

and Rent Bill (L. Fee) dated 13-03-2014 for Bldg. A-503 Delhi for Rs.199312/-;

- (B)** *To direct the office of CAO(E-1) MoD to waive charge of market/damage rent for A-503 Sangli Apartment, for the applicant for the period 01 Mar 2013 to 30 May 2013 amounting to Rs.99,656/-.*
- (C)** *To direct the office of CAO (E1) to accept the request of the Applicant for retention of married accommodation at A-503, Sangli Apartments, New Delhi, on superannuation on payment of normal rent for the period of 01 March 2013 to 30 May 2013 and on payment of market/damage rent amounting to Rs.99656/- for the period 01 Jun 2013 to 30 August, 2013;*
- (D)** *To direct the CAO (E1), MoD suitable directions be issued to CDA (O), Pune. And that the CDA (O) be informed to take necessary steps to adjust officers accounts in coordination with pension office since the*

said amount is already under recovery through officers pension. Any excess amount charged or so recovered over and above Rs.99656/- from officers pension be paid back to the officer and CAO to issue clearance certificate to the applicant within 30 days of the order.

- (E) The Application be allowed with costs for the reason that the applicant has been compelled by the respondents to go into litigation for no fault of his and consequently suffer irreparably.*
- (F) Allow the present Original Application with costs;*
- (G) Pass any other or further order(s) as may deem fit and proper, in favor of the applicant.*

BRIEF FACTS

2. The applicant, on his posting to Delhi, was allotted MoD Pool Govt. Married Accommodation at A-503 Sangli

Apartments, New Delhi w.e.f. 27.10.2008. The applicant was due to superannuate on 28.02.2013. Before his due date for superannuation, on 30.04.2012, the applicant was posted out of Delhi to HQ1 Corps (Mathura) on one week's notice and thus on that date i.e. 30.04.2012, the applicant sent an application to COAS and sought cancellation of the posting out order. His case was initiated for sidestepping in Delhi and he was granted Extended Journey Time (EJT) for the interim period. However, the MoD rejected the said application of the applicant and the applicant reported to new posting area at Mathura in July, 2012. The applicant applied for retention of the married accommodation to CAO(EI), MoD. Consequently, he was granted permission to retain the married accommodation at Delhi on NAC basis for the period 07.06.2012 till the date of superannuation i.e. 28.02.2013 by CAO vide letters dated 18.01.2013 and 24.05.2013. Letter dated 24.05.2013 was beyond the period of retention. In the meantime, the applicant applied to CAO on 26.12.2012 for retention of married

accommodation at Delhi for the period of three months from 01.03.2013 to 30.05.2013 after retirement.

3. The applicant superannuated at Mathura while he was staying in Single Officer Accommodation while his family was staying in married accommodation at A-503, Sangli Apartments, New Delhi. He applied for further retention of the said accommodation in **May, 2013** for a further period after 30.05.2013 on payment of damage rent and thus he deposited a demand draft for Rs. 1,00,194/- as advance rent vide Demand Draft No. 66384 dated 08.05.2013 drawn on the Syndicate Bank. The applicant submits that on receiving the request for retention of accommodation for the period 01.03.2013 to 31.05.2013 on normal licence fee and from 01.06.2013 to 30.08.2013 on damage rent, the CAO on 27.05.2013 asked for some documents in support of the applicant's application. On 10.03.2014, the applicant was informed about rejection of his application for retention of govt. accommodation and demand draft was also returned. The applicant again applied for reconsideration of his case for

retention in September, 2014, however, his case was rejected by ISAAC on 24.11.2014. Subsequently, a recovery of Rs.1,99,312/- was raised by CDA (O) as the applicant had retained the married accommodation at Delhi after superannuation. After repeated requests for resolving the matter, in May, 2018, the Pension Office started deducting Rs.29,115/- per month from the pension of the applicant on the directions of PCDA (P) Allahabad vide Order No. 13120180551, which, according to the applicant, is unjust and arbitrary on the part of the respondents as he was not informed in time that he is not entitled for retention of the married accommodation at Delhi. Aggrieved thereby, the applicant has filed the present OA and in the interest of justice, in accordance with Section 21 of the AFT Act, we take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

5. The applicant submitted that the respondents acted unreasonably and arbitrarily in the matter and that the principles of natural justice were violated. It was submitted

on behalf of the applicant that when the applicant initially applied for retention of the married accommodation at Delhi well in time and advance rent/damage rent was also deposited, the CAO (E1) acknowledged the same and asked for submission of additional documents in support of his request, and after one year of application, the case of the applicant was rejected, which is unfair and unjust action on the part of the respondents. The applicant submitted that it would be justified to request for retention of the accommodation at Delhi, which the applicant retained after obtaining sanction from the Government till superannuation and thus rejection of the applicant's request on the ground that he was entitled to retain the married accommodation at his last duty station i.e. Mathura is unjustified for he had been granted retention of the accommodation at Delhi on NAC basis till the date of superannuation. The applicant contended that if an officer is posted out to a new station when he has barely 9-10 months for superannuation, then the respondents are bound to look into the aspect of welfare in this regard and it is, therefore,

prayed that OA be allowed granting all the prayers made therein.

