

**Central Administrative Tribunal
Principal Bench**

OA No.2753/2015

Orders Reserved on :31.01.2020

Pronounced on: 24.02.2020



Hon'ble Mr. Pradeep Kumar, Member (A)

Shri Mahesh Narayan Age 56 years
S/o Shri M.P. Sahu Assistant Engineer
CBMD M-422, PWD PTS Malviya Nagar,
New Delhi.

-Applicant

(By Advocate: Mrs. Meenu Mainee)

-Versus-

Union of India : Through

1. Secretary Ministry of Urban Development
Nirman Bhawan,
New Delhi
2. Director General CPWD Nirman Bhawan,
New Delhi.
3. Executive Engineer 'Q' Division
CPWD East Block-I, Level-IV
R.K. Puram, New Delhi.

(By advocate: Shri Hanu Bhaskar)

ORDER

The applicant was appointed as Junior Engineer (JE) (Civil) on 12.01.1984. In due course he was promoted as Assistant Engineer (AEN) Group 'B' w.e.f. 23.11.2010. While working as JE, he was allotted a Type-II quarter

No.H-419, Nanakpura, New Delhi under the emergency pool on 08.08.1994 by the Q Division of CPWD.

In due course, the applicant was allotted a Type-IV quarter No.E-132, Nanakpura by Directorate of Estates from General Pool on 25.08.2010. This quarter needed certain repairs. On completion of the same the applicant gave an occupation report on 20.10.2010. The applicant, however, pleaded that this quarter was non-liveable, as despite repairs there was problem of water supply and he never physically occupied it and eventually surrendered it on 26.04.2011. Applicant continued to stay in H-419, which was eventually vacated by him on 30.05.2014 when he shifted to another quarter no.E-109 (which was allotted on 12.05.2014).

2. Meanwhile, the applicant was transferred to Border Fencing Division at Jaisalmer on 01.12.2010. This was a hard posting and as such employees on such hard postings are allowed to retain the quarter at the earlier place of posting. Accordingly, the applicant continued to retain quarter No.H-419.

However, the Q Division of CPWD treated retention of quarter No.H-419 as unauthorized and wrote many letters, e.g. on 03.02.2011, 11.03.2011, 23.03.2011 and



05.04.2011 to vacate quarter no.H-419 and pay market rent for the same w.e.f. 21.10.2010 onwards.

The applicant represented in detail on 21.04.2012 that he has been transferred to Jaisalmer and the rules permit retention of quarter at earlier place of posting and that he had never occupied quarter No.E-132 on account of water problem and official vacation report was also given on 26.04.2011. Accordingly, the applicant pleaded as under:

“In view of the above it is requested to please allow the retention of H-419, Nanakpura, New Delhi in favour of me and refund the amount of Rs.43050/-(Rupees Forty Three Thousand Fifty Only) illegally and unauthorisedly got recovered by you from my salary by misleading the Superintending Engineer, B.F.C.-II, C.P.W.D., Jaisalmer.... It is also submitted that I am liable to pay the damages charges of the accommodation to E-132, Nanakpura of the Directorate of Estates, New Delhi which remained under my possession (through not occupied physically) w.e.f. 20/10/2010 to 26/04/2011.”

3. Thereafter, another detailed representation was also sent on 26.04.2011. The Superintending Engineer, Jaisalmer also wrote a letter on 04.05.2012 to the Q Division to permit retention of quarter no.H-419, as the applicant was on a hard posting. The Chief Engineer Border Fencing Division also advised the Q Division of the CPWD on 09.05.2012 as under:

“In connection with above mentioned subject and referred letter it is intimated that Sh. Mahesh Narayan Assistant Engineer (Civil) is working in the office of Superintending Engineer, B.F.C-2, Jaisalmer (Rajasthan) under this Zone, which comes under Hard Area and according to rules as a result of rotational



transfer in public interest the officer/employee posted in Hard Area has the right to retain the same Govt. accommodation in which he continued to reside earlier to his posting to Hard Area.

Therefore, you are requested not to make the recovery of rent of said quarter on market rate.”

3.1 However, the Q Division again advised the applicant on 11.11.2014 to vacate the quarter No.H-419 and to pay damage rent as under:



Upto 30.04.2014 as per Damage Charges	Amount of Recoverable	Amount	Amount recovered of
21.10.2010 to 21.04.2011	@7175	43,050/-	* 43,050/-
22.04.2011 to 30.04.2011	@7175	2,153/-	---
01.05.2011 to 31.12.2012	@7175	1,43,500/-	-
01.01.2013 to 30.05.2014	@13475	2,29,075/-	
Total Amount		4,17,778/-	(-) 43,050
Net Payable amount		3,74,728/-	

* 21.10.2010 to 21.04.2011 @7175/- = Rs.43050/- amount recovered from Executive Engineer, Border Fencing Division-VI, CPWD, Jaisalmer (Rajasthan) vide letter no. 9(1)/का.अभी./सी.ह.म.--6/जैसल/2011/976 दिनांक 08.08.2011 C.V. No.49,dated 05.08.2011”.

4. Another detailed representation was made on 20.04.2015 to the Q Division of CPWD. It was forwarded by the Chief Engineer officer also to the Q Division on 20.05.2015 and to send a compliance report. However, the Q Division maintained their stand as shown in para 3.1 above.

5. Since the grievance remained and the applicant did not receive any reply the instant OA has been preferred. The applicant had sought relief in the form of stay on the recoveries and for refund of Rs.43050/- which has since been recovered as damage for quarter No.H-419 for the period from 21.10.2010 to 21.04.2011.



