

IN THE ARMED FORCES TRIBUNAL

(REGIONAL BENCH) KOLKATA

APPLICATION NO : O. A. 48 OF 2016

**CORAM : Hon'ble Mr. Justice B. P. KATAKEY, Member(Judicial)
Hon'ble Lt. Gen. GAUTAM MOORTHY, Member(Administrative)**

IC-53875X Lt Col Mithilesh Chandra Jha
O/o Commander Works Engineer (Suburb)
Military Engineer Services
Barrackpore, Kolkata, PIN-700 120

... Applicant

-VS-

1. Union of India
Through the Secretary
Ministry of Defence, South Block, New Delhi-110 011.
 2. The Controller General of Defence Accounts.
Ulan Batar Marg, Palam, Delhi Cantt-110 010
 3. The Accounts Officer (NW) Dr. Homi J Bhabha Road
Colaba Mumbai-400 005
 4. The Principal Controller of Defence Accounts (Officers)
Golibar Maidan, Pune-411 001.
 5. The Flag Officer Commanding-in-Chief
Headquarters Western Naval Command
Shoorji Vallabhdas Marg, Ballard Estate, Tiger Gate
Mumbai-400001
- ... Respondents.

For the Applicant/s : In person

For the respondents : Mr. Dipak Kr. Mukherjee, Advocate.

Date of hearing : 03.05.2017

Date of order : 16.05.2017

O R D E R

Per Justice B. P. Katakey, Member (Judicial) :

1. This application is directed against the order dated 5.8.2015 imposing license fee at damage rent amounting to Rs. 4,86,017/- for the period 11.4.2015 to 31.7.2015 and directing to recover the same from the applicant upon his

declaration as unauthorized occupant by the Command Quartering Officer, Western Naval Command, Mumbai, i.e. on expiry of 10 days from the date of Stuck of Strength (SOS) which was 01.04.2015.

2. The facts leading to filing of the application are that the applicant, who is an officer of Indian Army, was posted as Deputy Commander Works Engineer (Naval Dockyard) in the office of the Director General, Naval Project, Mumbai, where he joined on 17.12.2012. While the applicant was posted in the said capacity he was allotted a married accommodation in accordance with the Navy Order 02/2008, being flat No. 07/C, Archana, vide allotment order dated 28.5.2014. The applicant accordingly occupied the said accommodation. He was thereafter transferred and posted as Senior Barrack/Stores Officer in the office of Commander Works Engineer (Suburb), Barrackpore, in the state of West Bengal, which happens to be a peace station. The movement order dated 27.3.2015 was accordingly issued to the applicant for his departure from Mumbai on 31.3.2015 with SOS with effect from 01.04.2015. The applicant on his transfer filed an application on 19.3.2015 before the Flag Officer Commanding-in-Chief, through Command Quartering Officer, Headquarter Western Naval Command, Mumbai, seeking to retain the married accommodation allotted to him for a period of 2 months, indicating therein that the application in the prescribed format will be submitted by him after obtaining requisite supporting documents. The applicant before consideration of the said application, in terms of the movement order reported and joined his transferred place at Barrackpore. The Command Quartering Officer thereafter on 07.04.2015 intimated the office of Commander Works Engineer, Director General Naval Project, Naval Dockyard, Mumbai, the issues required to be considered in connection with the application filed by the applicant on 19.3.2015 for allowing him to retain the accommodation for a period of 2 months and at the same time indicating that the applicant is being declared unauthorized occupant in respect of

the aforesaid accommodation with effect from 10.04.2015. The office of the Director General, Naval Project (MB) on 08.04.2015 has informed the HQ CWE (Suburb), Military Engineering Services, Barrackpore, where the applicant has been posted on transfer, about the rejection of his application dated 19.3.2015 by the Command Quartering Officer and also intimating that the applicant will be declared as unauthorized occupant of the said accommodation with effect from 10.4.2015. The applicant on receipt of the aforesaid communications dated 07.04.2015 and 08.04.2015 submitted his objection on 05.05.2015 against his declaration as unauthorized occupant and requested for giving sanction for retention of the accommodation, which, however, has been rejected by the Command Quartering Officer on 15.05.2015. The applicant again on 07.05.2015 filed another application for retention of the aforesaid quarter at Mumbai on the ground of the children education for the period from 01.04.2015 to 31.03.2016, which was duly forwarded by the Command Works Engineer (Suburb), Barrackpore, Military Engineering Service, with due recommendation from the Station Headquarter, Barrackpore, along with the certificate from the concerned school. The said application has been rejected by the Command Quartering Officer on 20.5.2015 on the ground that the applicant is not entitled to retain the quarter on child education ground. By the said order the applicant has also been informed that he has been declared as unauthorized occupant of the allotted accommodation in Mumbai with effect from 11.04.2015 and non-vacation of the said accommodation will attract the action under the provisions of Navy Act, 1957 and eviction under the Public Premises (Eviction of Unauthorized Occupation) Act apart from charging of license fee at damage rent from 11.4.2015 till vacation of the accommodation. Another warning was issued to the applicant on 11.6.2015 by the Command Quartering Officer on the same line. Thereafter, the license fee at

damage rent was charged on the applicant, as aforesaid, vide the order dated 5.8.2015. Hence, the present OA.

