

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.300/2014

Dated this Wednesday the 5th day of April, 2017

CORAM: HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)

Dr.Harihar Panda,
 Ph.D.,
 Employment as Professor and
 Head of Dept. of History,
 National Defence Academy,
 Khadakwasla, Pune – 23.
 (R/at 206/B, D-3 Area, NDA,
 Khadakwasla, Pune – 411 023.
(Advocate Shri S.P. Saxena)

... Applicant

Versus

1. Union of India, through the
 Secretary, Ministry of Defence,
 DHQ., P.O., South Block,
 New Delhi – 110 011.
2. Chief of Integrated Staff Committee,
 (C.I.S.C.), Kashmir House,
 Rajaji Marg, New Delhi 110 011.
3. The Commandant, National Defence
 Academy,
 P.O. Khadakwasla, Pune 411 023.
4. Brig. J.S. Soin, Brig. Am.,
 N.D.A. Khadakwasla,
 Pune 23.
5. Colonel A.S. Badwal, Station Commander,
 NDA Khadakwasla,
 Pune 411 023.

***(Advocates Shri N.K. Rajpurohit with
 Ms. J.K. Rehel)***

... Respondents

ORDER

Per : Dr. Mrutyunjay Sarangi, Member (A)

The Applicant works as Professor and Head of Department of History at the National Defence Academy, Khadakwasla, Pune - 23. He is aggrieved by the non-allotment of a Type VI-A Quarter to him. He has filed this OA praying for the following reliefs:

“8.a To allow the Original Application.

8.b To hold and declare that ignoring the case of applicant for allotment of Quarter of Type VI-A to him, is arbitrary and illegal action of the Respondents.

8.c To direct the Respondent No.3 to consider allotment of the Qtr. No.D-3/65, vacated by Colonel S.S. Mishra, to the applicant by allowing the applicant a change from his present Type-V Quarter to the above quarter as prayed by him in his applications dated 07.05.2014 and 15.05.2014.

8.d To direct the respondents to consider allotting a Type VI-A Quarter to the Applicant, if it is not available immediately, as and when a quarter of his entitlement falls vacant.

8.e To pass any other order which may be considered necessary in the facts and circumstances of the case.

8.f To award the cost of application.”

He had also prayed for interim relief by way of an ad-interim and ex-parte order to restrain the respondents from allotting D-3/65 Type VI-A Quarter to any other officer drawing less Pay and Grade Pay than the applicant.

Records show that on 20.05.2014 the following interim order was passed by this Tribunal;

“In the meantime, the Respondents No.1 to 3 are directed to maintain status-quo as on today so far as Quarter No.D-3/65, located at National Defence Academy, Khadakwasla, Pune till the next date of hearing and if the same is vacant it shall not be allotted to anybody, and the same will be subject to further order of this Tribunal.”

The interim relief was continued from time to time till the matter was finally heard on 09.03.2017 and the order was reserved on the OA.

2. The brief facts of the case, as they appear from the OA, are as follows;

i) The Applicant had joined as a Civilian Group 'A' Officer (Gazetted) in the post of Professor and Head of Department of History at the National Defence Academy, Khadakwasla, Pune (Herein to referred as NDA) in 2010. He claims that at the time of joining the post he was entitled to a Type VI-A Government Quarter with an area of 159.05 sq.mtrs., but the Respondent No.3 allotted him Type V Quarter with an area of 120 sq.mtr. The Applicant alleges that the respondents have been allotting quarters as per their own whims and in an arbitrary manner without following the rules and orders of Government applicable for allotment of Government

Quarters. He has given the example of Quarter No.D-2/48 (Type VI-A) which was allotted to Lt.Col.S. Saraswat, a Service Officer ignoring the claim of the applicant who was senior to Lt.Col. S. Saraswat. ii) The Government has declared the equivalency amongst the cadres of Brigadier/Colonel/ Professors by the Ministry of Defence letter No.9602/6/N.D.A. dt. 07.02.1950 (Annexure A-1). The Applicant has obtained information under the RTI Act, 2005 that 20 Quarters having a plinth area of 283.43 Sq.mtrs. inside the NDA Campus have been allotted to officers who are entitled to lower type of accommodation. The Applicant has been continuously and repeatedly approaching the Respondent No.3 for an allotment of Type VI-A Quarter which is his entitlement as per the Grade Pay of Rs.10,000/- but neither a Type VI-A Quarter has been allotted to him nor he has received any reply from the Respondent No.3. The Applicant has submitted in his OA that D-3/65 Type VI-A Quarter was occupied by Col.S.S. Mishra who is posted out of NDA and has vacated the said quarter. The applicant submitted a representation on 07.05.2014 and 15.05.2014 to the Respondent No.3 requesting for permitting him

