

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.826/2016

Dated this Friday, the 05th day of April, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)

1. Dr. Maheshwar Rao, Age : 56 yrs.,
Professor and Head of Department,
National Defence Academy,
Khadakwasla, Pune 411 023.
(R/o : House No.1D-3/67, N.D.A.
Khadakwasla, Pune).
2. Dr. Ms. Vanita Puri, Age : 50 yrs.,
Associate Professor,
National Defence Academy,
Khadakwasla, Pune 411 023.
(R/o : D-3, 208-A, N.D.A.
Khadakwasla, Pune).
3. Dr. S.N.Rao Pasupuleti, Age : 33 yrs.,
Assistant Professor,
National Defence Academy,
Khadakwasla, Pune – 411 023.
(R/o : 184, A D-2 Area, N.D.A.
Khadakwasla, Pune).
4. Shri Narendra Pradhan, Age : 47 yrs.,
Asst. Professor, N.D.A.,
Khadakwasla, Pune 411 023.
(R/o : 202-A, D-3 Area, N.D.A.
Khadakwasla, Pune – 411 023.).
5. Dr. Harihar Panda, Age : 54 yrs.,
Professor, N.D.A.,
Khadakwasla, Pune 411 023.
(R/o : 206-B, D-3 Area, N.D.A.
Khadakwasla, Pune 411 023.)
6. Dr. Manbendu Pathak, Age : 50 Yrs.,
Associate Professor,
National Defence Academy,
Khadakwasla, Pune 411 023.
(R/o : 206-A, D-3 Area, N.D.A.

Khadakwasla, Pune – 23).

7. Dr. Pankaj Sharma, Age : 45 Yrs.,
Asstt. Professor,
National Defence Academy,
Khadakwasla, Pune 411 023.
(R/o : 206-A, D-3 Area, N.D.A.,
Khadakwasla, Pune – 23).
8. Shri Harpreet Singh, Age : 35 yrs.,
Asst. Professor,
National Defence Academy,
Khadakwasla, Pune 411 023.
(R/o : D-2 Area, 173 A,
National Defence Academy,
Khadakwasla, Pune 411 023.)
9. Shri Sanjay Singh, Age : 44 yrs.,
Asstt. Professor,
National Defence Academy,
Khadakwasla, Pune 411 023.
(R/o : 172-B, D-2 Area,
National Defence Academy,
Pune 411 023).
10. Shri P. Srinivas, Age : 48 yrs.,
Asst. Professor in Geography,
National Defence Academy,
Khadakwasla, Pune 411 023.
(R/o : 162/a, D-3 Area,
N.D.A. Khadakwasla, Pune – 23).
11. Dr. Govind N. Sarage, Age : 44 yrs.,
Associate Professor,
National Defence Academy,
Khadakwasla, Pune 411 023.
(R/o : D-3, 205-A, N.D.A.
Khadakwasla, Pune 411 023).
12. Shri Rajesh Das, Age : 36 yrs.,
Asstt. Professor,
National Defence Academy,
Khadakwasla, Pune 411 203.
(R/o : 201-A, D-3 Area,
National Defence Academy,
Khadakwasla, Pune 411 203).

13. Shri Sanjoy Choudhury, Age : 39 yrs.
National Defence Academy,
Khadakwasla, Pune 411 023.
(R/o : 170-A, D-2 Area,
National Defence Academy,
Khadakwasla, Pune 411 023).
 14. Dr. Swagata Nandi, Age : 54 yrs.,
Professor, National Defence Academy,
Khadakwasla, Pune – 23.
(R/o : J-906, Asawari Nanded City,
Pune 411 041).
 15. Rajeev Kumar Bansal, Age : 46 yrs.,
Associate Professor,
National Defence Academy,
Khadakwasla, Pune 411 023.
(R/o : 205-B, D-3 Colony,
Khadakwasla, Pune 411 023).
- (By Advocate Ms. Sujatha Krishnan)*

... Applicants

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1. The Union of India, through the Secretary,
Ministry of Defence, DHQ P.O.,
South Block, New Delhi – 11.
2. The Principal Director (Pers.)
Headquarters Integrated Defence Staff,
Ministry of Defence,
Dept. of Personnel, Kashmir House,
New Delhi 110 011.
3. The Commandant,
National Defence Academy,
Khadakwasla, Pune 411 023.
4. The Principal, National Defence Academy,
Khadakwasla, Pune 411 023.
5. Brigadier (Administration),
Adm. Commandant,
National Defence Academy,
Khadakwasla, Pune 411 023.

