

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16th day of December, 2010

Original Application No. 370/2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Babu Lal Suthar
s/o Shri Mohan Lal,
r/o Type-III/102, GSI Colony,
Malviya Nagar, Jaipur,
presently working as Driver;
DDG Cell, GSI, WR,
Jaipur

.. Applicant

(By Advocate: Shri Rajendra Vaish)

Versus

1. Union of India
through Dy. Director General,
Geological Survey of India,
Western Region,
Jhalana Doongri,
Jaipur.
2. Estate Officer (E&A Section),
Survey of India,
Western Region,
Jhalana Doongri,
Jaipur

... Respondent

(By Advocate: Shri Mukesh Agarwal)

O R D E R (ORAL)

The grievance of the applicant is regarding the impugned order dated 7.6.2010 (Ann.A/1) whereby Director and Head of Office, Geological Survey of India, Western Region, Jaipur was

requested to deduct three times license fee (Rs. 219x3=657) from 15.1.2009 from the salary of the applicant. Copy of this letter has also been endorsed to the applicant for information.

2. Briefly stated facts of the case are that the applicant while working as Driver in the respondent Department was allotted quarter No. Type-III/102 in the Geological Survey of India (GSI) Colony at Malviya Nagar, Jaipur vide allotment letter dated 15/22.1.2009 (Ann.A/2). It is the case of the applicant that he was drawing basis salary of Rs. 5500/- which was a pre-requisite condition for allotment of the aforesaid quarter as per rules on the date of allotment. For that purpose, the applicant has also placed reliance upon the instructions dated 22.9.1998 which stipulate that an employee drawing a basic pay of Rs. 5500/- is entitled for allotment of Type-III quarter. It is further averred that now the basic pay has been changed and instead of pay scale or basic pay as basis for allotment of a particular type of quarter, the grade pay has been made basis. The applicant has also placed on record a copy of the allotment letter dated 22.1.2009 (Ann.A/2). The grievance of the applicant is that respondent No.2 is bent upon to charge license fee three times from the applicant without any basis and no reason has been assigned in the impugned order to increase the license fee of Rs. 219/- to three times i.e. Rs. 657 w.e.f. 15.1.2009. It is on the basis of these facts that the applicant has filed this OA thereby praying for quashing the impugned order Ann.A/1

with further prayer that excess, if any, deducted from the salary of the applicant be refunded to him.

3. Notice of this application was given to the respondents. The respondents in the reply have stated that the applicant was staying in Type-II accommodation as per his eligibility under the rules but he submitted request for change of accommodation from Type-II to Type-III on 13.1.2009. The respondents have stated that in terms of notification dated 12.11.1998 which came into force from 1st January, 1999 the official whose basic pay is less than 8500/- but not less than 5500/- was eligible for allotment of Type-III residence. It is further stated that in terms of OM dated 1.8.1991 and OM dated 11th December, 1991, one step higher than entitlement accommodation can be allotted to an official on his request, but for that purpose three times license fee is payable. The respondents have further stated that basic pay of the applicant in January, 2009 was Rs. 5375/- i.e. less than Rs. 5500/- therefore as per rules, he was not entitled for Type-III accommodation but by considering his request dated 13.1.2009, he was allotted Type-III accommodation as per rules in existence vide letter dated 22.9.2008 (Ann.A/2). For that purpose, the respondents have placed photocopies of the pay and due and drawn statement of the applicant as Ann.R/3. The respondents have stated that the applicant was further informed vide order dated 22.10.2009 to either shift the existing allotment to Type-II accommodation, otherwise three times license fee per month would be recovered from his salary w.e.f. 15.1.2009. Since the applicant has not submitted any option to shift in type-II

accommodation, thus, according to the respondents, there is no infirmity in the order Ann.A/1.

4. The applicant has filed rejoinder. The applicant has reiterated that pay of the applicant as on 1.11.2008 was Rs. 5500/- and Type-III quarter was allotted in January, 2009. It is further stated that respondents have filed Ann.R/3 which only provides pay of the applicant upto August 2008 as Rs. 5375/- which is less than Rs. 5500/- but the respondents have deliberately mislead this Tribunal and concealed the fact that the basic pay of the applicant in November, 2008 was Rs. 5500/- which was revised to Rs. 13500 as per recommendation of the 6th Pay Commission. The applicant has further reiterated that the fact regarding basic pay of Rs. 5500/- of the applicant on the date of application was also clarified by the respondents from the Accounts Department and it was thereafter that the allotment of Type-III quarter was made to the applicant.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The question which requires our consideration is that what was the basis pay of the applicant in January, 2009 when case of the applicant for allotment of Type-III accommodation was considered and whether the applicant was allotted one type higher accommodation than the entitled category so as to make him liable for three times license fee in terms of OM dated 1st August, 1991 and 11th December, 1991. At this stage, it will be relevant to notice few statutory provisions of the rules regarding entitlement and allotment of accommodation. At this stage it will

be useful to quote SR-317-5-B which show classification of residence and their entitlement and thus read:-