to shift to Quarter No.D-3/65 which is a Type VI-A accommodation. On 15.05.2017 the applicant's Advocate had also sent a Legal Notice to the Commandant, NDA, Khadakwasla, Pune (Respondent No.3) for the said allotment. Since neither D-3/65 nor any Type VI- A Quarter has been allotted to him, the applicant has filed this OA praying for the reliefs as enumerated in Para 1 above.

3. The Applicant has based his prayer on the following grounds as mentioned in para 5 of the OA and reproduced herein below;-

“5.1. The Applicant is directly appointed as Professor of Dept. of History in the National Defence Academy, Khadakwasla, Pune, which is a teaching Institution run, controlled and administered by Central Govt. His appointment is through UPSC.

5.2The Applicant's pay on his appointment is fitted in P.B. - 4 plus Grade Pay of Rs.10,000/- p.m.

5.3In NDA establishment, there are around 80-85 Group -'A' Gazetted Officers (Class-I), who are appointed as teaching faculty staff in the post of Assistant Professors, Associate Professors and Professors. The Professor get Pay Band-4 with Grade Pay of Rs.10,000/- p.m. whereas other service officers of the rank of Captain , Major, Lt. Col. Etc., gets less pay and lower grade pay. Hence, the applicant is senior-most for consideration of his application for allotment of Quarter Type VI-A in NDA premises, compared to service officers who draw less grade pay.

5.4 Type VI- A Quarters have been falling vacant from time to time, since 2010, when the applicant joined NDA, but instead of allotting a Type VI-A Quarter to the applicant, the Respondent No.3 has been ignoring his case for allotment of Type VI Qtr. to the applicant, for no valid, legal or justified reasons, which were not

being disclosed to the applicant.

5.5 The Applicant had to approach under RTI to obtain various important information about the type of Govt. Quarters available of Type VI-A areas, and the names of service officers occupying the Quarters of Type VI-A though not eligible and entitled for such allotment, and it was after directions given to Respondent No.4 by CIC New Delhi, the details are now made available to the applicant.

5.6 Lt. Colonel Tariq Khan, Officiating Adm. Commandant, and Colonel V. Parashar had also given a false information to the applicant by letter No.3317/SHQ dt.09.04.2011 and letter No.3316/SHQ dt. 03.06.2013, respectively that, there are no Quarters of Type VI-A, in NDA. However, when the information was sought through RTI , it is revealed that a large number of posts of Type VI and Type VI-A are existing in NDA premises and some of them are being occupied by other service officers of the rank of Lt. Colonel or equivalent who are not even eligible for allotment of Type VI-A Quarter.

5.7 The Applicant has even approached the Secretary of Ministry of Defence about non-allotment of entitled category of Govt. Quarters to him by the Respondent No.3, but it appears that the Respondent No.2 and 3 have not put up his representation to the Secretary for orders.”

4. The Respondents filed their reply on 03.06.2014 on preliminary objection and contested the claim of the Applicant. It is their contention that Quarter No.D-3/65 has already been allotted to Armed Forces Officer Commander B.S. Sekhon on 13.05.2014 and taken over by him on 17.05.2014. It is the respondents' contention that the Principal Bench of this Tribunal has decided OA No.1569/2008 on 13.08.2009 in which

they have held that this Tribunal does not have any jurisdiction for deciding matters pertaining to allotment of Quarter. In the present OA, the claim of the applicant for allotment of Type VI-A quarters is not a service condition and therefore does not fall within the jurisdiction of this Tribunal. The Respondents have cited the judgment of the Delhi High Court in Smt. Babli & Anr Vs. Govt of NCT of Delhi & Ors. [95(2002)Delhi LAW Times 144(DB)] and the orders of this Tribunal in OA No.508/2003 and OA No.193/2003. Therefore, the OA filed by the applicant deserves to be dismissed for want of jurisdiction.

