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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1736/2013

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***Judgment dated 12.07.2016***

**INDIAN COUNCIL OF AGRICULTURAL  
RESEARCH AND ANR**

..... Petitioners

Through : Mr.Gagan Mathur and Mr.Varun Kumar,  
Advs.

versus

**PRAMOD KUMAR & ANR.**

..... Respondents

Through : Ms.Avnish Ahlawat, Adv. for respondent  
no.1.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MR. JUSTICE I.S. MEHTA**

**G.S.SISTANI, J (ORAL)**

1. Challenge in this writ petition is to the orders dated 23.12.2011 and 11.9.2012 passed by Central Administrative Tribunal (in short '*the Tribunal*') in OA No.2183/2010. By the impugned order dated 23.12.2011 the Tribunal has allowed the OA, set aside and quashed the order dated 19.7.2008 passed by the disciplinary authority, order dated 22.6.2009 passed by the Appellate Authority and the Charge Memo dated 15.10.2007. The Tribunal has further directed the petitioners herein to refund the license fee deducted from the salary of the respondent no.1 for the period of non-occupation of the quarter allotted to him. It has also been directed that the respondent no.1 herein would be granted admissible HRA and Transport Allowance for the period he stayed in the rented accommodation. By the impugned order dated 11.9.2012, necessary corrections in the order dated 23.12.2011 have been carried out.

2. Before the rival submissions of the counsel for the parties can be considered, the facts which have led to filing of the OA may be noticed.
3. As per the petition, petitioner no.1, Indian Council of Agricultural Research, is a Society registered under the Societies Registration Act, 1860 (hereinafter referred to as '*the Society*'). Petitioner no.1 follows the Rules and Regulations of Government of India *mutatis mutandis* subject to the Rules and Bye-laws of the society. Petitioner no.1, which is an autonomous body, is fully funded by the Government of India. Petitioner no.2, Central Soil and Water Conservation Research and Training (hereinafter referred to as '*CSWCRTI*') is an institute under petitioner no.1. Respondent no.2 is the Disciplinary Authority.
4. At the relevant point of time, respondent no.1 was working as a Technical Officer with CSWCRTI, Dehradun. Vide order dated 24.7.2002 the petitioner was transferred to CSWCRTI, Research Centre, Datia, Madhya Pradesh. He joined his duties at CSWCRTI, Regional Centre, Datia, on 14.8.2002. Petitioner no.2 vide communication dated 17.6.2003 issued a proposed list of allotment of residential quarters to its officers and staff including the respondent no.1, whereby Type III quarters were to be allotted to its officers and staff including respondent no.1 by CSWCRTI, Research Centre, Datia. In furtherance of the same, CSWCRTI, Research Centre, Datia, vide Circular dated 18.6.2003 allotted Type III quarter to its officers and staff including the respondent no.1 herein. In the Circular dated 18.6.2003, all the officers and staff members were requested to occupy the quarters latest by 30.6.2003 otherwise deduction from their salary would be made as per Rules. On 11.6.2004, CSWCRTI, Research Centre, Datia, issued an Office Order declaring the services of the respondent no.1 as essential, being In-Charge Maintenance. The respondent no.1 was directed to look after the duties of maintenance of

the new Office-Cum-Laboratory building and residential quarters (Civil and Electrical, both). Vide the said Office Order, the respondent no.1 was also directed to occupy Type III quarter (C-4) which was allotted to him. It was also ordered in the Office Order that the respondent no.1 would be assisted by Sh.A.S. Tiwari, SSGr-II for carrying out the work of maintenance of office building and residential quarters (civil & electrical). Additionally, the respondent no.1 was also directed to assist Dr.M.L. Gaur Head in research work related to Hydrology and Engineering. The respondent no.1 submitted various letters requesting therein to permit him to retain his existing quarter.