7. *Per contra*, the learned counsel for the respondents submitted that the applicant could be permitted to retain the married accommodation for two months on the ground of non-availability of accommodation in the new station at Mathura, a peace station; and that those matters which are not specifically provided in the MoD Accommodation Rules, 1991, are decided by the Inter Service Accommodation Advisory Committee (ISAAC) and in the present case, the rejection of the applicant's case was decided by ISAAC. The learned counsel clarified that the applicant's initial request for retention of the married accommodation at Delhi for the period from 07.06.2012 to 31.12.2012 was approved by the ISAAC in its meeting held on 29.10.2012; and when the applicant again requested for retention of the said accommodation from 01.01.2013 to 28.02.2013 i.e. till superannuation (beyond the permissible period of two months), his request was again considered and allowed by

ISAAC by its meeting held on 01.02.2013; and, therefore, the applicant was permitted twice to retain the married accommodation. The learned counsel further submitted that the applicant did not vacate the MoD pool accommodation on or before 28.02.2013 and vacated the same on 30.08.2013; that the applicant was asked for submitting some documents which were never supplied by him and thus his case could not be processed; that the request of the applicant to regularise the period of overstay w.e.f. 01.03.2013 to 30.08.2013 was rejected by ISAAC as the same is not permissible under the rules in the meeting held on 22.11.2013.

8. The learned counsel for the respondents submitted that the applicant again requested for regularising the retention of MoD Pool accommodation at Delhi for the period from 01.03.2013 to 30.08.2013 on normal licence fee; the case was discussed in ISAAC meeting held on 24.11.2014 and was rejected observing that officers on superannuation, as per GoI, MoD D(Q&C) letter No. 13(10/86/D(Q&C) dated 03.07.1991, are eligible to retain married accommodation at last duty

station and in the present case the applicant was superannuated from Mathura, a peace area, and hence was eligible to retain accommodation on superannuation at Mathura. The learned counsel submitted that all the correspondences/requests were regularly replied to and the applicant failed to submit any supporting documents and did not submit duly filled in forms etc. and thus the respondents had rightly issued the impugned orders. The learned counsel for the respondents thus prayed for dismissal of the OA on the above grounds.

ANALYSIS

9. We have heard the learned counsel for the parties and have also gone through the records produced before us.

10. In the present case, the applicant, while posted in Delhi, was allotted a married accommodation under the MoD Pool (CAO) in New Delhi. On 30.04.2012, the applicant received order of posting to Mathura. He was to be superannuated from service on 28.02.2013. It is not controverted in the matter that on request of the applicant for

cancellation of posting being processed, he was granted 60 days' Extended Journey Time (EJT) for reporting to the new Station at Mathura, which he did in the month of July, 2012. In this case, it is not in dispute that the applicant's requests for retention of the married accommodation at New Delhi on Non-availability Certificate (NAC) basis for the period from 07.06.2012 to 31.12.2012 (on the basis of repair certificate) and for the period from 01.01.2013 to 28.02.2013 were approved, as is evident from the minutes of the meetings of ISAAC annexed to the counter affidavit by the respondents. The applicant, by his own admission, was staying in a Single Officer's Accommodation in Mathura and his family in the married accommodation at New Delhi, while he superannuated at Mathura (Peace station).

11. Further, after retirement from service on 28.02.2013, the applicant did not vacate the allotted married accommodation at New Delhi and vide letter dated 08.05.2013, he had requested for retention of the said married accommodation for the period from 01.03.2013 to 31.05.2013

on normal licence fees and then from 01.06.2013 to 31.08.2013 on payment of damage rent and for that a demand draft was also attached with the said letter for a sum of Rs.1,00,194/-. As stated in the letter dated 27.05.2013, filed by the respondents as Annexure-R2 to the counter affidavit, the applicant was informed that his request was not processed in the absence of the supporting documents/Part II order and No Demand Certificate form. Thereafter, vide communication dated 10.03.2014, filed as Annexure-R3 by the respondents, the applicant was informed that the request of the applicant as mentioned vide his letter dated 08.05.2013 was not approved by ISAAC in its meeting held on 22.11.2013 as the same was not covered under the rules and thus, while returning the demand draft, the applicant was found liable to be charged with damage rent for the said period i.e. 01.03.2013 to 30.08.2014 i.e. the date when the applicant vacated the allotted govt. accommodation. The said communications have not been denied by the applicant.