5. The Applicant filed Rejoinder to the reply on the preliminary objection on 07.07.2014 in which he has claimed that Quarter No.D-3/65 was allotted to Shri B.S. Sekhon on 13.05.2014 even before the meeting of the ISQC of Station Headquarters, Khadakwasla, Pune held on 16.05.2014. The Applicant has also claimed that grievance of a Civilian employee concerning denial of a quarters of his entitled category is a service matter and can be agitated before the Tribunal. As per the order dated 18.12.1991, passed by the Chairman of the Central Administrative Tribunal and as per the Schedule

order dated 18.12.1991, cases relating to allotment or eviction from Government accommodation comes under the jurisdiction of the CAT. It is the applicant's contention that the order of the Principal Bench of this Tribunal in OA No.1569/2008 and 1186/2008 is not relevant in the present OA since the facts and other aspects are quite different. The respondents have been allotting Government Quarters to Civilian Lecturers/Readers/ Professors of NDA ever since NDA was established. The Applicant has cited the case of a few Professors and an Associate Professor who have been allotted Type VI-A Quarters in the recent past. It is his contention that denial of Type VI-A Quarter to the applicant is arbitrary and discriminatory.

6. On 07.07.2014 the applicant also filed MA No.488/2014 praying for a direction of this Tribunal to the respondents that the allotment of any other vacant Type VI-A Quarter be not made pending the final decision of this Tribunal in the present OA.

7. The Applicant filed a further reply to the affidavit dated 03.06.2014 filed by the respondents. The Applicant has submitted that his revised Pay Band and Grade Pay is PB-4

(Rs.37,400-67,000) and Grade Pay is Rs.10,000/- p.m. from the date he was appointed to the post of Professor at the NDA. The Applicant has quoted the Pay Scales and Grade Pay of the service personnel in the officer cadre, as reported in para 2.3.14 of the 6th Pay Commission. As per this prescribed Pay Scales, the Pay Scale of Lt.Colonel/Equivalent and officers above him are as follows:

| Sr. No. | Post | Pay Band | Grade Pay |
|----------------|---------------------------|-----------------|------------------|
| 1 | Lieutenant/Equivalent | 15,600-39,100 | 5400/- |
| 2 | Captain/Equivalent | 15,600-39,100 | 5700/- |
| 3 | Major/Equivalent | 15,600-39,100 | 6100/- |
| 4 | Lt.Colonel/Equivalent | 15,600-39,100 | 6600/- |
| 5 | Colonel/Equivalent | 15,600-39,100 | 7600/- |
| 6 | Brigadier/Equivalent | 15,600-39,100 | 8400/- |
| 7 | Major General/Equivalent | 39,200-67,000 | 9000/- |
| 8 | Lt.General/Equivalent | 39,200-67,000 | 11000/- |
| 9 | Vice Chief/Army Commander | 80,000 (Fixed) | Nil |
| 10 | Service Chief | 90,000 (Fixed) | Nil |

The Ministry of Defence had issued a letter No.42933/Policy(Qtr./3074/D(Q&C) dated 30.07.2009 conveying the sanction of the President about the entitlement for different types of accommodation for the Defence Civilians, as per which the Civilian officers with a Grade Pay of Rs.10,000/-p.m are entitled to Type VI-A Quarters.

8. The Respondents have filed an MA No.815/2014 for taking sur-rejoinder on record. The Respondents have claimed that Quarter No.D3/65 which is a Lt.Colonel/Equivalent Rank Service Officer Quarter was allotted to Commander B.S. Sekhon on 13.05.2014 prior to the ISQC meeting held on 16.05.2014. During March to June maximum posting of Armed Forces Officers takes place in NAD. In order to reduce the over crowding, the Station Commander had given approval to allot the vacant married quarters immediately on arising of the vacancy instead of waiting for the ISQC meeting. This approval of allotment was given in the Noting Sheet dated 10.04.2014. In the meeting of the ISQC held on 16.05.2014, the allotment to Commander B.S. Sekhon was ratified. The respondents have also reiterated that the order of the Principal Bench dated 13.08.2009 in OA No.1569/2008 and OA No.1186/2008 supersedes the previous order dated 18.12.1991. The Respondents have also submitted that the Quarter No.D3/65 is constructed exclusively for Armed Forces Officers of the rank of Lt.Colonel/Equivalent and it is not a Type VI-A Quarter. Civilian Academic Officers accommodation was constructed separately up to