5. On 12.4.2007, a Memorandum was issued to the respondent no.1 on the basis of information that the respondent was not properly performing his work and duties which were assigned to him by the Centre Head, Research Centre, Datia, and further despite the services of the respondent no.1 being declared 'Essential', he had not occupied the quarter allotted to him. Vide the said Memo, last warning was given to the respondent no.1 to properly perform the work and duties assigned to him and also occupy the quarter allotted to him. The respondent no.1 was also advised not to enter into unnecessary correspondence and comply with the directions within fifteen days. The respondent no.1 instead of complying with the above Office Order again sent a communication dated 26.4.2007 stating, *inter alia*, that he is ready to occupy the quarter allotted to him and obey all the orders as soon as the certain conditions are fulfilled. Thereafter, the CSWCRTI, vide order dated 11.5.2007, placed respondent no.1 under suspension as a disciplinary case against him was under investigation. On 3.9.2007 the respondent no.1 filed an appeal against the order of suspension. On 9.10.2007 a Memorandum containing the Charge Sheet was issued to the respondent no.1, *inter alia*, alleging that the respondent

no.1 had continuously disobeyed the instructions issued from time to time by the Head, Research Centre, Datia, and the Director with regard to occupation of residential quarter allotted to him, therefore, he had exhibited lack of devotion to duty and he has also acted in a manner of unbecoming of an employee of petitioner no.1. On 25.10.2007 the respondent no.1 filed his written statement against the Memorandum and Charge Sheet dated 9.10.2007. On 17.12.2007, the suspension of the respondent was revoked pending finalisation of disciplinary proceedings. Consequently, the Inquiry Officer submitted his report holding that the charge against the respondent no.1 stood proved. The Disciplinary Authority, vide Order dated 19.7.2008, imposed a penalty of reduction by two stages from Rs.8300/- to Rs.7900/- in the time scale of pay of Rs.6500-200-10500/- for a period of two years. It was further directed that the respondent no.1 would not earn increments of pay during the period of reduction and further on the expiry of the said period, the reduction would have the effect of postponing his future increments of pay. Thereafter, the respondent no.1 filed an appeal before the Appellate Authority i.e. petitioner no.1. The Appellate Authority, vide its order dated 22.6.2009, having considered the disproportionality of the penalty order, modified the penalty order to the extent that the reduction in two stages of pay scale shall be non-cumulative.

6. Aggrieved by the orders of Disciplinary Authority and the Appellate Authority, the respondent no.1 approached the Tribunal by means of OA No.2183/2010. The Tribunal noted that the respondent no.1 never applied for a quarter, as mandated by the rules of the institution. Further the disobedience of the respondent no.1 was limited to the non-occupation of the quarter. Thus, as per the Tribunal, the non-occupation of the quarter, which the respondent no.1 had never applied for and was unilaterally

allotted, cannot be said to be disobedience. Therefore, the Tribunal allowed the O.A. by passing the impugned order, which led to the filing of the present writ petition.

7. It is contended by Mr.Mathur that the directions passed by the learned Tribunal are not legally sustainable as the same are against the well-established principles of law. It is next contended that the impugned order passed by the learned Tribunal is based on conjectures and surmises, the same is against the well-settled principles of law and is not a reasoned judgment.
8. Mr.Mathur, learned counsel for the petitioners, submits that the impugned order passed by the Tribunal is illegal, arbitrary and the same has resulted in miscarriage of justice. Mr.Mathur further submits that once the services of the respondent no.1 were declared as essential being Incharge Maintenance and he was directed to look after the duties of maintenance of new Office-Cum-Laboratory building and residential quarters (Civil and Electrical, both), he was duty bound to comply with the orders/directions issued by his Superior Officers and occupy the quarter in question as his physical presence in the complex was mandatory and essential on account of nature of duties assigned to him. It is next contended that the learned Tribunal has failed to appreciate that the charge sheet was issued to the respondent no.1 on account of his misconduct of disobeying the instructions of the Head of the Centre and the Director, which charges have been proved against him during the course of inquiry, and on the basis of which a penalty was imposed upon him by the Disciplinary Authority vide order dated 19.7.2008.
9. Learned counsel for the petitioners further submits that the learned Tribunal has failed to appreciate that the respondent no.1 admittedly has not followed instructions and Office Orders and, thus, his conduct of

insubordination was sufficient for issuance of charge sheet and impose a penalty upon him. This was evident from the fact that despite the last warning having been issued to him vide Office Order dated 12.4.2007, he imposed a pre-condition for complying with the order, which is evident by his letter dated 26.4.2007. It is also contended that the learned Tribunal has failed to appreciate that the conduct of the respondent no.1 was unbecoming of an officer of the petitioner no.1.