(By Advocate Shri A.M.Sethna)

... Respondents

Order reserved on 12.03.2019

Order delivered on 05.04.2019

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O R D E R

This OA has been filed on 14.12.2016 by Dr. Maheshwar Roy and 14 others working as Assistant Professors, Associate Professors and Professors at National Defence Academy (NDA), Khadakwasla, Pune. The applicants have sought relief in terms of declaring them eligible and entitled for Rent Free Accommodation (i.e. without licence fee) from September, 2008 in terms of DOPT OM dated 05.12.2008; direction to respondent No.3 to implement the above DOPT OM, to stop deduction of licence fee from their monthly salary; refund the entire amount of licence fee / rent recovered from the applicants from September, 2008 onwards along with interest at the rate of 18%; and to fix responsibility of the concerned officers of respondent No.3 (Commandant, National Defence Academy, Khadakwasla, Pune) for disobedience of the Government of India instructions since 2008. They are also seeking provision of cost of this application.

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2. Briefly stated facts :-

2(a). The applicants are Government of India Group 'A' employees working as Teaching Faculty (as Assistant Professors, Associate Professors and Professors) at National Defence Academy, Khadakwasla, Pune. They have been appointed on selection by UPSC and are permanent officers of the Ministry of Defence. Their work consists of teaching and training of cadets for three years, based on which the cadets are conferred Bachelor Degree by Jawaharlal Nehru University, New Delhi.

2(b). The applicants are Civilian Staff Members of National Defence Academy, they are governed by the CCS Rules and are drawing salary as per UGC norms as per letter of Ministry of Defence dated 02.04.1996 (Annex A-1). The UGC pay scales have been adopted by the National Defence Academy without any modification.

2(c). The applicants are allotted residential accommodation in the campus of NDA as per the applicable rules and in case of non-allotment of Government accommodation

to a teaching faculty, house rent allowance is paid as per the rules. For the Government accommodation provided to the applicants, licence fee is deducted from their monthly salary but they claim that it is against the DOPT OM of 05.12.2008.

2(d). It is also claimed that VI Central Pay Commission had recommended to provide rent free accommodation to faculty members of the Training Institutions run by the Government and accordingly, the DOPT OM dated 05.12.2008 was issued conveying approval of the President of India for providing rent free accommodation to the faculty / staff of National / Central Training Academies. The applicants have stated that the NDA, Khadakwasla, Pune is the National / Central Training Academy of Ministry of Defence as confirmed by the letter of 26.09.2014 from Headquarters, Integrated Defence Staff, Ministry of Defence, New Delhi (Annex A-3 page 24 and 25).

2(e). The DOPT has further issued clarification dated 14.08.2013 to Commander, Directorate of Civilian Personnel,

Headquarters, IDS, Ministry of Defence, New Delhi stating therein that Central Training Establishments for Group 'A' Officers are those National and Central Training Institutes which provide training to the directly recruited officers belonging to Group 'A' services and that as per the VI CPC, rent free accommodation may be provided to all faculty and staff of National / Central Training Academies. It was also stated in the letter that the position has been elaborated by the Ministry of Urban Affairs (Directorate of Estates) as in the case of rent free accommodation, only exemption for payment of licence fee is permissible and all such allottees are liable of deduction of HRA. It was further stated that in view of the above, the Directorate of Civilian Personnel, Ministry of Defence may decide the status of INA (Indian Naval Academy), Ezhimala on the basis of the clarification given above regarding status of Central Training Establishments and if the institute is found eligible as per this criterion, rent free

accommodation to Civilian faculty may be decided accordingly, with the approval of Integrated Finance Division.

2(f). The applicants have further stated that all the respondents duly received the DOPT OM of 05.12.2008 but respondent no.3 has been deliberately not implementing stipulations of that DOPT OM and deduction of monthly licence fee has been continued from the applicants which is illegal and unauthorized. Even the Principal of NDA has been provided rent free accommodation but not the applicants. This amounts to discrimination and violation of Article 14 of the Constitution.

2(g). On the application of the applicant No.10 submitted on 11.07.2011 to the respondent No.4, no action has been taken. As per the DOPT OM dated 05.12.2008, Rashtriya Indian Military College, Dehradun has also extended this facility to its staff as informed by its letter dated 02.03.2015 (Annex A-6, page 29). Similarly, as per the letter from INA, Ezhimala, Kannur, Kerela dated 24.07.2015, rent free accommodation

has been extended to INA vide Integrated Headquarters (IHQ) MOD letters dated 04.02.2015 and 05.05.2015, and DOPT letter dated 14.08.2013. In spite of this, the respondent No.3 is still not extending the facility of rent free accommodation to the applicants, it has been claimed.