the scale of Type IV and modified to Type V. In the 1970s and 80s the civilian teaching faculty was not entitled to Type VI quarters. Their status have been upgraded only after the 6th Pay Commission after 2006 by granting increased Academic Grade Pay. The construction of nine Type VI quarters have been received and tendering process is under way. One of this Type VI quarter is meant for the applicant who is a Professor and Head of Department. The Applicant wants a Armed Forces Officers married accommodation (Quarter No.D3/65) and such accommodation are constructed and funded by the Armed Fores Headquarters exclusively for Armed Forces Officer of Army, Navy and Air Forces. Type VI-A accommodation are constructed and funded by Ministry of Defence for Civilian Officers whereas the applicant is trying to get a married accommodation meant for the Armed Forces Officers. The Applicant has been given the Academic Grade Pay which is not the same as the Grade Pay being given to the Armed Forces Officers. The Respondents claim that the applicant is referring to the Academic Grade Pay of Rs.10,000/- as Grade Pay of Rs.10,000/- which is incorrect and misleading. Prior to 2010, there were few Armed Forces Officers quarters which

were vacant due to the overall shortage of Armed Forces Officers in the Defence Services and were allotted to a few Civilian Officers on temporary basis. The situation has however changed and there is a long waiting list of Armed Forces Officers for married accommodation and therefore, no allotment to Armed Forces Officers quarters were made to the Civilian Officers after 2010. Type V quarters is the highest level accommodation available for Civilian Academic Officers in NDA. The OA is, therefore, devoid of merits.

9. The Respondents have also filed a reply to the MA No.488/2014 on 21.11.2014. It is the respondents' contention that the correct nomenclature of D3/65 is "quarter for Lt. Col." and it is not a Type VI quarters. The Officers quarters in NDA are meant for the Armed Forces Officers only and not for Civilian employees. The source of funding of the Armed Forces Officers quarters is from the Army Headquarters, Navy Headquarters and Air Forces Headquarters. The Civilian Officers quarters at the time of construction was only upto Type IV and source of funding was that of Ministry of Defence. Due to upgradation of the status of Civilian Academic

Officers after the 6th Pay Commission, new Type VI quarters are being constructed at NDA. No Type VI quarters was available for allotment to the applicant at the time of filing the reply to the MA No.488/2014 on 21.11.2014. The houses constructed for Armed Forces Officers prior to 6th Pay Commission are of higher status and are meant only for Armed Forces Officers. The sudden raising of the Pay of Civilian Academic Officers has resulted in the requirement of Type VI quarters which are being constructed for them.

10. The Respondents have filed another affidavit-in-reply on 19.02.2015 reiterating that quarter D3/65 is not a Type VI quarters. Married accommodation for Armed Forces Officers and Civilian Academic Officers are constructed separately. The Armed Forces Officers accommodation is entitled to furniture whereas the Civilian Academic Officers married accommodation is not entitled for provision of furniture. The Armed Forces Officers accommodation is constructed from the respective service project of the Army, Navy and Air Forces whereas the Civilian Academic Officers accommodation is constructed from the Capital Outlay of Defence Services. The Applicant's

contention that certain Type VI quarters have been allotted to Civilian Academic Officers is because at some point of time there was a shortage of Armed Forces Officers at NDA and since accommodation was available it was allotted to the Professors and other Academic staff.

11. The Respondents have also filed an affidavit-in-reply on 19.08.2016 in answer to the query raised by this Tribunal on whether separate ear-marked quarters are available for the Defence official which cannot be allotted to the Civilian employees. The respondents in their reply have claimed that the quarters for the Armed Forces Officers are funded by the Army Headquarters whereas quarters for the Civilian Gazetted Officers are funded by the Ministry of Defence. Separate seniority rosters are maintained for allotment of married accommodations to Armed Forces Officers and Civilian Gazetted Officers. The Respondents have also given the extracts of various paras of SAO which lays down the Rules for allotment of accommodation at various Army Establishments. The Respondents have reiterated that Quarter D3/65 was constructed exclusively for Armed Forces Officers of the rank of Major and above and is not a Type VI-A quarter. For the

Civilian Academic Officers, accommodation was constructed separately up to the Scale of Type IV and a few have been modified to Type V. It is their contention that the applicant by getting the Academic Grade Pay of Rs.10,000/- is not entitled to the accommodation at D3/65 which is meant for Armed Forces Officers. New Type VI quarters are being constructed at the NDA Campus and the applicant as per his eligibility will be allotted one of the quarters.