10. Mr.Mathur, counsel for the petitioner, has further submitted that the learned Tribunal has failed to appreciate that the respondent no.1 was charge sheeted for the continuous non-observance of directions issued by the Head of the Centre and Director of the Institute. It is further submitted that the Tribunal has fell into grave error in observing that the controversy in the present case is whether the respondent no.1 herein could be proceeded against for non-occupation of a quarter for which he had not applied and whether the licence fees could be deducted and Transport Allowance and HRA can be denied to him, whereas the real controversy in the present case relates to non-compliance with the directions to occupy the quarter after the respondent no.1 was posted as In-charge maintenance and his services were declared as essential. Thus, respondent no.1 committed insubordination in admittedly not complying with (i) the directions issued, and (ii) the Office Orders over a long period of time, despite issuance of last warning.
11. Mr.Mathur further submits that the learned Tribunal has erred in holding that the rules of the petitioner no.1 provide that for allotment and occupation of the quarter the concerned employee has to apply for it and there is no dispute regarding the same. It ignored the judgment rendered by the Supreme Court of India in the case of ***Director, Central Plantation Crops Research Institute, Kesaragod And Others v. M. Purushothaman***

*And Ors.*, reported at 1995 Supp. (4) SCC 633 wherein it was held that the Government or the organizations spend huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if the said quarters are not made available to the employees. Counsel further submits that whenever accommodation is offered to the employees, they have to either accept it or else the HRA is forfeited. The management cannot be saddled with double liability viz., on the one hand to construct and maintain the quarters, and on the other hand to pay HRA.

12. Mr.Mathur further submits that the Tribunal has fell in grave error in holding that there was no need to allot a quarter and that the work assigned to the respondent no.1 has not suffered on account of his not being present at the complex or that the respondent no.1 has not committed any misconduct. It is further contended that the learned Tribunal has failed to consider that duties of the respondent no.1 were always 'essential', requiring his physical presence at his place of duty so that he may be available at anytime.
13. Learned counsel for the petitioners has further submitted that the Tribunal has failed to consider that the respondent no.1 continuously refused to obey the directions of the Centre/Institute and since he was performing essential duties, he was issued last warning by the institute in order to ensure his presence in the Campus by occupying the quarter at the residential colony. It is further contended that the Tribunal has failed to appreciate that in view of clear defiance of orders for occupying the quarter and in light of his performing essential duties coupled with his adamant attitude despite issuance of last warning by the institute vide memo dated 12.4.2007, the issuance of charge sheet and imposition of

penalty could not have been faulted with.

14. Per contra, Ms.Ahlawat, learned counsel for the respondent no.1, submits that there is no infirmity in the order passed by the Tribunal. Counsel further submits that the scope of interference in a writ petition is very narrow and as the petitioners have failed to point out any illegality or perversity in the impugned order, the same should not be interfered with. Ms.Ahlawat further submits that the family of the respondent no.1 was living at Dehradun and as his family continued to stay in a Government quarter, the respondent no.1 did not apply for allotment of a quarter in Datia, Madhya Pradesh. Since he had not brought his family to Datia, he could have managed in a rented accommodation. Counsel further submits that the allotment was done in the absence of any application and deductions from salaries were started without any reasonable justification.
15. Learned counsel for the respondent no.1 further submits that the respondent no.1 was already living in a rented accommodation. He informed the authorities that he is not interested in the quarter as he is already occupying a quarter at Dehradun for which license fees was already being deducted from his salary and the additional license fees with respect to another quarter could only be deducted when the possession of the quarter is taken over. Since the respondent no.1 did not take possession of the quarter, the question of deduction of additional license fees could not have arisen. Ms.Ahlawat also submits that as per the information received through Right to Information Act from the Directorates of Estates, Government of India, there is no Rule under General Pool which prescribes “*for allotment of two entitled types of flats to a single person*”.
16. It is further submitted by learned counsel for the respondent no.1 that as per Rule 12(1) of the Indian Council for Agricultural Research (Allotment



of Residence) Rules 1981, (in short 'ICAR Rules') if an officer fails to accept the allotment of residence within five days or fails to take possession of that residence after acceptance within eight days, he shall not be eligible for another allotment for a period of one year from the date of allotment letter. In support of this contention, counsel has relied upon Rule 12, which reads as under:

