

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1127 of 1998 decided on 7.5.99

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Name of Applicant: Shri S. N. Munthy

By advocate: Shri V. K. Rao

Versus

Name of Respondents: UOI through Dte. of Estates & ann.

By advocate: Shri Gajendra Gini

Corum

Hon'ble Mr. N. Sahu, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No

(N. Sahu)
Member (A)

7/5/99

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1127 of 1998

New Delhi, this the 7th day of May, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Shri S.N.Murthy, S/o Shri
Sundareswara, M-6, Chittaranjan Park,
New Delhi-110019 - APPLICANT

(By Advocate Shri V.K.Rao)

Versus

Union of India, through

1. Director of Estates, Ministry of
Urban Affairs & Employment, Nirman
Bhavan, New Delhi

2. Assistant Director (Accounts), Dte.
of Estates, Nirman Bhavan, New
Delhi. - RESPONDENTS

(By Advocate Shri Gajendra Giri)

O R D E R

By Mr. N.Sahu, Member(Admnv)

The relief sought for in this OA is to set aside the order dated 23.7.1996 by which the applicant was informed that a sum of Rs. 75,322/- was found outstanding against him. The OA also impugns a letter dated 29.4.1998 addressed to Shri R.N.Arya, Member of Parliament.

2. The brief facts leading to the dispute are that the applicant retired from Government service with effect from 31.3.1994. During service he was allotted Government quarter No.D-II/226, Kidwai Nagar West, New Delhi. This was cancelled with effect from 1.8.1994, after allowing him to avail the concessional period of four months. Thereafter he was allowed four months further retention on payment

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of twice the flat rate of licence fees. By an order dated 9.1.1996 he was treated as an unauthorized occupant with effect from 1.12.1994. He vacated the quarter on 13.2.1996.

3. According to respondent no.1 the applicant was in unauthorized occupation from 1.12.1994 to 12.2.1996. They calculated net damages after all adjustment of a sum of Rs.75,322/- for the period of over stay. This demand is contested by the applicant on the ground that he continued in the quarter on the basis of stay given by this Tribunal in the form of an interim order. The Interim order was dated 1.12.1994 and reads as under -

"By way of interim relief, the respondent no.4 is hereby directed not to evict the applicant from the above Government accommodation for a period of 14 days. Call on 14.12.94 for hearing on interim relief".

4. The respondents were given liberty to oppose the interim relief. This interim order was given in OA 2366/94 which was filed for fixation of his pay in the scale of Rs.5100-5700 with effect from 8.5.1990 and also for conferment of increments in the years 1991, 1992 and 1993. The respondents have paid the applicant only provisional pension under Rule 69(1)(a) of the Central Civil Services (Pension) Rules and did not release his gratuity on the ground that departmental proceedings were pending against him. As on the date of the filing of the OA namely 30.5.1996 no DE has been initiated against him and no charge-sheet has been issued to him. This Tribunal directed that the respondents should calculate the

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pay of the applicant after taking into account the increments due and also calculate his retiral benefits due upon his furnishing the necessary pension papers duly completed including NOC from the Directorate of Estate.

5. The respondents contend on the other hand that he was transferred with effect from 1.7.1988 to DDA. As the new post was such that he was not eligible for General Pool accommodation, the allotment of quarter no.D-II 226, Kidwai Nagar West was cancelled with effect from 1.9.1988. The applicant did not vacate the premises and eviction order under the Public Premises (Eviction of unauthorized Occupants) Act, 1971 (in short "PP Act") was passed on 11.5.1990 against him. He was reposted on 8.5.1990 in Delhi Administration whereupon he applied for regularization of allotment. This allotment could not initially be regularized due to nonpayment of outstanding dues. It was regularized subsequently. The counter affidavit makes the following statement -

"The said amount was adjusted. As the date of priority of the officer was covered, the allotment of DII/226, Kidwai Nagar West was regularized vide letter dated 2.1.96 w.e.f. 8.5.90 in the name of Shri S.N.Murthy. Shri Murthy retired on 31.3.94 and the allotment was cancelled w.e.f. 1.8.94 and retention of 4 months on double licence fee was allowed upto 30.11.94. Thereafter damage rate were charged from Shri Murthy. Shri Murthy vacated the premises on 13.2.96 FN) and a final demand of Rs.75,322.00 was raised against Shri Murthy. Hon'ble Tribunal in its final order dated 25.2.97 in the DA No.2366/94 did not also give any directions towards payment of licence fee. As such Shri

Murthy was asked to make payment of Rs.75,322/- so that no Demand Certificate could be issued in favour of Shri Murthy. Against the said demand Shri Murthy has filed the present petition".

6. The learned counsel for the applicant relied on an order of this Tribunal in the case of Shri R.N.Mishra Vs. Union of India, OA No.2283 of 1991 decided on 7.1.1993. In that case the Supreme Court passed an order not to evict the applicant from the quarter till 31.5.1985. This order was continued till 30.6.1986 on which date he vacated the premises. The OA 2283/91 was filed seeking a refund of Rs.12065.30p collected from him at the inflated rate of licence fees of Rs.747/- per month against the normal rent of Rs.176/- per month, on the ground that the Supreme Court authorized the applicant to stay in the quarter from time to time till 30.6.1986. The Tribunal held that the rent should be recovered in accordance with the rules and damages for the period of stay could not be levied particularly when the stay was authorized by the Hon'ble Supreme Court. Thus, the Tribunal directed only recovery of rent as permissible under the rules.

7. On the other hand, the learned counsel for the respondents argues that the stay was only against eviction and does not operate against charging of rent or damage rent in accordance with the rules. It is urged that the period for which allotment subsists and the concessional period for further retention has been clearly specified in SR 317-B-11. In the PP Act

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"unauthorized occupation" has been defined as under -

"unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

3. In the present case the impugned letter dated 29.4.1998 shows that the applicant was considered to have remained in unauthorized occupation from 1.12.1994 to 12.2.1996 and under SR 317-B(22) he is liable to pay damages for the entire period of over stay. SR 317-B-22 reads as under -

"S.R.317-B-22. Where, after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the officer to whom it was allotted or of any persons claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges as may be determined by Government from time to time, or twice the licence fee he was paying, whichever is higher:

Provided that an officer, who was paying licence fee under F.R.45-A may, in special cases, except in case of death, be allowed by the Directorate of Estates, to retain a residence for a period not exceeding six months beyond the period permitted under S.R.317-B-11(2) on payment of twice the standard licence fee under F.R. 45-A or twice the pooled standard licence fee under F.R.45-A, whichever is higher but not exceeding 30% of the emoluments (as defined under F.R.45-C) last drawn by the officer. In case of an officer who was not paying licence fee under F.R.45-A, he may be allowed to retain a residence for the same period on payment of twice the

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standard licence fee under F.R. 45-A or twice the pooled standard licence fee under F.R.45-A or twice the licence fee that he was paying, whichever is higher.

Provided further that in the event of retirement or terminal leave, the period for further retention on payment of licence fee as indicated in the aforesaid proviso shall be not exceeding four months."

9. In the PP Act the two clear concepts spelt out are damages assessed for unauthorized occupation of public premises and charging of rent payable for use of public premises. These two are two different concepts. They cannot be confused or equated. The Estate Officer may direct the payment of arrears of rent as well as damages. The principles governing levy of damages and arrears of rent are different. One is a civil liability; the other is a penalty for misuse. SR 317-B-22 gives an option either to pay damages but these damages should be limited to twice the licence fees he was paying.

10. I am very clear in my mind that the applicant is not in unauthorized occupation. In Trilok Chand Vs. Estate Officer, AIR 1977 NOC 238 Del it was held that an authorized occupation becomes unauthorized when occupation is continued after the authority under which premises were occupied is withdrawn, determined or ceases to exist. The applicant had been occupying the quarter under the protection given by the Court. He was, therefore, not an unauthorized occupant. Even under SR 317-B-22 the provision for damages is limited upto twice the licence fees. The applicant stated that he had paid twice the normal licence fees from 1st December, 1974

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to 12th February, 1996. According to him there was an excess payment of Rs.32,000/- [Refer to para 16 of his letter dated 16.8.1997 (Annexure-A-7)]. Thus, I find no justification for the impugned notice dated 23.7.96. The calculations show that the respondents have calculated at the rate of Rs.5462/- from December 1994 to February, 1995; at the rate of Rs.5747/- from March, 1995 to May 1995; and at the rate of Rs.8747/- from June, 1995 to 12th February, 1996. This is not rent which is limited to twice the licence fees. Accordingly, the levy of this exorbitant amount of damages for a tenant who has been occupying the quarter under the protection of the Court order in a lawful manner cannot be justified. particularly when he applied for retention on medical grounds. . .

11. In the result, the impugned order is quashed. The demand raised is vacated. The OA is allowed. No costs.

N. Sahu
(N. Sahu) 7/5799
Member (Admnv)

rkv.