6. During the pendency of the OA, Q Division of CPWD has submitted a revised calculation on 27.10.2015 and accordingly the headquarters of CPWD replied to XEN, Q Division, CPWD on 06.11.2015 that damage charges have been revised and it now works out to Rs.59,443/-. In follow up thereof, the Q Division advised applicant on 16.11.2015 that damage rent which was advised earlier to be Rs.3,74,728/- has been revised to Rs.59,443/-.

Applicant pleads that this amount of Rs.59443/- has also been recovered in the period July, 2015 to December, 2015, ignoring the Rs.43050/- already recovered as of 05.08.2011 (para 3.1 supra).

7. The respondents opposed the OA pleading that the same is time barred since the recovery for Rs.43050/- were completed as on 05.08.2011, whereas the OA has been preferred in 2015 for refund of the same.

8. The respondents had advised total recovery for the period 21.10.2010 to 30.05.2014 to be Rs.4,17,778/- out of which an amount of Rs.43,050/- was already recovered for the period 21.10.2010 to 21.04.2011 (para 3.1 supra). Thus, as per this statement, only Rs.3,74,728/- remained to be recovered.



Subsequently, the Assistant Administrative Officer, CPWD, Delhi Central Circle-VI advised to XEN, Q Division on 16.07.2015 that damage rent has been recalculated and it works out to Rs.59,443/- (para-6 supra) which in turn was advised to applicant vide letter dated 16.11.2005 to advise that damage rent has been revised and the figure of Rs.3,74,728/- got changed to Rs.59,443/-.

This is indicative of confusion as to what was the damage rent and whether the amount already recovered (Rs.43,050/-) was accounted for or not. Accordingly, in the hearing of 07.03.2019, following directions were issued:

“2.0 The respondents had earlier indicated in a tabular form in their statement dated 11.11.2014, that an amount of Rs. 4,17,778/- is due as damage rent for the period 21.10.2010 to 30.05.2014, out of which Rs. 43,050/- was recovered as of 05.08.2011 leaving a balance of Rs. 3,74,728/-. Respondents vide letter dated 16.11.2015, have advised that due amount stands revised from Rs. 3,74,728/- to Rs. 59,443/- and it was argued that only Rs. 16,393/- is balance now.

3.0 As against this, applicant also claims that Rs. 59,443 was also recovered during July 2015 to December 2015 and this is in addition to Rs.

43,050/- recovered earlier. There is thus confusion.

4.0 The respondents are directed to indicate in a tabular form the amount of damage rent that is due from the applicant starting from 21.10.2010 onwards as per revised calculations. This should also indicate therein the total amount of recovery actually made till date. Statement be prepared in the format as was submitted by them on 11.11.2014 and submit on the next date of hearing with a copy to applicant.”



The contention of fresh recovery of Rs.59,443/- in addition to Rs.43,050/- recovered earlier, was also not rebutted by respondents. Matter was listed for 14.03.2019, 01.04.2019, 12.04.2019 and 01.05.2019. Following order was passed on 01.05.2019:

“The respondents were directed on 07.03.2019 to submit tabular form statement in respect of actual recovery. Despite several opportunities, they have not submitted the same so far. Respondents' counsel sought two days' time to submit the same statement. This is agreed along with cost of Rs. 1,000/- to be paid to the applicant. Further, in case the respondents fail to submit this statement, the right to file the same shall stand forfeited.”

Thereafter, matter was listed on 22.05.2019, 24.05.2019, 30.05.2019, 05.08.2019, 13.08.2019 and 26.08.2019. Despite imposition of cost of Rs.4000/- on respondents, the sought after clarification was still not submitted. When the matter came up for hearing on 31.01.2020, the respondents were given one more opportunity to submit within a week failing which it was ordered that OA shall be decided based on pleadings

already available. This clarification has however not been submitted till 20.02.2020.

Accordingly, OA is now decided based on pleadings available on file. For this purpose the date-wise table given by respondents, in the form of a detailed statement in para 3.1 above, has been relied upon.



9. The matter has been heard at length. Mrs. Meenu Mainee, learned counsel represented the applicant and Shri Hanu Bhaskar, learned counsel represented the respondents.

10. The applicant was allotted Type-II quarter No.H-419 while he was posted as JE. He was allotted and physical possession was also taken over of Type-IV quarter No.E-132 on 20.10.2010. The quarter No.E-132 was surrendered on 26.04.2011.

Accordingly, the damage rent has to be charged for the period 21.10.2010 to 26.04.2011 only as he was in occupation of two quarters in this period, which is not permissible.

11. Since recoveries for period 21.10.2010 to 21.04.2011, amounting to Rs.43,050/- are already made (para 3.1 supra), the only balance period which remained for recovery is from 23.04.2011 to 26.04.2011.

For this balance period, damage rent works to Rs.1197/- (2153x5/9) at rates indicated in para 3.1 above. The respondents are allowed to recover Rs.1197/- only.

The excess recoveries already made amounting to Rs.58,246/- (Rs.59,443-Rs.1196) shall be refunded along with interest at GPF rate for the period 01.01.2006 till the date of passing of this judgment. This entire exercise shall be completed within a period of 08 weeks from the date of receipt of a certified copy of this order, failing which the interest shall continue to accrue till it is finally paid.

MA No.1519/2016 also stands disposed of accordingly.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

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