*“Rule – 12*

***Non-acceptance of allotment or offer or failure to occupy the allotted residence after acceptance:***

*(1) if any officer fails to accept the allotment of residence within five days or fails to take possession of that residence after acceptance within eight days from the date of issue of the letter of allotment, he shall not be eligible for another allotment for a period of one year from the date of allotment letter.”*

17. Ms.Ahlawat further submits that as far as the respondent no.1 is concerned, he neither submitted any application for allotment of any quarter nor did he accept the allotment. Thus, the question of deducting HRA and additional license fee from his salary did not arise. In this respect, counsel relies upon Rule 14(1) of ICAR Rules, which reads as under:-

**“Rule-14 : Provisions relating to licence fee:**

*(1) Where an allotment of accommodation or alternative accommodation has been accepted the liability for licence fee shall commence from the date of occupation or from the eighth day of the date of issue of the allotment letter, whichever is earlier. An officer who, after acceptance, fails to take possession of that accommodation within eight days from the date of issue of the allotment letter, shall be charged licence fee from such date upto a period of twelve days.”*

18. We have heard learned counsel for the parties and considered their rival

submissions. The basic facts of the case are not in dispute that the respondent no.1 was working as a technical officer with CSWCRTI, in Dehradun. He was transferred to the CWCRTI at Datia, Madhya Pradesh, vide Order dated 24.7.2002.

19. It is the case of the respondent no.1 that he joined the posting at Datia on 14.8.2002, while his family continued to stay at the Government quarter at Dehradun. It is further the case of the respondent no.1 that he did not apply for a quarter at Datia as he decided to manage in a rented accommodation. The case of the respondent no.1 before the Tribunal was that in fact he did not make any application for accommodation in terms of Rule 6(2) or 6(3) of the ICAR Head Quarters (Allotment of Residence) Rules 1981. The said rule reads as under:-

**“Rule-6 : Application for allotment:**

1. ....
2. *In case of officers not in occupation of accommodation under these rules, the' Secretary shall invite applications in such form and manner and before such date as may be specified by him.*
3. *An officer joining duty in the Council on first appointment or on faster may submit his application to the Secretary within a month of his joining duty.”*

20. It is not in dispute that the respondent no.1 was allotted a quarter at CSWCRTI, Research Centre, Datia, Madhya Pradesh, on 17.6.2003 with the direction to occupy the same by 30.6.2003 failing which rent would be deducted from his salary. Since the respondent no.1 did not occupy the quarter, license fee of the quarter and the HRA were deducted from his salary w.e.f. September, 2003.

21. The submission of learned counsel for the respondent no.1 before this Court as also before the learned Tribunal was that as per Rules 12(1) and 14 of the ICAR Rules, if an officer does not occupy the quarter allotted to him within eight days from the date of allotment, he will not be entitled to any quarter for one year. It is, thus, the stand of the respondent no.1 that since he neither sought allotment nor accept the allotment, the deduction of HRA and license fee from his salary is illegal and at the most for not occupying the quarter allotted to him, he would not be entitled to a quarter for one year.
22. The case of the respondent no.1 is also that no doubt that vide letter dated 11.6.2004, he was directed to look after the duties of maintenance of new Office-cum-Laboratory building and residential quarters (Civil and Electrical, both) and his services were declared as essential, however, he continued to carry out his duties by staying in a quarter outside the campus but there is nothing to show that by his not occupying the rented accommodation the official work had suffered in any manner.
23. It may be noticed that the learned Tribunal had culled out the controversy between the parties in para 4 of the impugned order, which reads as under:
- “4. Having heard, the contentions of the rival parties, we perused the pleadings as well. Controversy in the present case is in very narrow and focused compass : whether the applicant could be proceeded against for non-occupation of the quarter for which he had not applied and whether license fee could be deducted from him and the Transport Allowance and HRA admissible to him could be denied by the Authorities concerned?”*
24. The Tribunal has allowed the O.A. primarily on the ground that the Rules of the Institution provide that for occupation of a quarter the concerned employee has to apply and after verifying the availability of a type of quarter the employee is entitled, appropriate allotments are made. The