12. The Applicant has filed an Additional Rejoinder on 07.12.2016 and have reiterated that there is no distinction between the Service Officers and the Civilian Gazetted Officers in the allotment of accommodation. The Applicant has relied upon the DOPT OM dated 28.12.2007, as per which there was a ban on issue of Unilateral Guidelines/Instruction concerning methods of Recruitment and service condition by Ministries in violation of established rules and procedures. The applicant has also enclosed the letter No.200265/Q(Wks) dated 01.03.1994 from the Headquarters, Southern Command, Pune. As per which 36 Type VI quarters were improved to bring them to Captain's scale accommodation at NDA, Khadakwasla. It is the applicant's contention

that the above quarters are arbitrarily shown as meant for Civilian Academic Officers which is impermissible as the Headquarters Southern Command has sanctioned these quarters for Captain cadre. The major accommodation in D-1 area of NDA allotted to the Professors/CAO are now being allotted to non-eligible Service Officers by manipulation by Respondent No.3. There is no such distribution of accommodation at NDA among the Service Officers and Civilian Officers. The applicant has given the example of a few Professors such as, Professor M. Roy, HOD Chemistry, (allotted to Type VI Quarter D3/61, Dr. Thangamani Associate Professor (allotted to Quarter VI D3/62), Dr. Anita Shukla (allotted to D3/97), Dr. N. Kar (allotted to D2/46) and Ms. Indira Advani (allotted to E-140 Quarter). On the other hand, Major Nandini (allotted D3/193 B), Col. Atul Bhatia (allotted D3-104 A), Col.Sahey (allotted D3/104 A), Col.Sharma (allotted D3/166 B) and Sq.Ldr. J.K. Makkar (allotted D3-167 B) are occupying quarters which are meant for Central Government Officers.

13. The Respondents have filed their additional affidavit-in-reply to the Additional Rejoinder on 25.01.2017 reiterating that in their

affidavit filed on 11.08.2016, the distinction between types of quarters for Armed Forces Officers and Academic Civilian Gazetted Officers has been clearly brought out. The DOPT OM dated 28.12.2007 cited by the applicant is not applicable in the present case, since the OM relates to methods of recruitment and conditions of service such as, eligibility for promotions within the All India Services and Allocation of Business Rules etc. The Respondents have admitted that 36 Type IV quarters were improved out of capital outlay on Defence Services and are being used for Civilian Gazetted Officers. The Armed Forces Officers who get posted in the NDA come from field areas and look forward to a suitable accommodation where they can stay with their family after their long separation. Allotting accommodation of Armed Forces Officers to a non entitled person especially when he can hire a accommodation as per his status will be causing grave injustice to the Armed Forces Officers who are posted in Academy for a short tenure of 2-3 years.

14. I have heard the learned counsels from both the sides and perused the documents submitted by them. The limited issue to be

resolved in the present OA is whether the denial of a Type VI-A quarters to the applicant, who is a Civilian Gazetted Officer working at NDA as a Professor is arbitrary and illegal as claimed by him.

15. At the outset, I consider it necessary to deal with the issue of jurisdiction of this Tribunal in the present matter. The Respondents have cited the judgment of the Hon'ble Delhi High Court in *Smt. Babli & Anr. Vs. Govt. of NCT of Delhi & Ors. in Civil Writ Petition Nos.4651 to 4653/2011, 2002(3)SLR 733* to argue that this Tribunal has no jurisdiction to entertain the present OA. They have also cited the judgment passed by the Principal Bench of this Tribunal in *OA No.1569/2008 pronounced on 13.08.2009* in which it was held that the Tribunal does not have any jurisdiction in the matter of allotment/eviction of quarters following the judgment of the Hon'ble Delhi High Court in *Smt.Babli (supra)*. They have also cited the orders of this Tribunal in OA No.508/2003 and 190/2003 to support their arguments. I have carefully gone through the judgments cited by the respondents and I consider that the present case is different. The Hon'ble Delhi High Court in

