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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.1345 of 1998 decided on 11.5.1999

Name of Applicant : Shri Nareesh Pal

By Advocate : Shri P.I. Gomman

Versus

Name of respondent/s UOI & ors

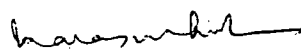
By Advocate : Shri R.P. Aggarwal

Coram:

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

1. To be referred to the reporter - Yes/~~No~~

2. Whether to be circulated to the other Benches of the Tribunal. - ~~No~~/Yes


(N. Sahu)
Member (Admnv)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1345 of 1998

New Delhi, this the 11th day of May, 1999

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

Shri Naresh Pal, Junior Engineer
(Civil), Office of the Supdg. Engineer.
(Civil) (South), I.S.B.T. Delhi - APPLICANT

(By Advocate Shri P.I.Oomman)

Versus

Union of India

1. Through Secretary, Ministry of
Communications, Department of
Telecommunications, Sanchar Bhawan,
New Delhi-11001

2. The General Manager Telephones,
Department of Telecommunications,
Faridabad-121002

3. Divisional Engineer (Plg), Office of
the General Manager Telephones
Faridabad-121002 - RESPONDENTS

(By Advocate Shri R.P.Aggarwal)

O R D E R

By Mr. N.Sahu, Member(Admnv)

The prayer in this Original Application is to quash the impugned order dated 14.5.1998 by which respondent no.3 directed recovery of a sum of Rs.37,404/- from the pay of the applicant.

2. The details of the recovery are enclosed to the counter reply. The respondents charged rent @ Rs.45/- per sq.mtr. per month for the period from 29.6.93 to 2.10.94 by way of damages on the ground that the applicant over stayed in the quarter allotted to him by the Department of Telecommunication. He took possession of the quarter on 2.8.1992. After some time he was transferred to

SE (Civil) Telecom Civil Circle, Curzon Road, during June, 1993. He was relieved on 29.6.93. According to him he was transferred to an eligible zone under the same cadre controlling authority. He addressed a representation on 3.2.1994 in response to the notice to vacate the quarter on 2.2.1994 from AE Planning on the ground that his son was admitted in the hospital for a special treatment. He submitted another representation as per Annexure-A-8. He did not receive any reply. He continued in the quarter but eventually handed over possession on 3.10.1994. As per the averment of the applicant which was admitted the respondents had already deducted the licence fee of Rs.85/- per month from the salary of the applicant from August 1992 to September 1994 and the applicant has not drawn HRA of Rs.450/- during this period (Annexures-A-11 & A-12). The recovery order was issued after a period of four years of the surrender of the quarter without a show cause notice. According to the applicant cancellation of the licence and notice for payment of market rent was required to be given to him under the law.

3. The learned counsel for the respondents stated that the allottee on transfer can retain the accommodation for a period of two months only. Retention of the accommodation thereafter was unauthorized and the applicant was liable to pay penal rent/damages. The applicant was transferred to AE (Civil), New Delhi. He carried out civil work of MTNL only and not SSA Faridabad. Cadre controlling authority remaining the same would not authorize the

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officer to continue to occupy accommodation. The quarter situated in NH-II, P&T Colony, Faridabad belongs to Faridabad Telecom Wing of P&T Department and is not part of General Pool quarters allotted by the Estate Officer of Central Government. These quarters are meant for employees posted in Faridabad Town Telephone System and could not have been allotted to any other Telecom employee serving outside the jurisdiction of the System.

4. I have carefully considered the submissions of the rival counsel. The stand of the respondents in my view is untenable. The applicant had represented that his son was hospitalized on medical grounds and sought an extension. This is a valid ground under which extension can be sought. The respondents did not reply to his representations. They continued to deduct the normal licence fee month after month. The applicant was not on notice at any time. Therefore, he was justified in drawing the conclusion that his request for extension was accepted and he continued to stay in the said accommodation. The fact remains that the applicant worked under the same cadre controlling authority and the quarter was utilized for his bona fide use. There was no attempt on his part to over stay in the accommodation without prior notice or request. Under the circumstances respondent no.3 should have rejected the representation and conveyed the order to vacate the accommodation before a specified date. The recovery notice given to him after four years of the vacation of the quarter is a highly belated step




and the respondents' own employees deserve to be treated with sympathy and understanding. Under Section 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 if the Estate Officer is of the opinion that any person is in unauthorized occupation of any public premises a show cause notice should be issued before eviction. It is after this notice the Estate Officer should record his satisfaction that the public premises are in unauthorized occupation. As the respondents continued to deduct normal licence fees, the applicant was under the bona fide belief that his request for continuation of stay was acceded to and accepted.

5. In the PP Act "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."

6. In the present case the impugned letter dated 14.5.1998 shows that the applicant was considered to have remained in unauthorized occupation 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 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."

7. In the PP Act the two clear concepts are damages assessed for unauthorized occupation of public premises and charging of rent payable for use of public premises. These 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 of rent are different. One is a civil liability, the other is a penalty for misuse. SR 317-B-22 gives an option to levy damages but these damages should be limited to twice the licence fees he was paying. The damages levied on the applicant are exorbitant and without notice.

8. Under the circumstances I do not think that there is any justification for directing to recover the penal rent/damages as per the notice.

9. In the result, the respondents' order of charging damages, which is penal rent, cannot be sustained without a proper show cause notice to the applicant and secondly the damages if any under the rule cited above can be only limited to twice the normal rent. Damages can be levied only when the procedure laid down in the PP Act is followed. Since admittedly that procedure is not followed, the impugned order is quashed and the OA is allowed. No costs.

rkv.

N. Sahu
(N. Sahu) 11/5799
Member (Admnv)