Tribunal was also persuaded by Rule 12(1) of the ICAR Rules wherein it has been stated that in case an employee does not occupy the allotted quarter, he is not entitled to future allotment for one year.

25. The Tribunal was also persuaded by the fact that the respondent no.1 had not applied for any quarter and, thus, was of the view that there was no need to allot a quarter which was not applied for by the respondent no.1. It was also held by the Tribunal that the allotment of a quarter to the respondent no.1 was a unilateral act on the part of the petitioners. The Tribunal has also held that to reject the request of the respondent no.1 for staying in a rented accommodation outside the campus was a wrongful act and, therefore, the petitioners were unreasonable. The Tribunal further held that the only disobedience which can be attributed to the respondent no.1 is non-occupation of the quarter allotted to him.
26. In our view, the Tribunal has completely misdirected itself and failed to identify the main issue between the parties and to take into account the stand of the petitioners (respondents therein) in their counter affidavit. On 11.6.2004 an Office Order was issued as per which the respondent no.1 was directed to look after the duties of maintenance of new Office-cum-Laboratory building and residential quarters (Civil and Electrical, both). Being Incharge of maintenance, his services were declared as essential and he was directed to occupy C-4 (Type III) quarter, which was allotted to him. The Office Order reads as under:

“

OFFICE ORDER

*In partial modification of this office order No. 333/2(1)/2004-Estt. Dated 27.5.04 Sh. Pramod Kumar, TO T-5 (Engg.) of this centre will look after the duties of maintenance of New office-cum-Laboratory building and residential quarters (Civil & Electrical both). As In-charge maintenance his services are*

*declared as essential. He is directed to occupy the quarter Type – III C-4 which is allotted to him. He will be assisted by Sh.A.S. Tiwari, SSGr-II for carrying out the work of maintenance of office building and residential quarters (civil & electrical). He will carry out these duties under the guidance of Head. In addition to this he will assist Dr. M.L. Gaur & Head in research work related to Hydrology and Engineering.*

*During the absence of Sh. Pramod Kumar, TO T-5 (Engg.) the work of maintenance of Office-cum-Laboratory building and residential quarters will be looked after by Sh. Sant Raj, T.O. T-6.*

*(Emphasis supplied)”*

27. The present controversy between the parties is to be considered in the backdrop of this office order. The quarter was allotted to the respondent no.1 not because he applied for it, but on account of the fact that his services were declared as essential. The quarter was allotted to him in order to enable him to comply with the Office Order i.e. for carrying out the work of maintenance of Office-cum-Laboratory building and residential quarters (Civil and Electrical, both). The respondent no.1 as per the said order was to assist Dr.M.L. Gaur, Head in Research Work related to Hydrology and Engineering. A provision was also made that during the absence of the respondent no.1, the work of maintenance of Office-cum-Laboratory building and residential quarters will be looked after by Sh. Sant Raj. Since the respondent no.1 did not comply with the repeated requests of the petitioners, the following Article of Charge was framed:

*“STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SH.PRAMOD KUMAR, T-5 (TECHNICAL OFFICER) (ENGG.), CENTRAL SOIL & WATER CONSERVATION RESEARCH & TRAINING INSTITUTE, RESEARCH CENTRE, DATIA (M.P.)*

*ARTICLE OF CHARGE*

*Shri Pramod while functioning as T-5 (T.O.) at CS&WCR&TI, Research Centre, Datia, has continuously disobeyed the instructions of the Head, Research Centre, Datia as well as of the Director issued to him from time to time regarding occupying the residential quarter allotted to him.*

