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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 183/1995

New Delhi, this 5<sup>th</sup> day of May, 1995

Hon'ble Shri Justice S.C. Mathur, Chairman  
Hon'ble Shri P.T. Thiruvengadam, Member(A)

Shri H.S. Bhatia  
s/o Shri Chandi Ram Bhatia  
C-21(B) New Multan Nagar, Delhi-56 .. Applicant

By Shri Sant Lal, Advocate

versus

Union of India, through

1. Secretary  
Dept. of Telecommunications  
M/Telecommunications  
Sanchar Bhawan, New Delhi
2. The Chief General Manager Maintenance  
Northern Telecom Region  
Kidwai Bhawan, New Delhi
3. The Chief Superintendent  
Central Telegraph Office  
Eastern Court, New Delhi .. Respondents

Shri M.K. Gupta, Advocate

ORDER

Hon'ble Shri P.T.Thiruvengadam

The applicant retired from TTS (Group B) Service on 31.10.90. Prior to his retirement he was occupying accommodation, namely P&T Quarter No. Chembry-I/Ground Floor, Atul Grove Road, New Delhi. Even after retirement he retained this accommodation and vacated the same on 21.11.92. It is not disputed that the applicant had to pay normal rent (licence fee) for 4 months after retirement, double the licence fee for the next 4 months and damage rent beyond 8 months, i.e. for the period from 1.7.91 till the date of vacation. The applicant had paid certain amounts upto March, 1992 and it is his contention that the amounts paid upto this

period are the actual rent including damage rent to be paid by him. The respondents have issued instructions on 12.2.94 to the Pension Disbursing Authority to recover a sum of Rs.28,396/- on account of outstanding licence fee from the dearness relief on pension. This OA has been filed for a direction to quash the instructions dated 12.2.94 and for refund of such recovery which had been made. An interim stay against further recovery was ordered by this Tribunal on 25.1.95. The applicant has also prayed for the release of an amount of Rs.5200/- which has been withheld from the DCRG, alongwith interest.

2. The learned counsel advanced a number of grounds in support of his case. These are spelt out as under:

- (A) Licence fee for various types of quarters was fixed on 28.10.87 and in the schedule attached (Annexure A-7), the area of the type of accommodation under occupation of the applicant was shown as 35.67 sq. mtrs. and the corresponding licence fee is Rs.60/-. After submitting a number of representations, the applicant has come to know that the respondents are taking the stand that the accommodation allotted has an area of 56.85 sq.mtr. There is no basis for this change;
- (B) Recovery from dearness relief on pension is illegal;
- (C) No show cause notice was issued before levying the enhanced rent by way of damages;
- (D) It is only the nominated Estate Officer who is authorised to order damages. The impugned letter has been issued by the Accounts Officer who is not having jurisdiction; and
- (E) Recovery of rental dues from DCRG is not permissible.

3. We take up these grounds one by one.

4. Ground (A) - Regarding area of accommodation:

4.1) It is admitted by the respondents that in the schedule to the Notification dated 28.10.87 on the subject of licence fee, the area of the type of accommodation in occupation by the applicant had been shown as 35.67 s.m. only, with corresponding licence fee of Rs.60/- effective from 1.7.87. The accommodation was remeasured during the pendency of the case and the measurement was found to be 56.85 sq.m. in area as per letter dated 6.2.95 of the Junior Engineer, Telecom Civil Enquiry. The respondents admit that there was an earlier remeasurement and at that time the area was measured as 61.60 sq. mtr. Based on this figure of 61.60 sq.mtr. and the corresponding remeasured plinth area of 72.83 sq. mtr., licence fee/normal rent was reckoned as Rs.135/- p.m. in lieu of Rs.60 earlier computed in the year 1987. The applicant was issued a letter dated 4.11.92 based on the measured area of 61.60/72.83 sq.mtr., as intimated by the Assistant Engineer on 29.4.92. The letter of 4.11.92, annexed as R-12 to the counter reply indicated that the applicant had to pay at revised rates as follows:

From 1.7.90 to 28.2.91: @ Rs.135/- p.m. instead of Rs.60/- p.m.

