-V or Type-IV. But nothing could prevent the Air force authorities to ascertain whether the applicant would have been eligible to a civilian pool quarter of Type-VI or Type-V and to compare whether the accommodation occupied by him at Hebbal is equivalent to such Type-VI or Type-V quarters. The Type-IV quarter, which was allotted to the applicant, is a civilian accommodation specifically constructed for civilian officers of CE(AF) Bangalore. The respondents had not determined whether an employee of the rank of Additional Chief Engineer should be allotted such Type-IV quarter. Without considering these aspects the applicant was directed to occupy the alternative accommodation Type-IV quarter allotted to him and on his failure to occupy the same action to make him vacate the quarter he occupied, to charge damage rate of rent/market rent for his continuance to stay in the old quarter and eviction therefrom were taken. Such actions taken without first determining the eligibility are in my view arbitrary and have resulted to injustice to the applicant and they are therefore not sustainable in law. Accordingly they are all set aside. The respondents shall examine the above two questions, namely, whether the quarter

at Hebbal was below his entitlement by comparing to the civilian quarters and whether the Type-IV quarter allotted to the applicant was appropriate to the status of an Additional Chief Engineer. They shall communicate a reasoned order giving details to the applicant within 3 months from the date of receipt of this order after hearing him.

The application is disposed of. No order as to costs.


13.10.99
(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER