

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Transferred Application No. 1103 of 2010**

Monday, this the 20<sup>th</sup> day of August, 2018

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Ex Junior Warrant Officer R.N. Mishra, son of Late R.D. Mishra,  
resident of 221/8K, Ganga Vihar Colony, Transport Nagar, Allahabad-  
211011.

.....Applicant

Ld. Counsel for the Applicant: **Shri Bhaskar Pratap Dubey,**  
**Advocate**

Versus

1. The Union of India, through the Defence Secretary, Government of India, South Block, New Delhi
2. The Chief of Air Staff, Air Head Quarter, New Delhi - 11
3. The Air Officer Commanding-in-Chief, Head Quarters, Western Air Command IAF, Subroto Park, New Delhi.
4. The Air Officer Commanding-in-Chief, Head Quarters, Central Air Command, IAF, Bamrauli, Allahabad.

.....Respondents

Ld. Counsel for the Respondents: **Shri Shailendra Sharma Atal**  
**Central Govt Counsel**

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Being aggrieved with recovery of market rate of rent of the temporary married accommodation and on certain other relates issues, the petitioner preferred Writ Petition No. 39919 of 2002 before Hon’ble High Court at Allahabad. Said Writ Petition upon establishment of the Armed Forces Tribunal was transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and renumbered as T.A. No.1103 of 2010. The petitioner has made the following prayers in the petition:

*“ (i) Issue writ, order or direction quashing the impugned order No. 255 SU/156/8/P3 dated 17 September, 1990 consisting the order of vacation of temporary service accommodation T/7311 communicated by Air Force Station Bamrauli, Allahabad (Para 6 (b), 255 SU/S 131/1/P1 dated 10 July 1991 (Annexure No. 18 and 19)7W/4118/2/Accts/xvii/93 dated 13 December 1991 (Annexure No. 24), 7W/C/800/10/P1 dated 28 December 1992 (Annexure – 26) 44W/C 201/6/P1 dated 03 August 1994 (Annexure -27) and CAC/3059/1/Wks/(c) dated 10 June 2002 (Annexure – 28) being unjust unfair mala fide and illegal.*

*(ii) Issue writ, order or direction in the nature of MANDAMUS commanding the respondents to refund the recovery of rent of allied charges Rs. 5085/- illegally recovered from his pay on 01 June, 1992 with a penal interest (compound) at the rate of 18 per cent per annum with effect from 01 June, 1992 till date of its refund.*

*(iii) Issue a writ, order or direction in the nature of MANDAMUS commanding the respondents to pay the equitable compensation as deem fit to the petitioner for causing him constant harassment including his members of family in matter of marriage accommodation.*

*(iv) Issue a writ, order or direction in the nature of MANDAMUS commanding the respondents to pay the equitable compensation as a damage a sum of Rs. 50,000,00/- (Fifty Lakhs only) to the daughter of the petitioner or the petitioner on her behalf for willfully causing a serious damage to her life in so many ways and*

*obstructions in solemnizing her marriage as well as living with human dignity in society to meet end of justice.*

*(v) Issue any other writ, order or direction as deem expedient and in the interest of justice fairly and equity.*

*(vi) Award cost of the petition to the petitioner.”*

2. Draped in brevity, the facts necessary for adjudication of the case are that the applicant was enrolled in the Indian Air Force on 22.09.1962 as an Airman and was discharged from service on 30.09.1994. During his service career the petitioner was posted at several stations and ultimately he was posted at 14, Provost Unit Air Force Station, Bamrauli at Allahabad where he joined on 27.09.1987. During his posting at Bamrauli at Allahabad, the petitioner was allotted temporary married accommodation (TMQ). Subsequently, the petitioner was transferred from 14, Provost Unit Air Force Station, Bamrauli at Allahabad to Air Force Station, Bikaner with effect from 14.06.1990. As per the policy in vogue, the petitioner was permitted to retain his temporary married accommodation at Bamrauli, Allahabad for two months upto 25.08.1990. The petitioner again applied for permission to retain said accommodation. The request of the petitioner to further retain the temporary married accommodation at Bamrauli, Allahabad was rejected. On refusal to vacate the temporary married accommodation in spite of repeated reminders, the petitioner was declared unauthorized occupant, accordingly market rate rent and allied charges to the tune of Rs. 5085/- were recovered from him. Feeling aggrieved, the petitioner preferred Writ Petition No. 39919 of 2002 before Hon'ble High Court at Allahabad which has been transferred this Tribunal and has come up before us for adjudication.