From 1.3.91 to 30.6.91: @ Rs.270/- p.m. instead of Rs.120/- p.m.

Beyond 1.7.91 @ Rs.2464/- p.m. instead of @ Rs.1427 p.m.

4.2) The Respondents have averred that with regard to damage rent, the calculation is based on the rate Rs.40/- p.m. per sq.mtr. of the living area and the rate of licence fee/normal rent computed is based on total plinth area.

4.3) The applicant had been continuously questioning the change in the area of the accommodation, indicated from time to time. Even during the argument, the learned counsel for the applicant pointed out that no additions/alterations of structural character had been carried out in the residence of the applicant. Reference to para 3 of the notification dated 28.10.87 was made. As per this para, such additions/alterations, if considered necessary, may be carried out in all similar residences in a standardised manner and no additional licence fee or charges may be recovered from the allottees for such additions/alterations.

4.4) We note that the dispute in this regard has arisen partly due to the shifting stand of the respondents. Initially the living area was measured as 61.60 sq. mtr. and later the same was measured as 56.85 sq. mtr. Hence some doubt has been raised about the actual measurement. It would be in the interest of justice if the actual measurement of living area and plinth area are made in the presence of the applicant and fresh recovery notice issued, if need be, as per directions to be given hereunder.

##### 5. Ground B - Regarding validity of recovery from Dearness Relief:

5.1) It was argued that no recovery should be effected from dearness relief to pension. A number of citations were relied upon:

- 1) ATR 1987(2)CAT-205 - Beni Prasad Vs. UOI
- 2) SLJ 1992(2)CAT Goel Vs. UOI & Ors.
- 3) 1(1991)CSJ(CAT)84 M.R.S.Raghavan Vs. Govt. of India
- 4) 1989(1)(CAT)61-SLJ-R.D.Sharma Vs. UOI
- 5) 1994(3)(CAT)P-507-Sandhu Lal Hasham Bai Vs.UOI

In the above citations, the general approach has been that if a person is entitled to receive pension, he will also be entitled to receive relief on pension and this relief in pension is in all respects part of pension. Thereby, prohibition in Rule 9 of the Pension Rules, namely pension or part thereof can be withdrawn only after departmental proceedings holding the pensioner guilty of grave misconduct or negligence gets invoked. In some of the citations it has also been observed that there are no specific rules in the Pension Rules empowering the Government to effect recovery from relief on pension on account of outstanding government dues.

5.2) The learned counsel for the respondents referred to the observation of their Lordships of the Supreme Court in UOI & Ors. Vs. G.Vasudevan Pillai reported in 1995(2)-SCC-32. In para 8 of this judgement, it has been observed that Kerala High Court in Narayan Vs. UOI 1994(1)KLT-897 had taken the view that the dearness relief is an integral part of pension, whereas the Delhi High Court in Civil Writ Petition No.1699 of 1992 (disposed of on 23.2.93) had taken the view that dearness relief is different from pension. However, the Apex Court observed that it was not necessary to express any opinion on this aspect of the matter in the circumstances of the case. In other words, the issue has been left open.

5.3) It was further argued that none of the citations relied upon had taken into account Clause 6 of Rule 72 of CCS(Pension) Rules. Clause 6, introduced by notification dated 22.1.91 reads as under:

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"(6) The recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of (four months) after the date of retirement of allottee shall be the responsibility of the Directorate of Estates (Any amount becoming due on account of licence fee for retention of Government accommodation beyond four months after retirement and remaining unpaid may be ordered to be recovered by the Directorate of Estate through the concerned Accounts Officer from the dearness relief without the consent of the pensioner. In such cases no dearness relief shall be disbursed until full recovery of such dues have been made).

Note: For the purpose of this rule, the licence fee shall also include any other charges payable by the allottee for any damage or loss caused by him to the accommodation or its fittings."

It was thus urged that recovery from dearness relief is legal.

5.4) The learned counsel for the applicant tried to draw a distinction that such recoveries could be to the extent of licence fee and can not cover damage rent. We can not accept this contention since we note that the purport of this clause is to enable recovery that may be due when the accommodation is retained beyond the date of retirement, especially when even retention beyond 4 months after retirement has been mentioned. In the context, the term licence fee is to be interpreted to include legitimate recovery for retention beyond the date of retirement.