3. We have heard the applicant in person and Mr. Dipak Kr. Mukherjee, learned counsel appearing for the respondents assisted by Maj N. Singh, OIC, Legal Cell, HQ Bengal Area.

4. The applicant in person, referring to the averments made in the OA as well as the counter affidavit and the supplementary affidavit filed by the respondents and the annexures appended thereto, has submitted that the allotment of the married accommodation in Mumbai having been made under Naval Order 2/2008, his application for retention of the said accommodation for the children education could not have been rejected by the Command Quartering Officer on the ground that the Army Officers are not entitled to the retention of quarters in the Naval Headquarter in Mumbai under Station Quartering Rules of Western Naval Command, more so when such Quartering Rules are contrary to the Naval Order 2/2008. Referring to the said Naval Order it has also been submitted by the applicant in person that as it is evident therefrom that the provisions contained therein would equally apply to all Commissioned Officers of the Indian Army, the provisions contained in rule 58 of Naval Order 2/2008 also applies to the applicant, which provides for retention of married accommodation at the old duty station on academic grounds. It has also been submitted that Naval Order 2/2008 provides that no local deviations except subsidiary rules to suit local conditions, duly approved by the Station Inter Services Quartering Committee, Station Quartering Committee and the Command concerned, which is permissible, the respondents cannot formulate Station Quartering Rules contrary to the Naval Order 2/2008 laying down that the Army Officers occupying the Naval accommodation are not entitled to retain the accommodation allotted to them while posted in Navy, beyond 10 days, and that too without approval by the

Station Inter Services Quartering Committee being contrary to the provisions contained in the aforesaid Naval Order 2/2008. The applicant has further submitted that the time limit for submission of application for retention of accommodation being stipulated therein, the application filed by the applicant for retention of the accommodation on the children education ground i.e. the academic ground was within the time allowed by the aforesaid Naval Order and, hence, it could not have been rejected, that too by the Command Quartering Officer. Referring to the Station Quartering Rules it has also been submitted that even under the said Rules the applications filed by the applicant though are required to be considered by the Quartering Committee, it is apparent from the orders passed by Command Quartering Officer that those were never placed before the Quartering Committee for consideration and were rejected by the Command Quartering Officer himself. The applicant also submits that by formulating Station Quartering Rules for service Officers, the Army Officers are sought to be discriminated against by the Headquarter Western Naval Command as by the said Rules while the Naval Officers are allowed retention of the accommodation for two months and also on children education ground (academic ground), the same is sought to be denied to the Army Officers. The applicant, therefore, submits that the impugned action on the part of the respondents in imposing license fee at damage rent needs to be set aside and the application needs to be allowed by imposing compensatory cost on the respondents.

5. The learned counsel appearing for the respondents, on the other hand, referring to the Station Quartering Rules has submitted that an Army Officer posted in Navy is allowed to retain the quarter for a period of 10 days from the effective date of his release on transfer. Referring to clause 1032, as stood prior to amendment, which provides for retention of the accommodation, it has been submitted that the Army, Air Force and MNS Officers posted in the strength of Indian Navy are not be

permitted any retention, except for children education ground if the children are studying in Class-IX to Class-XII and on 'no accommodation' basis for two months only from the date of SOS. It has also been submitted that the applicant being an Army officer and there being an amendment of clause 1032 (15) to the effect that the allotment of Naval pool accommodation of the Army Officer is for the period of appointment with Navy only, the applicant can be allowed to retain the accommodation only for a period of 10 days from the date of SOS and in the instant case till 10.4.2015 and, hence, no illegality has been committed by the respondents in charging the license fee at damage rent with effect from 11.4.2015, the accommodation having not been vacated by the applicant. The learned counsel also submits that the applicant in his first application dated 19.3.2015 requesting to allow him to retain the quarter for two months did not even make a whisper for retaining that accommodation on the children education ground, which he has filed only on 7.5.2015 and, hence, those were rightly rejected by the respondent authority. It has further been submitted that the applicant having executed an undertaking to vacate the accommodation on transfer, cannot claim retention of the accommodation after his transfer. The learned counsel, therefore, submits that the OA filed by the applicant deserves to be dismissed.

6. We have considered the submissions advanced by the applicant in person and the learned counsel for the respondents. We have also perused the pleadings apart from the records produced by the respondents including the proceedings of the Quartering Committee for the relevant period.