Smt.Babli (supra) has followed the Hon'ble Apex Court judgment in ***Union of India Vs. Shri Rasila Ram & Ors, JT 2000(10)SC 503*** which has clearly stated that the CAT has no jurisdiction to entertain OAs claiming allotment or regularization of Government accommodation unless such claim was shown to be a condition of service. The Applicant in the present OA was appointed as a Professor and Head of the Department of History on Direct Recruitment in February, 2010 and his Pay was fixed in PB-4 (Rs.39,200-67000) with a Grade Pay of Rs.10,000/-. The Govt. of India have passed specific order on the issue of entitlement of accommodation to the Civilian officials in Defence with the relevant Grade Pay. The Applicant has annexed at Annexure A-9 the Memo No.42933/Policy(Qtr)/3074/D(Q&C) dated 30.07.2009 which is reproduced herein below:

*“No.42933/Policy(Qtr.)/3074/D(Q&C)
Govt. of India, Ministry of Defence,
New Delhi, the 30th Jul. 2009.*

*To,
The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

*Sub: Type of Accommodation for Civilians Paid from
Defence Services Estimates.*

Sir,

*I am directed to refer to para 4 of SRO 308
dated 17th October 1978 as amended from time to time*

relating to allotment of Government residences and to convey the sanction of the President that the entitlement for different type of accommodation for the Defence Civilians will be determined as per the following emoluments drawn as on 01.01.2006 or thereafter;

| Type of Residences | Entitlement with regard to the existing classification based on the monthly Grade Pay as on 01.04.2009 or thereafter. |
|---------------------------|--|
| <i>I</i> | <i>Rs.1,300/-, Rs.1,400/-, Rs.1,600/-, Rs.1,650/- and Rs.1,800/-.</i> |
| <i>II</i> | <i>Rs.1,900/-, Rs.2,000/-, Rs.2,400/- and Rs.2,800/-</i> |
| <i>III</i> | <i>Rs.4,200/-, Rs.4,600/- and Rs.4,800/-</i> |
| <i>IV</i> | <i>Rs.5,400/- to Rs.6,600/-</i> |
| <i>IV(Spl)</i> | <i>Rs.6,600/-</i> |
| <i>V-A</i> | <i>Rs.7,600/-</i> |
| <i>V-B</i> | <i>Rs.8,700/- and Rs.8,900/-</i> |
| <i>VI-A(CI-II)</i> | <i>Rs.10,000/-</i> |
| <i>VI-B(CI-I)</i> | <i>Rs.12,000/-</i> |
| <i>VII</i> | <i>Basic Pay Rs.75,000/- to 80,000/-</i> |
| <i>VIII</i> | <i>Basic Pay Rs.80,000/- and above.</i> |

An officer of All India Services in the Grade pay of Rs.12,000/- shall also be eligible for Type -VII accommodation provided his/her pay plus Grade Pay reaches Rs.75,000/- or above.

TABLE

Type of Hostel ***Category of officer or his Grade Pay as on such date as may be specified by the Central Government for the purpose.***

| <i>(1)</i> | <i>(2)</i> |
|---------------------------------------|------------------------------------|
| <i>Single Suite (Without Kitchen)</i> | <i>Rs.4,200/- and above</i> |
| <i>Single Suite (With Kitchen)</i> | <i>Rs.4,200/- and above</i> |
| <i>Double Suite</i> | <i><u>Rs.5,400/- and above</u></i> |
| <i>Working Girl Hostel</i> | <i>All lady officers without</i> |

*limit of Grade Pay shall
be eligible.*

N.B.I. Date of priority for Type-V and above and for Hostel accommodation will be the date from which the minimum Grade Pay prescribed above is continuously drawn by the Government employees.