*By his above act, Shri Pramod Kumar has exhibited lack of devotion to duty and has acted in a manner unbecoming of a Council's employee and thereby violated the provisions of Rules 3(1) (i) (ii) & (iii) of CCS (Conduct Rules), 1964 as applicable to ICAR employees."*

28. After the inquiry was held, the disciplinary authority by an order dated 19.7.2008 imposed the following penalty:

*"Accordingly, the penalty of "reduction by two stages from Rs.8300/- to Rs.7900/- in the time scale of pay of Rs.6500-200-10, 500 for a period of two years with immediate effect" is hereby imposed on Shri Pramod Kumar, T-5 (Tech Officer), CS&WCR&TI, Res. Centre, Datia (M.P.). It is further directed that he will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay."*

29. The Appellate Authority by the order dated 22.6.2009 modified the order of disciplinary authority. The Appellate Authority found that there were no procedural irregularities in the departmental proceedings. But considering the disproportionality of the penalty imposed, modified the penalty to the extent that the reduction in two stages of pay scale shall be non-cumulative.
30. Having regard to the fact that vide Office Order dated 11.6.2004, the services of the respondent no.1 were declared as essential, in our view the respondent no.1 was duty bound to occupy the quarter to enable him to perform his duties of maintenance of the new Office-cum-Laboratory building and residential quarters (Civil and Electrical, both) and the

petitioners were the sole judge as to whether it was necessary for a person whose services were declared to be essential to occupy a quarter in the complex itself or not.

31. The learned Tribunal has failed to take notice of this Office Order in the order impugned and its implication and has only taken into consideration the fact that the respondent no.1 had not made any request for allotment of a quarter and incorrectly relied upon the Rules as per which in case a person does not occupy the quarter at best he would not be entitled for a quarter for a period of one year. In our view, the aforesaid view taken by the Tribunal with regard to Office Order dated 11.6.2004, is not applicable to the facts of the present case. No procedural infirmity has been pointed out by the Tribunal in conducting of the inquiry or in the order passed by the disciplinary authority or the Appellate Authority.
32. We also find force in the submission of counsel for the petitioners that once the respondent no.1 was allotted a Government quarter he would not be entitled to any HRA. We are fortified in our view by a decision of the Supreme Court rendered in ***Director, Central Plantation Crops Research Institute, Kesaragod And Ors.*** (supra), relevant portion of which reads as under:

*“5. It is clear from the aforesaid provisions that paragraphs 4 [a] (i) and (ii) -lay down the procedure for making application for accommodation. Paragraph 4 [b] (i) lays down the consequences on refusal to accept the accommodation when offered. There is no doubt that paragraphs 4[a] (i) and (ii) state that an application has to be made to secure accommodation. However, that does not mean that Government or the organisation such as the appellant - organisation to which the said provisions apply, cannot on their own offer accommodation to the employees. Hence the reason given by the Tribunal that it is only if the employee applies for such accommodation and he refuses to accept the same when offered that he would be disentitled to the HRA, is not correct. It must be*

remembered in this connection that the Government or the organisation of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or to forfeit the HRA. The management cannot be saddled with double liability, viz., to construct and maintain the quarters as well as to pay the HRA. This is the rationale of the provisions of paragraph 4 of the said Government Office Memorandum. ”

(Emphasis supplied)

33. In our view, the respondent no.1 has shown a complete lack of discipline and devotion to duty and has acted in a manner of unbecoming of an employee of the petitioner no.1 Council.
34. Accordingly, present writ petition is allowed. The impugned orders dated 23.12.2011 and 11.9.2012 passed by the Tribunal are set aside, except we see no reason as to why the respondent no.1 should be directed to pay license fee for the quarter, which he has not occupied. The order of the Tribunal to that extent is upheld. The license fee which if deducted shall be refunded to the respondent.
35. The writ petition is disposed of in above terms.

**G.S.SISTANI, J**

**I.S. MEHTA, J**

**JULY 12, 2016 //msr**