

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 685 of 2020****Monday, this the 7<sup>th</sup> day of February, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

JC No. 379892N Sub Upendra Singh

S/o Shri Baleshwar Singh

Presently posted to Central Command Signal Unit (CSSR) Lucknow.

..... Applicant

Ld. Counsel for the Applicant: **Shri Virat Anand Singh**, Advocate

Versus

1. Union of India & Others, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.
3. Officiating Officer, Stn HQ Cell, J&B Sub Area, Danapur Cantt, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,  
Central Govt Counsel.**ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(i) To quash and set aside the recovery of damage and allied charges of Rs. 1,75,040/- by authorities as unjust and wrong.
- (ii) To direct the authorities to waive the same and further direct the same amount to be re-imbursed back to the applicant with bank interest as applicable.

- (iii) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.
- (iv) Allow this application with cost.”

2. The brief facts of the case are that applicant was posted to 21 Mountain Division Signal Regiment which was located in field area and therefore, applicant was allotted Qtr No. 115/4, Circular Road as SF married quarters in Danapur Cantonment. The applicant got posted to J & B Sub area Sig Coy w.e.f. 09.10.2015. As the new posting of applicant was now in peace station, applicant was asked to vacate the accommodation by Station HQ vide letters dated 11.12.2015 and 23.12.2015. The applicant was interviewed by GOC and a direction to allot another accommodation in FAFA Area till March 2017 on compassionate grounds was passed. Station HQ J & B Sub Area allotted Qtr No. 30/1 at Polo Sqr Area on 23.05.2016. However, the allotted new quarter being not fit for living, applicant could not vacate his SF accommodation and did not move in the new one. The applicant was given letters of damage of rent and allied charges amounting to Rs. 1,75,040/-. Thereafter, a Court of Inquiry was held into the matter to ascertain the facts. The Board arrived at positive conclusion being no fault of the applicant and recommended waiver of damage rent and allied charges but no positive action was taken by the higher authorities. Resultantly, a sum of Rs. 1,75,040/- was deducted from his monthly Pay Slips from 04/2016 to 10/2017 and applicant suffered heavy financial loss. Being aggrieved, the

applicant has filed the present Original Application for reimbursement of amount.

3. Learned counsel for the applicant submitted that applicant was posted to 21 Mtn Div Sig Regt which was located in field area and therefore, applicant was allotted Qtr No. 115/4, Circular Road as SF married quarters in Danapur Cantonment on his request. The applicant got posted to J & B Sub area Sig Coy w.e.f. 09.10.2015. As the new posting of applicant was now in peace station, applicant was asked to vacate the accommodation vide letters dated 11.12.2015 and 23.12.2015. The applicant replied the letters and personally communicated his problem to GOC HQ J & B Sub Area on 06.04.2016. The applicant was interviewed by GOC and it was directed that applicant shall vacate SF accommodation and OC Sig Coy shall allot him another accommodation either auth/temp in FAFA Area till March 2017 on compassionate grounds. Station HQ J & B Sub Area suo-motto allotted Qtr No. 30/1 at Polo Sqr Area on 23.05.2016 to take over possession by 31.05.2016. However, the allotted new quarter being not fit for living, applicant could not vacate his SF accommodation and did not move in the new one. It is pertinent to mention here that applicant occupied only one accommodation i.e. SF accommodation and not the newly allotted accommodation, therefore, he being entitled for one married accommodation cannot be penalised on account of damage of rent and allied charges for single occupied accommodation.

4. Learned counsel for the applicant further submitted that applicant was given letter of damage of rent and allied charges

amounting to Rs. 1,75,040/-. Thereafter, a Court of Inquiry (Board of Officers) was held into the matter to ascertain the facts. The Board arrived at positive conclusion being no fault of the applicant and recommended waiver of damage rent and allied charges but no positive action was taken by the higher authorities. Resultantly, a sum of Rs. 1,75,040/- was deducted from his monthly Pay Slips from 04/2016 to 10/2017 and applicant suffered heavy financial loss.