12. In this regard, it is essential to refer to the relevant rules of the MoD Pool Accommodation Rules, 1991 pertaining to conditions of retention of accommodation on transfer, etc. and the relevant rules thereof are reproduced as under :

**“PART III
RETENTION OF ACCOMMODATION**

On Transfer

52. *Officers are eligible to retain the allotted Defence Pool accommodation during the tenure of their current appointment in the Defence HQrs. An officer cannot retain the Defence Pool accommodation beyond ten days after he is transferred out of his present appointment/ tenure in Defence HQrs. Officers vacating their accommodation will invariably report in writing to the Quartering Officer before their departure as to when they will vacate the accommodation. Officers not doing so will be liable for disciplinary action. They are also liable to be charged rent at damages rate until such time as intimation of vacation is received by the Quartering Officer. An officer, however, can be permitted to retain the accommodation for the bonafide use of his family in the special circumstances mentioned in the succeeding paragraphs.*

On Attachment/Leave immediately after S.O.S.

53. *The period of 10 days allowed for vacation of the accommodation can be extended in the following circumstances:*

(a) Officers placed on attachment to Defence HQrs immediately after they are SOS from Defence HQrs. They may be permitted to retain the family accommodation for

the entire period of attachment on payment of normal rent and the date of termination of attachment will reckon as the crucial date for allowing further retention of family accommodation.

(b) Officers granted leave-cum-joining time

Retention of Defence Pool accommodation at normal rates will be permitted till the date of completion of leave-cum-joining time and the concession of further retention of accommodation, if any, would follow from that date.

(c) Officers granted extended joining time

Retention of Defence Pool accommodation would be permitted for the entire period of extended joining time and the date of completion of extended joining time should be taken as crucial date of allowing any further retention of the accommodation.

(d) Officers granted annual leave-cum-joining time cum extended joining time with or without attachment

Retention of the Defence Pool accommodation would be allowed for the entire duration as in (c) above.

On Transfer to a Peace Station

54. An officer on transfer from AFHQ / ISOs to peace station can retain the Defence Pool accommodation beyond 10 days of his SOS on ground of non-availability of accommodation in the new station or on academic grounds of their children. For this, the officer, on transfer should decide within a maximum period of two months from the date of SOS whether he would opt to retain the accommodation on ground of NAC or children's education and send an intimation to the Quartering Officer in writing. The option once exercised will be treated as final and no change of option will be

permitted. Officers will not be permitted to combine the options for retaining accommodation on grounds of non-availability of married accommodation at the new duty station and on children's education.

On Grounds of Non-Availability of Accommodation (NAC) at the new duty station

55. *An officer who opts to retain the Defence Pool accommodation on NAC grounds should submit his application to the Quartering Officer along with non-availability certificate as per the format placed at Annexure-V signed by the competent authority within two months of his SOS. Officers of the rank of Brigadiers and below / equivalents occupying regular / 3-4 roomed hostel accommodation will be shifted to hired accommodation after two months from the date of SOS, if they are desirous of retaining accommodation in the Defence Pool on NAC basis. However, officers of the rank of Maj Gens and above/equivalents occupying bungalow type of accommodation will be shifted to Type VI/ Type V flats, if they are desirous of retaining accommodation in the Defence Pool on NAC basis. They may also be permitted to live in private houses on rent reimbursement basis but the rent in such cases will be restricted to separated family scales. Sanction for retention of accommodation on NAC shall be granted only after the officer shifts to alternative accommodation in such cases. Shifting to alternative accommodation is compulsory and failure to do so will render him liable to face eviction proceedings as well as charging of rent at damages rate, as applicable to unauthorized occupants.*

56. *Retention of accommodation on NAC grounds upto a period of one year will be granted by JS (T) & CAO*

while sanction exceeding one year will be accorded by the ISAAC. The veracity of NACs submitted by the officers for periods exceeding one year will be verified by the respective Service HQ before the case for retention of the accommodation is considered by the ISAAC.

57. It will be the personal responsibility of the officer to obtain NAC from the competent authority and forward the same to the Quartering Officer well before the expiry of the permitted period of retention.