2. This issues with the concurrence of Ministry of Defence (Finance) vide their ID No.322/F/W-III/09 dated 22/7/09."

*Yours faithfully,
sd/-
(A.K. Singh)
Director (L&C)"*

16. The plain and simple interpretation of the above memo leads me to the conclusion that the Civilian Officers in Defence with a Grade Pay of Rs.10,000/- are entitled to a VI-A Type of residence. The issue in the present OA is, therefore, not a simplicitor allotment of quarter but the entitlement of the applicant to a certain Type of quarter. The applicant's entitlement to certain type of accommodation has already been decided by the Government and notified in the above mentioned memo. Such entitlement forms a condition of service, in the sense that a person whose Grade Pay has been fixed at Rs.10,000/- should get a Type VI-A quarters as a condition of his service. I, therefore, reject the contention of the respondents that this Tribunal has no jurisdiction in the matter and proceed to examine the OA on merits.

17. From the perusal of the records submitted by the applicant and the respondents, it is quite clear that the Academic Faculty has been allotted Type VI quarters as and when available. Except for those who have been allotted Type V or Type VI accommodation, almost all Civilian employees in the NDA have been accommodated in quarters upto Type IV. On the other hand, the Armed Forces Officers who are posted for limited tenure of 2-3 years are accommodated in the available quarters as per their entitlement.

18. A query was raised by this Tribunal on whether there is a separate ear-marking of accommodation for the Armed Forces Officers and the Civilian officers within the NDA. The respondents have made an attempt to explain the distinction between the Armed Forces Officers and the Civilian Gazetted Officers accommodation by stating that the construction of the quarters for the Armed Forces Officers is met out of funds allocated by the headquarters of Army/Navy/Air Forces whereas the construction of quarters for the Civilian employees is funded by the Budget of the Ministry of Defence. They have also attempted to distinguish between the Armed Services personnel and the Civilian personnel on

the ground of the difference in Grade Pay and Academic Grade Pay.

19. On the query raised by this Tribunal specifically on the issue of separate ear-marking for accommodation for Armed Forces Officers and Civilian employees, the respondents filed an affidavit on 19.08.2016. They have quoted the following Rules on Allotment of Married Accommodation;

“a) Extract of Para 22 of SAO 10/S/86: Allotting Authority The Station Commander (or allotting authority) will be responsible for the classification, allotment and administration of all accommodation in the station pool. The Station Commander will ensure that as far as possible officers are allotted quarters of the class to which they are entitled and that all Government quarters and messes whether Government owned/hired/requisitioned/leased or appropriated are fully allotted having due regard to military convenience and financial consideration and that the interests of the State in the recovery of rent are safeguarded. The Station Commander will be assisted by the Quartering Committee in the matter of allotment of accommodation, where Naval and/or Air Force officers are also affected, the duties will be carried out by an Inter Service Quartering Committee (ISQC) consisting of representatives of the services concerned and presided over by the Station Commander. The Station Commander for this purpose will be the senior most officer of the predominant service.

b) Extract of Para 24 of SAO 10/S/86: Policy of Accommodation: All accommodation (Government owned/hired/requisitioned) in the Station will be kept in the Station Pool at a station where more than one service has constructed accommodation. Accommodation built by a particular service at the station will be allotted primarily to officers belonging to that service, subject to the provision that no accommodation in the respective pool in the station

remains vacant at any time. Any accommodation lying vacant/surplus with either service will be offered for allotment to officers of other services on the waiting list irrespective of the service one belongs to. All other Government owned accommodation i.e. hired, requisitioned etc. will be merged in a common pool to be allotted to service officers irrespective of the service based on a common seniority roster at that station.

c) Extract of Para 25 of SAO 10/S/86: Classification of Accommodation: All accommodation in the station will be classified according to the laid down scales. These scales will be used as guide in determining the classification of Civil Department Buildings & leased houses. The accommodation in Government Hostels will be classified in accordance with these principles but in no case will married accommodation in hostel be classified higher than Class 'E'.

d) Extract of Para 27 of SAO 10/S/86: Accommodation Belonging to Category 'A' Establishments: Accommodation to the extent of normal requirements of the institution may be reserved for its staff and students. Surplus accommodation, if any, will be allotted to other service officers of the station in consultation with the Commandant concerned. The accommodation falling vacant for short periods, i.e. after completion of one course and before the commencement of the subsequent course may be taken in the station pool in consultation with the Commandant concerned only if, it is possible to get it vacated for re-allotment to officers attending the next course."