7. This Tribunal vide the order dated 13.5.2016 while admitting the OA for hearing passed an interim order staying recovery of the damage rent charged on the applicant, which interim order is in force.

8. It is evident from the married accommodation allotment Order dated 28.5.2014 that the allotment of the flat No. 07/C, Archana, was approved by the Quartering Committee in terms of Rules laid down in Navy Order 2/2008. Rule 3 of the said Navy Order provides that it will apply to all Commissioned Officers of Indian Navy, in Indian Army, in Indian Air Force and all Nursing Officers of the Military Nursing Services (regular). Rule 2 provides that no local deviations except subsidiary rules to suit local conditions, duly approved by the Station Inter Services Quartering Committee (ISQC), Station Quartering Committee (SQC) and the Commands concerned will be permissible. Rule 57 of the said Navy Order permits an officer transferred from one peace station to another to retain the married accommodation for a period of 10 days after the date of handing over the charge. It also provides for extension of the said period of 10 days on four grounds stipulated therein. Rule 58 provides that an officer is permitted to retain the married accommodation on transfer for 10 days without any reason and beyond that he can retain the married accommodation at the old duty station on three grounds, viz., (a) on children education ; (b) NAC and (c) posting to a field station/afloat service. It also provides that the service officers on transfer can retain the married accommodation on payment of normal license fee at the last duty station upto the end of the current school/college academic date of their children, even if married accommodation is/becomes available for allotment to the officer at the new duty station, subject to certain stipulations contained therein. Rule 63 of the said Navy Order specifies the time limit for submission of application for retention of accommodation. It stipulates that on posting out, the officers will be allowed two months' time to decide the ground of retention of accommodation, i.e. either on NAC basis or on academic grounds, if they are otherwise entitled to retain accommodation on either of the said two grounds. It also stipulates that option once exercised would be treated as final and the period of two months for

deciding the ground will reckon from the date of handing over charge or as determined in accordance with Rule 57. Hence the application filed by the applicant on 7.5.2015 cannot be rejected on the ground of delay.

9. The Station Quartering Rules framed by the Western Naval Command has a deviation from the aforesaid Naval Order 2/2008. Clause 1032 of the said Rules provides for retention of accommodation. Sub-clause (1) stipulates that officer on transfer from the station will be permitted to retain the married accommodation for the bonafide use of their families and the request for retention of accommodation must reach the Command Quartering office at least 10 days prior to the date of SOS. Sub-clause (15) of clause 1032, as amended, has stipulated that all Army, Air Force, MNS and Civilian Officers are allotted the Naval pool accommodation for the period of appointment with Navy only and thereby they have been deprived even for retention of the accommodation for a period of two months from the date of SOS, as stood prior to such amendment.

✓ 10. As noticed above, under Naval Order 2/2008 any Army Officer is entitled to retain the accommodation for a period of two months and they are also entitled to retain the same on academic grounds, which however has been taken away by the Station Quartering Rules of Headquarter Western Naval Command. Nothing could be placed before us by the respondents about the approval by the Station Inter Services Quartering Committee, Station Quartering Committee and the Command concerned on such deviation in the Station Quartering Rules from the Naval Order 2/2008.

11. That apart, even assuming that Station Quartering Rules are framed in accordance with Naval Order 2/2008, the applications seeking retention of the accommodation are required to be considered and decided by the Quartering Committee. The records of Quartering Committee produced by the respondents do not reveal placing and consideration of the applications filed by the applicant by

the Quartering Committee and such applications were, in fact, rejected by the Command Quartering Officer, without being placed before the Quartering Committee, which is contrary to the provisions of the Station Quartering Rules. Without there being an order passed by the Quartering Committee rejecting the applications filed by the applicant for retention of the accommodation allotted to him in Mumbai, the applicant could not have been declared as unauthorized occupant as has been done by the Command Quartering Officer. The undertaking given by the applicant at the time of allotment of the accommodation being under protest and contrary to the aforesaid Naval Order it would not bind the applicant and debar him from being considered for retention of accommodation by the appropriate authority. The applicant admittedly has vacated the accommodation on 28.3.2016.

12. In view of the above, the order dated 05.08.2015 imposing the license fee at damage rent with effect from 11.04.2015 and directing recovery of the same from the applicant cannot stand the scrutiny of law and, hence, it is set aside. The respondents are directed to refund the license fee at damage rent, if any, realized from the applicant.

13. The OA is, accordingly, allowed to the extent as indicated above without any order as to cost.

14. Let the original documents filed by the respondents be returned upon observing requisite formalities.

15. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be furnished to the parties upon compliance of requisite formalities.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

ss.

(JUSTICE B.P. KATAKEY)
Member (Judicial)