2(h). The respondent No.3 had taken up this matter with the Headquarters, Integrated Defence Staff on 19.08.2015 for advice as to whether rent free accommodation exempting payment of licence fee can be provided to the Central Government Group 'A' Officers posted with the National Defence Academy. In reply to that, respondent No.2 i.e. Principal Director (Personnel), Headquarters Integrated Defence Staff, New Delhi informed the respondent No.3 on 21.04.2016 that the case for providing rent free accommodation to faculty / staff of NDA has been taken up with the Ministry of Defence and in this regard certain additional details were sought by him (Annex A-10). Since the respondents have not implemented the orders of DOPT OM dated 05.12.2008 and Ministry of

Defence has also not issued any order for providing rent free accommodation to the applicants, the present OA has been filed by them.

3. Contentions of the parties :-

The applicants contend that -

3(a). as per the Government orders mentioned under the facts above, they are entitled for rent free accommodation since 2008 as per DOPT OM dated 05.12.2008 (page 23) but they have not been provided it by the respondent No.3;

3(b). even the Principal of NDA has been provided rent free accommodation, however, the applicants have not been provided this facility and this is discrimination against the applicants. Even Rashtriya Indian Military College, Dehradun and the Indian Naval Academy, Ezhimala, Kannur have extended this facility of rent free accommodation to their faculty and staff members as per the OM dated 05.12.2008 but the applicants have deprived been of this facility which is in violation of Article 14 and 16 of the Constitution;

3(c). when respondent No.3 had taken up the matter with respondent No.2, the reply dated 21.04.2016 was received stating that the case for providing rent free accommodation to faculty and staff of NDA has been taken up with Ministry of Defence and in that some additional details has been sought from respondent No.3. Thereafter, however, there has not been any response to respondent No.3;

3(d). even submission of legal notice on behalf of the applicants to respondent Nos.1 to 3 and 4 dated 05.04.2016 has not resulted in any action by them and;

3(e). the applicants are not aware of the DOPT policy letter of 14.08.2013. The NDA is a category A Training Establishment under the Ministry of Defence, as mentioned in that category 'A' under Defence Services Regulations, 1987 (page 85 and 86). From 01.09.2008 to 30.06.2017 (the period prior to implementation of VII Central Pay Commission recommendation), the applicants should have been provided with rent free accommodation. Therefore, the OA should be allowed.

The respondents in their reply have contended that -

3(f). National Defence Academy is an Institution under the Ministry of Defence, Government of India and therefore, the Ministry of Defence is the Competent Authority to issue orders on various financial benefits such as rent free accommodation to be allowed to its officers. However, final decision regarding provision of rent free accommodation to faculty and staff members of NDA has not yet been received from the Ministry of Defence;

3(g). the DOPT OM of 05.12.2008 regarding rent free accommodation cannot be implemented unless it is adopted by the Competent Authority i.e. Ministry of Defence for providing rent free accommodation to the teaching staff of NDA. The NDA is not a National Training Academy and merely on the basis of the RTI reply received by the applicant, financial benefits cannot be extended to them. In this regard, Headquarters Integrated Defence Staff, New Delhi has already replied on 30.05.2017 to

the Commandant, NDA, Khadakwasla stating that in absence of any documentary proof, RTI reply cannot be made a basis for seeking any relief;

3(h). as already admitted by the applicants, Directorate of Civilian Personnel, Integrated Headquarters Defence Staff took up this matter with DOPT on 12.06.2013 with reference to DOPT OM of 05.12.2008, in view of demand received from INA, Ezhimala for rent free accommodation seeking clarification whether the INA, Ezhimala can be considered under the category of National / Central Training Academies. To this the DOPT replied on 14.08.2013 stating that Central Training Establishments for Group 'A' Officers are those National and Central Training Institutions which provide induction training to the directly recruited officers belonging to Group 'A' services. The DOPT reply further informed that as per the VI Central Pay Commission, rent free accommodation may be provided to all faculty and staff of National and Central Training Academies as their stay at the campuses is

required. It was also mentioned further that as elaborated by the Ministry of Urban Affairs (Directorate of Estates), as in case of rent free accommodation only exemption from payment of licence fee is permissible and all such allottees are liable to deduction of HRA. In view of above, the Directorate of Civilian Personnel, Ministry of Defence may decide the status of INA, Ezhimala on the basis of above clarification and if the Institute is found eligible as per this criterion, rent free accommodation may be decided accordingly, with the approval of the Integrated Finance Division;

3(i). based on the above clarification of DOPT, Headquarters Integrated Defence Staff (Navy), New Delhi informed the Flag Officer Commanding-in-Chief, Southern Naval Command, Kochi on 04.02.2015 that approval is accorded for providing rent free accommodation (except licence fee payment) to all faculty and staff members of INA, Ezhimala. However, as per the subsequent communication dated 10.06.2016 (Annex R-5, page 59), Directorate of Civilian Personnel,

Headquarters Integrated Defence Staff (Navy) with reference to the sanction issued on 04.02.2015 with the concurrence of PIFA (Navy), it was informed that the case had not been taken up with the Ministry of Defence in view of clarification provided by DOPT OM of 14.08.2013. However, as intimated by CGDA, New Delhi on 22.03.2016, the matter stood referred to MOD and further clarification will follow on receipt of clarification / guidelines of MOD.

