

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

Original Application No. 452 of 2004

At Jabalpur this the 19 day of Aug 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Vijay Kashyap, S/o Late Shri G.R. Kashyap, Aged 53 years
U.D.C. Kendriya Vidyalaya No.1, Bhopal (M.P.) R/o Quarter
No.22, K.V. No.1, Bhopal (M.P.)

Applicant

By Advocate Shri Sajid Akhtar

Versus

1. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. Union of India through Secretary, Ministry of Human Resources Development, New Delhi.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan Regional Office, Opposite Central India Floor Mill, Arera Hills, Bhopal.
4. Principal Kendriya Vidyalaya No.1, Shakti Nagar, Gwalior.
5. Principal, Kendriya Vidyalaya No.4, Gwalior (M.P.).

Respondents

By Advocate Shri M.K. Verma

O R D E R

By Hon'ble Mr. A.K. Bhatnagar, Member (J)

By this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the impugned order dated 05.05.04

imposing damage rent on the applicant for the period from 09.05.98 to 10.05.99. It is further prayed to direct the respondents to refund the damage rent, which was illegally deducted.

2. The facts in brief as per the applicant, are that the applicant joined Kendriya Vidyalaya Sangathan on 01.07.1975 as Lower Division Clerk and was posted in Gwalior. Thereafter he was promoted in the year 1982 as Upper Division Clerk and was allotted quarter no. 8/3, K.V.No.1, Gwalior. Vide order dated 26/20.09.97 he was transferred to Kendriya Vidyalaya, I.T.B.P., Karera, Shivpuri. Against the order of transfer, he represented to the respondents and the respondents modified the order of transfer vide order dated 09.03.98 and posted the applicant to Kendriya Vidyalaya No.4, A.F.S., Residency, Gwalior. The applicant again preferred a representation seeking permission to continue to occupy the quarter originally allotted to him, on 01.01.1998, which was rejected by the department vide order dated 15/16.05.1998 with a finding that market rent would be recovered from the applicant for over staying in the quarter, which will duly be worked out and intimated to the applicant (annexure A-2). Vide letter dated 30.06.1998 the respondent no.4 conveyed the respondent no.5 that damage rent is to be recovered from the applicant at the rate of Rs.55/- per square meters for 55 sq. meters for a period of 7 months and till the applicant vacates the quarter. Thereunder a total sum of Rs.21,175/- was to be recovered from the salary of the applicant pursuant to the directions of respondent no.4, filed as annexure A-3. Vide order dated 25.09.1998 a sum of Rs.3025/- per month was to be deducted from the salary of the applicant towards the payment...pg.3/-

of damage rent (annexure A-4). The applicant preferred a representation for waiving the damage rent with a further request for consideration of his case, as has been done in the cases of his co-employee, who have been permitted occupation for a period of 2 months on normal licence fee and 6 months on double license fee, whereas in the case of the applicant market rent is fixed only after a lapse of 2 months. The applicant also preferred an appeal to respondent no.1 but the same was not forwarded by respondent no.3 for extraneous considerations. Ultimately, he filed his appeal dated 16.02.2002 directly to respondent no.1 alongwith 8 annexures. When no decision was taken by the appellate authority, he approached this Tribunal vide O.A.No.811/03 and by Order dated 20.11.2003 the O.A. was disposed of at the admission stage with a direction to the respondents to consider the representation of the applicant dated 16.02.2002 in the light of Judgment of Hon'ble Supreme Court in the case of S.S. Tiwari Vs. U.O.I. and the Hon'ble High Court of M.P. in the case of Ram Chandra Agarwal Vs. K.V.Sangathan in Writ Petition No.611/98. On 05.05.2004, the respondents decided the representation of the applicant holding that he would be liable to pay for the period 20.09.97 to 08.05.98 normal licence fee and thereafter i.e. from 09.05.1998 to 10.05.1999 damage rent, which is impugned in the O.A. and filed as annexure A-8.

3. Learned counsel for the applicant submitted that respondents have discriminated in the case of...pg the applicant as much as number of cases are there where the respondents have not imposed the damage rent on similarly placed employees. He further submitted that respondents have not complied with a specific direction

given in the order dated 20.11.2003 in O.A.No.811/03. The respondents have not taken into consideration the Judgment of Hon'ble Apex Court as well as of Hon'ble High Court of M.P. in passing the impugned order. Thus, the action of the respondents is arbitrary and illegal. He further submitted that due to modification of the transfer order of the applicant the applicant was not legally required to vacate the quarter so the question imposing the penal rent did not arise. He has further submitted that respondents have imposed penal rent and double the licence fee in number of cases of the employees but they have not taken into consideration this aspect in the case of the applicant, which is discriminatory and violative of principle of natural justice.