"SR.317-B-5. Save as otherwise provided by these rules, an officer will be eligible for allotment of a residence of the type shown in the table below-

Type of Residence	Category of Officer or his monthly emoluments as on such date as may be specified by the Central Government for the purpose of concerned allotment year
I Less than Rs. 3050
II Less than Rs. 5500 but not less than Rs. 3050
III Less than Rs. 8500 but not less than Rs. 5500
.....	

From the portion as quoted above, it is clear that where the pay of the person is ~~not~~ Rs. 5500/- but less than 8500/- then the employee shall be entitled to Type-III residence. The respondents have placed on record due and drawn statement of the applicant as Ann.R/3 pursuant to revision of pay scale on the basis of recommendation of 6th Pay Commission, which has been made effective w.e.f. 1.1.2006. Perusal of this document reveals that pay of the applicant as on November, 2007 in the old pay scale was Rs. 5357/-. Had the pay scale been not revised pursuant to recommendation of 6th Pay Commission, the pay of the applicant in November, 2008 would have been Rs. 5500/-. Thus, in January, 2009, the pay of the applicant was not less than Rs. 5500/- and, as such, he was entitled to Type-III accommodation in terms of the aforesaid rules. It may be stated that the provisions as quoted above, regarding entitlement and allotment of accommodation was in

vogue till new provisions were substituted which came into effect w.e.f. 29.8.2009. The substituted provisions of SR 317-B-5 is reproduced hereinbelow and thus reads:-

“SR-317-B-5-(1) Save as otherwise provide by these rules, an officer shall be eligible for allotment of a residence of the type shown in Column-1 of the Table below:-

Type of Residence	Grade Pay/Basic Pay
I	Rs. 1,300, Rs.1,400, Rs.1,600, Rs.1,650 and Rs. 1,800
II	Rs. 1,900, Rs. 2,000, Rs. 2,400 and Rs.2,800
III	Rs. 4200, Rs. 4,600 and Rs. 4,800
.....	

Thus, as can be seen from the portion as quoted above, after coming into force the substituted provisions effective from 29th August, 2009, the basis for allotment of Type-III residence shown in Column-I of the table was to be determined on the basis of grade pay. It may be relevant to state here that concept of grade pay was introduced for the first time pursuant to revision of pay scale on the basis of 6th Pay Commission w.e.f. 1.1.2006 whereas the eligibility for allotment of residence prior to coming into the aforesaid substituted provisions w.e.f. 29.8.2009, the basis for entitlement was basic pay. If the matter is examined in the light of the old provisions of SR-317-B-5 vis-à-vis the substituted provisions of the aforesaid rule, which came into effect from 29.8.2009, it is clear that entitlement of the applicant as on January, 2009 has to be seen on the basis of the pay which was drawing as if the revised pay scale based on grade pay has not come into existence. If the matter is perused in the light of the aforesaid provisions, we are of

the firm view that pay of the applicant in January, 2009 was not less than Rs. 5500/-, as such, in terms of the rules, which were in vogue at the time of allotment of Type-III accommodation to the applicant, the applicant was entitled for Type-III quarter. Thus, contention of the respondents that he has been allotted accommodation one type higher than his entitlement cannot be accepted. As such, it was not permissible for the respondents to recover three times license fee from the applicant. It may be mentioned that the substituted provisions of SR-317-B-5 whereby grade pay has been made basis pursuant to revision of pay scales made effective from 29.8.2009 are not retrospective and as such, any allotment made prior to the aforesaid date has to be examined in the light of the old provisions which were in vogue at the relevant time and such allotment cannot be re-opened in view of the substituted provisions, which may be applicable in respect of allotment made after the cut off date i.e. 29th August, 2009. Thus, we are of the firm view that it was not permissible for the respondents to charge three time license fee from the applicant in respect of allotment made in January, 2009 simply because as per the substituted provisions which came into force on 29th August, 2009, the entitlement of the applicant based on grade pay is to that of Type-II quarter.

7. For the foregoing reasons, the OA is allowed. The impugned order Ann.A/1 is quashed. The respondents are directed to recover normal license fee from the applicant in respect of Type-III accommodation as per the instructions in vogue instead of recovering three times license fee. The excess amount, if any,

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recovered from the salary of the applicant pursuant to Ann.A/1 shall be refunded to the applicant within a period of two months from the date of receipt of a copy of this order. No costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member



(M.L.CHAUHAN)
Judl. Member

R/