5.5) In view of the specific clause, namely clause 6 of Rule 72 of the Pension Rules, which clause has not been challenged, we have to hold that legitimate recovery from dearness relief on pension can not be termed as illegal.

6. Ground C - Show cause notice for damage rent:

6.1) On the aspect of issuing show cause notice as per the provisions of Public Premises (Eviction of unauthorised occupation) Act (PPE Act in short) and recovery of damage rent as per the procedure laid down in this Act, the applicant relies on the order passed by the Bombay Bench of this Tribunal in V.K. Kutty Vs. UOI (ATJ1994(2)609). It has been held that administrative instructions issued prior to the enactment of the PPE Act can not be enforced in realising the amount due either as rent or damage rent and the method as laid down in the provisions of PPE Act has to be pursued.

6.2) On the other hand, the learned counsel for the respondents referred to the order passed in S.C.Bhatnagar Vs. UOI reported in 1994(3)(CAT)367-SLJ decided by this Bench of the Tribunal. Paras 8 and 9 of the order read as under:

"8. As regards the third ground, Shri Sawhney has argued that cancellation of the allotment order of the quarter and a show cause notice to the applicant was essential before an action could be taken to recover penal rent. In this connection he relies upon the Delhi High Court's ruling in Harbhajan Singh V. UOI 1973 Labour IC 1659 and Awadesh Kumar v. UOI, 1994(1) SLJ(CAT)446. As regard Harbhajan Singh's case (supra), Shri Sawhney's reference is based upon a misunderstanding of the import of that judgement. All that the judgement states is that the liability to pay outsiders rent under Rule 1713(b)(v) of Railway Establishment Manual arose only when the occupant did not vacate the quarter after the cancellation of allotment. That can not be construed to mean that because no cancellation order was issued in the case, the applicant was not liable to pay penal rent despite of over stay. In fact, in Harbhajan Singh's case (supra) itself, it has been held in penultimate paragraph while disposing of the case, that the stay of that petitioner in the quarter was unauthorised, because the rule authorised the overstay only for a period of four months after the date of transfer, and it was not necessary either for the railway authorities or for the Railway Board to declare formally the stay of the petitioner as unauthorised by issuing an order cancelling allotment for penal consequences to be visited, because the rules

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themselves act as a notice that higher rent could be recoverable for the period of overstay. As far as Awadesh Kumar's case (supra) is concerned, which was decided on 30.8.1993, the same is a Single Bench Judgement, while in the case of Shanker and others v. UOI, 1994 (26)ATC 278, judgement in which was delivered on 16.9.1993, it was conclusively held by a Division Bench (Calcutta) of the Tribunal that no notice is required to be issued before initiating recovery proceedings, where the applicant was aware of the administrative instructions laying down the consequences of unauthorised occupation. The applicant can not seriously contend that he was unaware of the consequences of unauthorised occupation, and in that light of the Division Bench's judgement in Shanker's case (supra) which is also later in point of time than Awadesh Kumar's case (supra), it must be held that no show cause notice was required in this case before initiating recovery proceedings.

"9. The next ground taken is that the penal rent can not be recovered except by following the provisions of Section 7 of PPE Act. In this connection, Shri Sawhney has placed reliance on the case of B.S. Vederfa v. UOI, 1968 SLR(SC)6 in support of the proposition that under proviso to Article 309 of the Constitution, the rules regulating the recruitment and conditions of service of public servants shall operate only till provision in that behalf is made by or under a legislative enactment and once such legislative enactment is made, action regulative service conditions etc. has to be taken only under that enactment and not outside it. At the outset it must be mentioned that the ruling cited by Shbri Sawhney has no application to the facts of the present case as it relates not to unauthorised occupation of Govt. accommodation, but to the reversion of an Assistant to the post of a UDC. What is of direct relevance is Harbhajan Singh's case (supra), cited by Shri Sawhney himself and discussed above, in the penultimate paragraph of which, while disposing of the application, it has been conclusively held that a railway servant who continues to occupy railway quarter beyond the authortised period, should be liable to pay a higher rate of rent and the rules 1728, 1730 and 1713 (b)(v) Railway Establishment Manual themselves act as a notice that higher rate of rent would be recoverable for the period of overstay. That judgement further went on to hold that rules are enforceable independently of the pp (EOU) Act in as much as they were statutory rules and can not be said to be discriminatory to be known to the railway servants, no further opportunity was necessary to be given to the petitioner before he was charged a higher rent than the normal rent after expiry of the period of an authorised occupation and the question of applicability of the PP(EOU) Act in Shanker's case (supra) wherein after referring to the decision of the Hon'ble Supreme Court in New Delhi Municipal Committee v. Kalu Ram, 1976(3)SCC407, in which it has been held that