4. On the other hand learned counsel for the respondents filed the counter-affidavit resisting the claim of the applicant. Learned counsel for the respondents has submitted that the applicant was transferred vide order dated 26/20.09.97 to ITBP Karera, District Shivpuri and was relieved on 29.09.1997 and from that period w.e.f. 29.09.1997 the applicant has unauthorisedly retained the quarter till 10.05.1999. As per rules, an employee can retain a quarter allotted to him, after his transfer for a period of 2 months only on payment of normal licence fee from the date of his transfer i.e. 26.09.1997 in the case of the applicant. The applicant was relieved from his duty on 29.09.97 due to his transfer so the contention of the applicant that he has applied for modification of transfer order, therefore, he was entitled to retain the staff quarter until decision thereon, is absolutely unfounded. The applicant applied for retention of his staff quarter through his representation dated 07.01.1998 i.e. much after the expiry of permissible period i.e. 2 months.

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In fact the applicant failed to put up his case before the competent authority for retention of staff quarter beforehand. His request for modification of transfer order was accepted by order dated 09.03.98 while the applicant retained the quarter unauthorisedly till 10.05.1999. It is further contended that although on issuance of letter ^{copy of O.A.,} dated 16.01.2004 by the respondents, order alongwith letter dated 17.02.2004 was sent by the applicant to the department and a reasoned order was passed on 05.05.2004. The relief extended to Shri S.S. Tiwari and Shri R.C. Agarwal in compliance of the Court's Order was not found applicable in the case of the applicant as those cases related to the period prior to the issuance of KVS Circular No.10-10/92-KVS(Admn.I) dated 26.06.2001. Moreover his transfer from Kendriya Vidyalaya No.1, Gwalior was modified in March, 1998 at the end of academic session 1997-98.

5. We have heard the learned counsel for the parties and perused the record.

6. We have gone through the letter dated 26.06.01 under which the accommodation in question lies subject to payment of licence fee as under:-

(i) For the first 02 month after the relieving of the employee. Normal licence fee.

(ii) For the next 6 months Double the licence fee.

We have also gone the impugned order dated 05.05.2004 passed by the respondents in compliance of the Tribunal's order given in O.A.No.811/03 on 20.11.03 by which the applicant was allowed to pay the licence fees for the residential accommodation held by him at Kendriya

Vidyalaya No.1, Gwalior on the following reates:-

1. For the period from 20.09.97 to 08.05.98 i.e. from his release from Kendriya Vidyalaya No.1, Gwalior and until 02 months beyond the date of modification effecting transfer to K.V. No.4, Gwalior. Normal licence fee.
2. Remaining period till the date of vacation of staff quarter. Damage rent.

7. The Hon'ble Supreme Court in the case of S.S.Tiwari vs. U.O.I. and Others reported in 1997(1) S.C.C. page 444 in para-53 has held as under:-

53. An out of turn allottee is an ineligible person because he has not become eligible as per the rules governing the allotment. So, strictly speaking, an out of turn allottee is required to pay damages, and as in these cases we are concerned with allotments made after 1.4.1991, the rate of damages could be either Rs.40/- or Rs.45/- per sq.m. as the case may be. We are, however, desisting from doing so and would rather require treating the cases at hand as overstay after cancellation of allotment. As already noted, in cases of overstay, twice the licence fee to be charged depending upon the type of quarter allotted. For type III we would require this to be twice the licence fee, for Types IV and above three times the licence fee.

8. In the Judgment of Ram Chand Agarwal vs. Kendriya Vidyalaya Sangathan in Writ Petition No.611/98, decided on 07.09.98 by Hon'ble High Court of M.P., a direction was issued to the respondents to reconsider the matter in the light of Judgment of Hon'ble Supreme Court in the case of S.S. Tiwari(supra).

9. In view of the above facts and circumstances and in the light of Judgment as cited above, we are of the view that it will be appropriate to follow the directions given by the Hon'ble Apex Court as well as by the Hon'ble High Court of M.P.

10. In view of the above discussion and in the light of Judgment as cited above, the O.A. is partly allowed. The order dated 05.05.2004 is quashed to the extent for charging the damage rent for the remaining period till the vacation of staff quarter. The respondents are directed to charge the rent and licence fee depending upon the type of allotted quarter (for type III) twice the licence fee for the period from 09.05.98 to 10.05.99. In case ^{if} any excess recovery has been made from the applicant, that shall be refunded to him after due adjustment. This exercise shall be completed by the respondents within a period of one month from the date of receipt of a copy of this order. There will be no order as to cost.

(A.K. Baatnagar)
Member (J)

(M.P. Singh)
Vice Chairman

/M.M./

प्रृष्ठांकन सं. ओ/न्या.....जखलपुर, दि.....
प्राप्तिक्रिया दाता निम्नान्दा:-

- (1) रामेश, स.ज. रामेश, रा. रामेश, जखलपुर
- (2) लक्ष्मीनाथ, शंकरलाल, जखलपुर के काउंसल
- (3) लक्ष्मी शंकरलाल/जु..... के काउंसल
- (4) वंशवत्तन, धोता, जखलपुर जगदयोड

सूचना एवं आवश्यक कार्यवाही हेतु

Sajid Akhtar A.

M. J. Jawaad A.

उप नियमित

Issued
On 20/8/04
By