Based on the above development, Commandant, NDA, Khadakwasla was also informed by Director Personnel, Headquarters, IDS, New Delhi on 14.02.2017 that the Ministry of Defence had asked to link the case of approval of the Ministry of Defence for providing rent free accommodation at INA, Ezhimala with the request of NDA, Khadakwasla and that the decision of MOD is still awaited. Thereafter, no further decisions / instructions have been received from the Ministry of Defence about the request of the applicants for providing rent free

accommodation to them. Consequently, respondent No.3 has not been able to agree to their request so far. In view of this, OA deserves to be dismissed.

3(j). as per the OM of Directorate of Estates, Ministry of Housing and Urban Affairs dated 17.08.2017 based on recommendation of VII Central Pay Commission, the Government of India has already abolished with effect from 01.07.2017 (Annex A-14) rent free accommodation allowance.

4. Analysis and conclusions :-

I have perused the OA memo and its annexes, rejoinder of the applicant, reply filed by the respondents and considered the arguments advanced by both of them on 12.03.2019. On their careful consideration, the clear position emerges as follows :

4(a). The applicants are Government of India Group 'A' Civilian Officers posted with NDA and are governed by the Central Civil Services Rules. The main claim of the applicants in the OA is that being members of the Teaching Faculty (Assistant

Professors, Associate Professors and Professors) at National Defence Academy, Khadakwasla, Pune, they are eligible for rent free accommodation as per the recommendation of VI Central Pay Commission and DOPT OM dated 05.12.2008 from 01.09.2008 up to 30.06.2017. In support of this claim, the applicants have also stated that this facility has already been provided to faculty members at Rashtriya Indian Military College, Dehradun and Indian Naval Academy, Ezhimala, Kannur, Kerela.

The respondents have opposed this claim of the applicants stating that the NDA is not a National or Central Training Academy for Group 'A' Officers, it only conducts a three years training course for cadets who subsequently get inducted / recruited into the Armed Forces (Army, Navy and Air Force). The respondents also contend that in absence of formal decision of the Ministry of Defence to implement the DOPT OM of 05.12.2008, the facility of rent free accommodation being sought by the applicants cannot be provided to them. This

issue is already under consideration of the Ministry of Defence.

4(b). On this subject, the recommendation of VI Central Pay Commission (para 6.4.11) was that rent free accommodation may be provided to all faculty and staff of National / Central Training Academies as the duty hours are long and constant interaction with the trainees in residential campuses is required. However, recommendations of a Central Pay Commission do not get automatically implemented. Out of various recommendations made by the Commission, those recommendations which are finally accepted by the Government and approved to get implemented. After taking into consideration this recommendation of the VI Central Pay Commission, the Government of India's Policy Decision was issued by the DOPT OM dated 05.12.2008 conveying sanction of the President that rent free accommodation will be provided to all faculty and staff of the National / Central Training Academies from 01.09.2008. However, with that OM, list of eligible

National / Central Training Academies was not mentioned. It is also necessary to distinctly note that this facility has been recommended by the VI Central Pay Commission and approved by the Government of India for all faculty and staff of National / Central Training Academies.

4(c). On this subject, Directorate of Civilian Personnel, Integrated Headquarters, Ministry of Defence (Navy), New Delhi by letter of 12.06.2013 sought clarification from DOPT whether INA, Ezhimala can be considered a National / Central Training Academy and its Civilian Faculty may be given rent free accommodation. In response to that letter, DOPT clarified in the letter dated 14.08.2013 that Central Training Establishments for Group 'A' Officers are those National and Central Training Institutions which provide induction training to the directly recruited officers belonging to Group 'A' services. In that letter, the DOPT further mentioned that if found eligible as per this criterion, the status of INA, Ezhimala as a Central

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Training Establishment may be decided.