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Section 7 of PP(EOU) Act did not create a right but merely prescribed an alternative procedure for recovery of certain dues, the Tribunal rejected the contention that the respondents had obligation to move the Estate Officer under Section 7 PP (EOU) Act in order to recover damages for the unauthorised occupation, and held that such procedure was merely an alternative procedure and the railway authorities could recover such dues by deducting the same from the salary. Hence this ground also is rejected.'

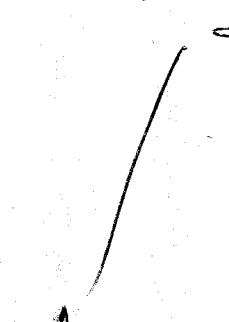
6.3) We agree with the above appreciation and accordingly reject the ground regarding show cause notice advanced by the applicant.

7. Ground D-Jurisdiction of the officer ordering recovery:

7.1) The ground raised is that the recovery was ordered by the Accounts Officer and not by the concerned Estate Officer. This ground was met by the learned counsel for the respondents stating that Accounts Officer is acting in pursuance of instructions from the Estate Officer (Annexure R-2) and as such the action is permissible under clause 6 of Rule 72 of the Pension Rules. We agree with the validity of the argument of the respondents and accordingly reject this ground also.

8. Ground E-Recovery of rental dues from DCRG:

8.1) It was argued that even a portion of DCRG could not be withheld for adjustment towards rent. The only argument advanced was that such a proposition has been laid down by Full Bench in Wazir Chand Vs. UOI decided on 25.10.90. We, however, note that this OA dealt with a Railway case and the Railway instructions ~~are thus~~ applicable.



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9. We note that the impugned letter dated 2.2.94 by which recovery of Rs.29,396/- has been ordered is based on the first remeasurement of the living area as 61.60 s. mtr. It is now admitted by the respondents, that the impugned order dated 2.12.94 is thus based on wrong premise. Hence it is liable to be quashed.

10. In the circumstances, the OA is disposed of with the following directions:

- (i) The accommodation which was under the occupation of the applicant should be remeasured in the presence of the applicant. This should be done within two months of the receipt of a copy of this order by the respondents. The applicant should cooperate in the remeasurement and in case of non-cooperation measurement would be made ex-party by the respondents immediately after the expiry of the period of two months.
- (ii) The impugned order dated 2.2.94 directing recovery of Rs.29,396 is quashed. However, any recovery made so far prior to the issue of the stay order on 25.1.95 in this regard need not be paid back to the applicant but adjusted subsequently. If no adjustment is required the recovery made should be returned within 3 months from the date of receipt of this order.
- (iii) After making the remeasurement as per the direction (i) herein above, fresh order regarding recovery required may be issued, and recovery

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ordered to be made from Dearness Relief to Pension if there is such a need. The order in this regard should be issued within 3 months of receipt of a copy of this order.

(iv) The balance amount of DCRG of Rs.5200 may not be released till order as per direction (iii) above is issued. In case any recovery is required, this may be adjusted from the held up amount of DCRG. If no recovery falls due, the held up amount of Rs.5200 may be released with interest @ 12% per annum for the period from the date this amount was withheld till the date of payment.

11. There shall be no order as to costs.

P. T. Thiruvenkadam  
575755  
(P.T.Thiruvenkadam)  
Member(A)

S. C. Mathur  
Chairman

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