3. Learned counsel for the applicant had following to submit:-

- (a) The respondents were wrong to ask the applicant to vacate his temporary married quarter at Air Force Station Bamrauli at Allahabad within two months of his posting out because besides two months of normal holding of said quarter, he had a right to hold it on education grounds of his daughter.
- (b) The respondents have illegally declared the applicant as unauthorized occupant and the recovery of market rate of rent of Rs. 5,085/- is illegal.
- (c) Due to order of vacation of temporary married quarter, his daughter's college study was disturbed and he had to leave her with relatives in Allahabad to continue with her studies.
- (d) The respondents also harassed him in following manner:-
  - (i) Calling him back from 60 days sanctioned annual leave without sufficient cause and ill treatment by Flt Lt. Balbir Sing, his Section Commander at Air Force Station, Bamrauli.
  - (ii) Raising form 10 on him for psychiatric examination and declaring him a case of 'Neurosis'.
  - (iii) Not releasing his commutation money and paying him pension without commutation.

4. The arguments of the learned counsel for the applicant were on similar lines as submitted in the T.A. and rejoinder affidavits. He concluded by stating that to do justice to his client, the Tribunal must quash the vacation order of his temporary married quarter, refund Rs. 5,085/- illegally recovered as market rent, grant compensation for harassment to the applicant as deemed fit, and grant rupees fifty lacs compensation to his daughter for harassment.

5. Per contra, the learned counsel for the respondents had following to submit:-

- (a) Accommodation for defence personnel is built as per authorized scales of accommodation and is barely sufficient to cater for the posted manpower of that station. Therefore, temporary accommodation also is pooled in to improve the satisfaction level of posted personnel and rules on vacation of accommodation are strictly implemented.
- (b) The accommodation policy for Indian Air Force is clear, i.e. basically after transfer the accommodation can be held only for two months and thereafter it can be retained on children education grounds. However, retention of quarter on children education grounds is permitted only for school going children whereas the applicant having applied for retention on two months ground later justified his unauthorized occupation beyond two months on education grounds of his college going daughter. As per rules on retention of accommodation, the ground once selected for retention cannot be changed. However, notwithstanding this rule, the ground of retaining quarter for education of college going child was outside the scope of existing policy at that time. Hence, the applicant was rightfully declared unauthorized occupant and market rent was recovered from him.
- (c) Any person of applicant's seniority and JWO rank will have college going children and that transfers being a normal part

of a soldier's life, there was nothing unusual in the transfer of the applicant to Air Force Station Bikaner, a peace station. As such, applicant's contention that the respondents have damaged his daughter's life by transferring him to Bikaner and asking him to vacate the quarter as per extant rules is misplaced.

- (d) It is further submitted that any soldier is free to withdraw up to 90% of his Provident Fund except for last three months' before his retirement. As per policy, no contribution towards Provident Fund can be made in last three months of retirement and similarly no withdrawal can be made in last three months because of the audit requirement to check the account in detail and make final payment on retirement. In case of early discharge on compassionate grounds, this audit period may extend beyond the discharge date by some duration. This being the normal policy for every officer and airmen going on retirement, the contention of the applicant that the respondents have tried to block his daughter's marriage by not releasing Provident Fund money is unfortunate.
- (e) Learned counsel for the respondents further added that the various other contentions of the applicant in terms of his complaint that he was harassed by his Section Commander, that he was recalled from leave of 60 days are unsubstantiated. His statutory complaint that he was harassed by his Section Commander was disposed of as per rules on

the matter. It has to be remembered that a soldier cannot expect his Section Commander to act as per his desires and any act otherwise cannot be termed as harassment. The fact that the applicant was recalled from sixty days' leave is true, but to say that it was done to harass the applicant is not true. The applicant is an Indian Air Force tradesman who deals with security and other important security related issues. Due to non-availability of relevant records at Station level at this belated stage, it is not possible to bring out the exact reason for his recall but to say that it was harassment will be distortion of truth.

- (f) Any organization has its own compulsions of positioning the required man power at the right time at the right place. Therefore, the transfer of applicant after two years and six months from Air Force Station Bamrauli was well within the rules and the applicant should have no legitimate grievance even if his posting at Bamrauli is considered as a non-compassionate ground posting.
- (g) Learned counsel for the respondents during hearing stated that if a Supervisor or Officer notices abnormal behavior, he is well within his rights to advise for psychiatric examination. The procedure for a request for psychiatric examination is through raising of Form-10. After the initial report of the Officer raising Form-10 the Specialist Psychiatrist examines the patient and gives his independent opinion on the matter.