5. Learned counsel for the applicant placed reliance on the judgment of a three Judge Bench in ***State of Punjab v. Rafiq Masih*** (2014) 8 SCC 883 and pleaded that applicant's case is covered with this judgment and therefore, amount deducted/recovered on account of damage of rent and allied charges by the respondents be refunded back to the applicant.

6. Learned Counsel for the respondents submitted that applicant was allotted Field Area Family Accommodation (FAFA), Qtr No. 115M on 17.09.2013 while serving with 21 Mountain Division Signal Regiment. Thereafter, applicant was posted to a peace station i.e. Jhankhand & Bihar Sub Area Signal Company w.e.f 09.10.2015. However, neither the applicant nor his unit intimated regarding move of the applicant to Station HQ Danapur that is allotting authority of Government married accommodation which is against the Army Order 191/79 on the subject. On becoming aware about arrival of applicant in peace area, Quarter No. 11/1 of J & B Sub Area Sig Coy was allotted to the applicant but he did not shifted in newly allotted quarter.

Since, the applicant neither applied for married accommodation nor vacated FAFA, Station HQ Danapur issued reminder letter dated 11.12.2015, 23.12.2015 and 29.12.2015 to vacate FAFA. The applicant applied for married accommodation in his unit on 15.12.2015 and after interaction with Station HQ, permission was accorded to retain FAFA accommodation till 15.01.2016. The applicant was interviewed by GOC J & B Sub Area on 11.04.2016 and as per direction of GOC, quarter No. T-30/1 Polo Square was allotted and applicant was directed to shift in the said accommodation. However, the accommodation was not taken over by the applicant and was lying vacant from 23.05.2016 to 26.10.2010. Since the accommodation was not vacated, the applicant was issued eviction notice as per PPE (Public Premium Eviction of unauthorized Occupants) Act 1971 on 02.07.2016. Thereafter, the applicant again applied for retention of Quarter No. 115/4 till March 2017 which was not agreed to by the competent authority. The applicant was again allotted another accommodation, Qtr No. T-59 in FAFA location by his unit but applicant did not shift and continued to occupy unauthorised accommodation Qtr No. 115/4 of FAFA. On 22.04.2017, applicant was again informed to vacate the accommodation but accommodation was not vacated. The unit of the applicant forwarded a statement of case on 10.10.2018 to waive off damage rent charges which was not agreed to by the competent authority.

7. Learned counsel for the respondents further submitted that a Board of Officers was held in the applicant's unit to waive off damage rent which was approved by the Officer Commanding of the unit and

Board Proceedings were forwarded to Station HQ Danapur to waive off damage rent which were perused and was turned down by the higher formations/authority. He pleaded that in view of aforesaid factual position, O.A. lacks merit and deserves to be dismissed.

8. Heard learned counsel for the parties and perused the relevant documents available on record.

9. The Hon'ble Apex Court in ***State of Punjab v. Rafiq Masih*** (2014) 8 SCC 883 has also held in its concluding para 12 that :-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

10. The High Court of Rajasthan in CWP No. 5213/2003, **Wg Cdr Ajit Singh vs. Union of India**, decided on 30.03.2009 has held in its concluding paragraphs of the order that :-

“A house accommodation was allotted to the petitioner as per an administrative policy framed by the Government of India relating to allotment of accommodation to the service officers posted to Armed Forces Headquarters. The policy aforesaid prescribes different eventualities for allotment of house accommodation, hired

accommodation, rent reimbursement of house, procedure for allotment of house and also penalty on non-occupation of house allotted after giving acceptance. Essentially the policy is framed by the Government of India to provide an amenity to the service officer posted to Armed Forces. Such policy requires allotment of a house accommodation to defence personnels which is fit for dwelling. True it is that the policy in quite unambiguous terms prescribes for charging damage rent from the date of allotment of house till that is re-allotted to other officer, if the allottee fails to occupy the accommodation concerned, however, while giving effect to such penal provision, it is also required to see that whether the accommodation allotted was fit for dwelling or not.