ADDENDUM: VACATION OF HOUSE ON TERMINATION OF NAC. As per ISAAC decision dated 13 Apr 2018, an officer may be granted a period of 10 days to vacate the accn on expiry of validity period of NAC or allotment of FAFA, whichever is earlier, for the purpose of shifting from one house to another."

From the perusal of Para 54 of the Rules, it is borne out that an officer cannot retain the MoD Pool accommodation beyond 10 days after he is transferred out of Defence HQrs, however, he can be permitted to retain the same for two months on the ground of NAC in the new station (peace station).

13. We have also gone through the GOT, MoD D(Q&C) letter No. 13 (10/86/D(Q&C)) dated 03.07.1991, which has been annexed by the respondents to the counter affidavit, which provides that service officers are eligible to retain the Defence Pool accommodation for a period of three months at their last

duty station after retirement/invalidation/superannuation from the service.

14. Furthermore, Rule 80 of the MoD Accommodation Rules provides that for the retired officers, the retention for a further limited period (not exceeding three months) can be considered by the Ministry of Defence on compassionate grounds provided the officer is prepared to pay the rent at damages rate in advance for the period for which retention is sought.

Rule 80 reads as under :

***“80. Retention for a further limited period can be considered by the Ministry of Defence on compassionate grounds provided the officer is prepared to pay the rent at damages rate in advance for the period for which retention is sought. Application with supporting documents and a crossed bank draft drawn in favour of CAO, Ministry of Defence towards rent at damages rate for the full period for which retention is sought should be submitted to the Quartering Officer immediately after retirement of the officer but not later than 15 days in advance before the expiry date of three months of retention mentioned above. However, such a request will be subject to its being granted by the competent authority and as such in case it is not accepted by the competent authority the demand draft will be returned to the officer.*”**

ADDENDUM. As per Policy Letter No.41187/Retn/CAO/E-1 dated 05 Sep 17, the retention for a further additional period, of 01 month only beyond the permissible period of 03 months can be considered on the following compassionate grounds, provided the officer is prepared to pay the rent at damages rate in advance:-

- (a) Medical condition of the officer or his dependent who may be suffering from serious ailments.**
- (b) Educational requirement of their children appearing in examinations.**
- (c) Sudden demise of family member / performance of last rites / rituals.**
- (d) Marriage ceremony.**
- (e) Delay in handing over of own house / flat duly supported by certificate from architect."**

15. Having gone through the above provisions laid down in the MoD Accommodation Rules and considering the fact that the applicant's request for retention of the married accommodation being approved by the competent authority on two occasions i.e. for the period from 07.06.2012 to 31.12.2012 (on the basis of repair certificate) and for the period from 01.01.2013 till the date of his retirement i.e. 28.02.2013 (while the applicant was staying at the Single Officer's Accommodation at Mathura and his family was

staying in the married accommodation at New Delhi), we find that the applicant was not authorised to hold the allotted married accommodation at New Delhi beyond 28.02.2013 being the date of his superannuation. The applicant was permitted as per the rules to hold/retain the govt. accommodation for three months beyond the superannuation date at his last duty station which was Mathura, however, the applicant chose not to avail of this facility. We are, therefore, of the considered view, that the respondents have rightfully held the applicant liable to be charged with damage rent for the unauthorized/overstay period from 01.03.2013 (a date after the day of superannuation) till the date of vacation of the govt. married accommodation i.e. 30.08.2013, which period was not approved for retention by ISAAC in its meeting held on 22.11.2013, as has been referred to hereinabove.

16. The applicant was holding a high rank of Maj Gen at the time of his retirement and thus it is not expected of him of not knowing the consequences and conditions under the policy with regard to the retention of the accommodation.

Therefore, there is no merit in the submissions made by the applicant. Moreover, the policy for allotment and retention of the Government accommodations is for the benefit of the serving officers. The policies/instructions/Army Orders dealing with the govt. accommodation are quite liberal and while dealing with such matters, one should also bear in mind the difficulties which a new incumbent would face on posting at his new place if the accommodation is not vacated by the personnel as per rules when they are transferred out of station after retention, if any permitted by the relevant rules. It is pertinent to bear in mind that unless the govt. accommodation is vacated by the outgoing officer, it would not be possible to allot the accommodation to the personnel who are in the waiting list in the station. The entire administration for allocation of govt. pool accommodation will collapse if the stand as taken by the applicant is also followed by other officers. Therefore, the applicant's prayers cannot be granted nor can he be shown any leniency in the matter.

CONCLUSION

17. In view of the above considerations, the OA 602 of 2019 stands dismissed being devoid of merit. Consequently, all pending miscellaneous applications also stand closed.

18. There is no order as to costs.

Pronounced in open Court on this 11 day of September, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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