He emphasized that an Armed Forces personnel in Indian Air Force Police Force who is entitled to handle weapons on daily basis and do public dealing has to be fully fit and if Form-10 is raised by the Section Commander or someone in the medical chain as per their judgment on his behavior and this raising of Form-10 is as per the checks and balances which are inbuilt in the organization, then the same cannot be termed as harassment.

- (h) Lastly, commutation is an advance payment of 15 years' of pension by the Government. For clearing this advance payment of 15 years' pension by Audit, the Medical Certificate on life expectancy is required. This Medical Certificate is issued out only after the Release Medical Board is done. Since the applicant on one hand refused to undergo Release Medical Board despite repeated reminders, and on the other hand, started mounting pressure for early release of his pension through representations and Court cases, his pension was released without commutation. It has to be understood that merely option for commutation by applicant was not good enough. Without the relevant Medical Certificate on life expectancy coming after Release Medical Board, it is not possible to release his commuted pension. Thus, the applicant himself is responsible for this situation because he refused to undergo Release Medical Board despite repeated reminders. By the time he agreed and got his Release Medical Board



done on 27.01.1997, i.e. after about two years and four months of his release, his pension without commutation was already processed and released.

6. Learned counsel for the respondents further contended that besides the present Writ Petition of the applicant which has been transferred to this Tribunal, the applicant had also filed three other Writ Petitions in Hon'ble High Court of Judicature at Allahabad on similar issues. He concluded that no wrong has been committed against the applicant. However, the applicant has consistently perceived actions of respondents in a negative light and his claim of harassment by the respondents is totally misplaced. He demanded dismissal of the T.A. filed by the applicant.

7. We have heard learned counsel for the parties and perused the record in general and the policy of allotting quarters in particular. We have given out anxious thoughts to the pleadings and submissions of both sides and have reached the following conclusion:-

- (a) The applicant was an authorized occupant from allotment of the temporary married quarter at Air Force Station, Bamrauli at Allahabad till two months after his posting out. Thereafter he becomes an unauthorized occupant because the housing policy of Indian Air Force at that time did not support the retention of quarter on grounds of college going child. We find that Ld. Counsel for the applicant has miserably failed to submit any evidence to support his claim that the policy at that time permitted retention of Air Force accommodation on education grounds of college going children. Hence, we find that the vacation order issued by the respondents and recovery of market rate of rent for the unauthorized period of occupation by the respondents is valid in law.

- (b) The contention of learned counsel for the applicant that applicant's daughter has been harassed by the respondents and that the respondents have tried to create obstructions in her marriage is not only misplaced but is totally mischievous by intention. We find that the learned counsel for the applicant has miserably failed to provide any credible evidence to support his claim in this regard; hence we agree with the respondents that no wrong has been caused by them to the daughter of the applicant. Thus, there is no question of any compensation to be paid by the respondents.
- (c) We find that a lot of emotional appeals have been made in written submissions and during hearing by learned counsel for the applicant on the issue of applicant's harassment by respondents. However, he could not provide any credible evidence to substantiate the same. We refuse to accept that being in a combat force like Indian Air Force, a tough behavior by Section Commander or a recall from leave or a posting out after two years and six months or a recommendation on Form-10 for psychiatric examination amounts to harassment. We therefore agree with learned counsel for the respondents that no harassment has been caused to the applicant by the respondents. Hence there is no question of any compensation to the applicant.
- (d) The respondents have clearly stated that all pensionary dues have been paid to the applicant except the commuted amount of pension he had opted for. The respondents have justified the act of not paying the commuted amount of pension to the applicant on the grounds of applicant's refusal to undergo Release Medical Board despite repeated reminders. Because of this refusal by the applicant, the life expectancy certificate authorized by the Medical Board in Release Medical Board could not be produced and without this certificate Audit does not release commuted pension because commutation is

nothing but advance payment of 15 years' pension by the Government and the Auditors want the life expectancy certificate for the same. We have found that the applicant has submitted that his Release Medical Board was completed on 27.01.1997. However, considering all issues and the specific plea of applicant in one of his writ petitions before this Tribunal that he should not be sent to any Military hospital again, we agree with the respondents that the two years four months delay in conduct of Release Medical Board was primarily due to non co-operation by the applicant. In light of the fact that the applicant, on the one hand, was not keen on Release Medical Board, and on the other hand, was pressing hard for release of his pension through court cases, therefore, the action of the respondents in releasing his pension without commutation is justified. In any case, since the applicant has retired about 24 years back, the issue of commuted portion of his pension i.e. 15 yrs advance pension, has become irrelevant as on date.

8. In view of the above, we find the T.A. to be totally devoid of merit, misplaced and mischievous, hence liable to be dismissed.

9. It is accordingly **dismissed**.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated: August 20, 2018  
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