This makes it clear that the status of a Training Institution as a National / Central Training Academy is to be decided by the concerned Controlling Ministry of Government of India on the basis of certain well-defined criteria. The criterion specified by DOPT in its letter of 14.08.2013 for the Central Training Establishments for Group 'A' Officers was that those National and Central Training Institutions Establishments which provide induction training to the directly recruited officers belonging to Group 'A' services.

4(d). The next issue involved in this OA is whether the National Defence Academy, Khadakwasla qualifies to be termed as National / Central Training Academy as mentioned in DOPT OM dated 05.12.2008. In this regard, the respondents have categorically submitted that the NDA is not a National / Central Training Academy because no such specific approval has been given by the Ministry of Defence to the NDA, Khadakwasla because the National / Central

Training Academies for Group 'A' Officers i.e. are the Academies which conduct post induction / post recruitment training of Group 'A' Officers but the NDA conducts only three years course for cadets who at end of the course are given Bachelor's Degree of Jawaharlal Nehru University, New Delhi and are subsequently inducted into the Army, Navy and Air Force, after which they undergo their post induction training at their respective training academies i.e. Indian Military Academy (IMA), Dehradun, Indian Naval Academy (INA), Ezhimala, Kannur and Indian Air Force Academy (IAFA) at Dundigal near Hyderabad, Telangana.

Thus, based on the aspects of pre-induction or post-induction training, training requirements of concerned trainees skill test of the faculty etc, it seems the NDA, Khadakwasla is not strictly identical to the IMA, INA and IAFA. Therefore, if the facility of rent free accommodation has been provided to the faculty and staff of the IMA, Dehradun, INA Ezhimala, IAFA, Dundigal, the same facility may not straightaway

become applicable to the faculty and staff of the NDA, Khadakwasla. Hence, on this subject i.e. which of the Training Institutions including NDA are to be extended the facility of rent free accommodation from 01.09.2008 to 30.07.2017 requires a policy decision of the Ministry of Defence, Government of India. However, no such decision of the Ministry of Defence for the NDA, Khadakwasla has been brought on record by the applicants. The respondents have clarified that such a decision has not been taken so far by the Ministry of Defence. Hence the facility could not be provided to the applicants. This is a valid ground.

4(e). The next issue is whether the claim of the applicants is correct that this facility of rent free accommodation has been provided to faculty and staff of INA, Ezhimala and Rashtriya Indian Military College, Dehradun.

In this regard, the claim of the applicants is simply based on a reply from office of the Rashtriya Indian Military College, Dehradun to an RTI query lodged by

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one of the applicants i.e. (Shri Palagiri Srinivas) stating that facility of rent free accommodation is extended to faculty members of Rashtriya Indian Military College, Dehradun as per DOPT OM dated 05.12.2008. However, it does not mention about approval of the Ministry of Defence. Hence this is not acceptable as the full basis for a decision. The contention of the respondents in this regard is valid and correct that simply a reply sent under RTI cannot become the basis for extending the facility of rent free accommodation to the applicants. It is pertinent to note here that the applicants have not brought on record any evidence to show that the facility of rent free accommodation has been extended to the faculty and staff of Rashtriya Indian Military College, Dehradun with specific approval of Ministry of Defence.

4(f). As regards the applicants' claim that similar facility has been extended at INA, Ezhimala from the communication dated 14.02.2017 (Annex R-6 page 61) from Headquarters IDS, New Delhi to the

Commandant NDA, Khadakwasla, it is clear that when the approval was given to extend the facility of rent free accommodation to faculty and staff there, it had been given only at the level of the Headquarters, IDS without taking up the subject with the Ministry of Defence. Hence, the Ministry of Defence has asked for linking of the request of NDA, Khadakwasla with the case file pertaining to approval to extension of such facility at the INA, Ezhimala.

Also based on intimation of CGDA, New Delhi on 27.03.2016 the matter stood referred to Ministry of Defence and further communication is expected only on receipt on clarifications / guidelines from the Ministry of Defence. These facts clearly bring out that provision of rent free accommodation to faculty and staff of INA, Ezhimala did not have approval of the Ministry of Defence and the proposal of the NDA, Khadakwasla is still under consideration of the Ministry of Defence, Government of India.

In view of the above delineated

position on this subject, the applicants cannot be granted the facility of rent free accommodation unless such specific policy decision is issued by the Ministry of Defence. Viewed in this context, there is nothing wrong and illegal in the stand taken by the Respondent No.3 in not extending the facility so far to the applicants.

5. Decision :-

The OA is disposed of with a direction to respondent No.1 to expedite decision on the subject of provision of rent free accommodation to the faculty and staff of the NDA, Khadakwasla. This process may be completed within a period of three months from the date of receipt of copy of this order.

(Dr. Bhagwan Sahai)
Member (Administrative)

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