In the instant case the petitioner after collecting letter of allotment dated 30.4.2001 physically inspected the site on 3.5.2001 and on the same day he pointed out number of deficiencies with the accommodation allotted to him including the deficiencies relating to cracks in walls and cracks in terrace. The petitioner by the same letter also requested the Chief Administrative Officer for allotment of some other house accommodation. The deficiencies pointed out by the petitioner were also substantiated by Junior Engineer (Civil) working with the respondents. It is also relevant to note that the previous occupant Lt. Colonel Shri S.Aghagurel also pointed out number of deficiencies with the house which was allotted to the petitioner. The deficiencies pointed out by the petitioner were also found genuine by the Administrative Officer of the Directorate of Plans who vide letter dated 7.12.2001 recommended to consider petitioner's case being a genuine one. In these circumstances the respondents instead of invoking penal provisions should have examined the correct factual position and to get the house accommodation adequately repaired. From perusal of the minutes of PSOC meeting, it is apparent that as a matter of fact the representation of the petitioner for waiver of damage rent was rejected in most cryptic manner. The PSOC should have called complete record and should have verified the real reasons for not occupying the allotted accommodation by the petitioner.

In normal course, an officer who has given willingness for house accommodation accepts allotment made and refusal to such accommodation is an exception. In the present case the petitioner on 3.5.2001 itself pointed out several deficiencies in the house accommodation and those deficiencies were also earlier noticed by the previous occupant and also by the Junior Engineer (Civil) working with the respondents. A competent officer of the respondents found grievance of the petitioner genuine. In these circumstances, the refusal by the petitioner to occupy the allotted house was required to be examined with an open mind and with all objectivity before invoking penal provision. In the present case no such objective consideration reveals from the consideration made by the PSOC in its meeting dated 15.5.2002. The Central Government too rejected the petitioner's case in quite casual manner. The policy maker or executors, while invoking penal provisions, must consider all objective conditions, circumstances and sufferings of the policy consumers. In such circumstances the charging of damage rent from the petitioner is certainly bad and as a matter of fact allotment of a house which was not fit for dwelling is required to be treated as non- allotment of hired accommodation.

In view of whatever said above, this petition for writ deserves acceptance and, therefore, the same is allowed. The damage rent charged from the petitioner is declared illegal. The respondents, therefore, are directed to refund the same to the petitioner forthwith. The petitioner is also declared entitled for all consequential benefits including the benefit of reimbursement of house rent as per rules in the case of non-allotment of government accommodation.”

11. We find that applicant was allotted FAFA Qtr No. 115/4 in Danapur while he was posted in a field area and thereafter, he was posted to J & B Sub Area Sig Coy w.e.f. 09.10.2015. The applicant was interviewed by GOC J & B Sub Area and he was directed to vacate FAFA quarter and another accommodation in FAFA area was to be allotted to the applicant till March 2017. Accordingly, Qtr No. 30/1 at Polo Square area was allotted to the applicant but the same was not fit for living and thus applicant could not vacate the FAFA accommodation and thus, newly allotted accommodation was not occupied by the applicant. Hence, it is clear that applicant retained only one accommodation i.e. FAFA accommodation and not the newly allotted accommodation being unfit for living, therefore, he being entitled for occupation of one Government married accommodation cannot be penalised on account of damage of rent and allied charges for any other unoccupied accommodation. Hence, in view of aforesaid judgments, an amount of Rs. 1,75,040/- deducted/recovered from the applicant on account of damage of rent and allied charges through his monthly Pay Slips is liable to be refunded to the applicant.

12. In view of above, Original Application is allowed. The respondents are hereby directed to refund Rs. 1,75,040/- to the applicant which were recovered from his pay through monthly Pay Slips from 04/2016 to 10/2017. The Respondents are directed to comply with the order within a period of four months from the date of

receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: February, 2022

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