20. From the above, it is found that nowhere a distinction has been made about the separate ear-marking of quarters for Defence Services officials at NDA. The Respondents have also not produced any other record or document to show that certain quarters are ear-marked only for the Armed Forces Officers. On the other hand, the applicant has cited the examples of many

Professors and Associate Professor who have been allotted Type VI-A quarters without any apparent restriction that certain accommodation is earmarked for the Armed Forces Officers only. It is also quite clear that quarter D-3/65 which is a subject matter of contention in this OA has been hastily allotted to Commander B.S. Sekhon just three days before the meeting of the Inter Service Quartering Committee (ISQC). This leads to the conclusion that Quarter D-3/65 has been allotted to the above mentioned Armed Forces Officers just three days prior to the meeting of the ISQC to prevent the consideration of the applicant's application for allotment of Type VI accommodation. This shows a degree of arbitrariness and discrimination particularly when there is no order for exclusively earmarking separate quarters for the Armed Forces Officers and the Civilian employees.

21. However, I have also taken note of the points raised by the respondents in their affidavit in reply to the additional rejoinder dated 25.01.2017 that the Armed Forces Officers are posted from their field posting to the NDA for short tenures of 2-3 years and are entitled to live with their family during their posting.

Any allotment to the Civilian employees in NDA of different types of accommodation will undoubtedly affect the availability of accommodation for Defence Personnel, since the Civilian employees will enjoy a much longer tenure than the Armed Forces Officers. To overcome this potential problem, the Government follows a system of General Pool and Tenure Pool accommodation, earmarking certain houses for the officers who come on transfer and categorize them as Tenure Pool accommodation. It will, therefore, be advisable for the NDA to clearly ear-mark houses for the Armed Forces Officers who are posted at NDA and make them available only for Armed Forces Officers and not allot them to Civilian employees. This will ensure that entitled category of houses are available for the Armed Forces Officers when one officer replaces another officer of the same rank on transfer. The Respondents are at liberty to take necessary steps in this direction.

22. In the present case, however the respondents have not been able to produce any records to show that Type VI/VI-A or its equivalent accommodation in terms of size are exclusively ear-marked for the officers of Armed

Forces.

23. The Applicant is entitled for a change of residence. Para 12 of the SRO 308 lays down the following:

“12. Change of residence:-

(1)An officer to whom a residence has been allotted under these rules may apply for a change to another residence of the same type or a residence of the type to which he is eligible under rule 4, whichever is lower, not earlier than a period of 6 months from the initial date of occupation of accommodation. Not more than one change shall be allowed in respect of one type of residence allotted to the officer.

All applications for change made in the form prescribed by the Allotting Authority and received up to the last day of calender month shall be included in the waiting list in the succeeding month. For purposes of this rule the officers whose names are included in the wailing list in an earlier month shall be senior en-bloc to those whose names are included in the list in subsequent months. The inter se seniority of the officers included in the list in any particular month shall be determined in the order of their priority dates”.

24. The Rule for Allotment of Accommodation reads as follow:

“22. The Station Commander (or allotting authority) will be responsible for the classification, allotment and administration of all accommodation in the station pool. The Station Commander will ensure that as far as possible officers are allotted quarters of the class to which they are entitled and that all Government quarters and messes whether Government owned, hired requisitioned leased or appropriate are fully allotted having due regard to military convenience and financial consideration and that the interests of the State in the recovery of rent are safeguarded. The Station Commander will be assisted by the Quartering Committee in the matter of allotment of accommodation, where Naval and/or Air Forces officers are also affected, these duties will be carried out by an ISQC consisting of representatives of the services concerned and presided

over by the Station Commander. The Station Commander for this purpose will be the senior most officer of the predominant service.”

Again there is nothing in this Rule to distinguish between the Armed Forces Officers and the Civilian officers.

25. However, once houses are constructed specific ear-marking has to be done for the Defence Personnel posted in NDA. The respondents are at liberty to formulate a policy on this. But till specific orders are passed for ear-marking of houses, denial of accommodation to Civilian Officers will be arbitrary and illegal.

26. Considering the fact and the Rules, I am of the view that since no specific ear-marking has been done for the Defence Officials for quarters existing within the NDA Campus, the applicant is entitled as per his entitlement to the next available vacancy in Type VI-A or equivalent quarters and may be allotted accommodation accordingly.

27. The Original Application is **allowed** only to this extent. All MAs stand closed. No order as to costs.

(Dr.Mrutyunjay Sarangi)
Member (A)