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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.369/95

New Delhi: ~~May~~ June 2nd, 1995.

HON'BLE MR.S.R.ADIGE, MEMBER(A).

Shri A.K.Goyal,
s/o Shri B.B.L.Goyal,
working as an Assistant Engineer in
P &D Unit of the All India Radio under
the Directorate General AIR New Delhi
and r/o QD-6, Radio Colony, Kingsway,
Delhi-110 009.Applicant.

By Advocate Shri B.Krishan.

Versus

1. The Director General,
Directorate General, All India Radio,
Sansad Marg,
New Delhi.
2. The Superintending Engineer,
High Power Transmission,
All India Radio,
Kingsway,
Delhi -110 009.
3. The Pay & Accounts Officer (IRLA),
(Computer -II Section),
Ministry of I & B, AGCR Bldg. IP Estate,
New Delhi.-2Respondents.

By Shri M.M.Sudan, Advocate.

JUDGMENT

Applicant Shri A.K.Goyal, Assistant Engineer, AIR was allotted Qr. No. QD-6, Radio Colony, Kingsway, Delhi by Superintending Engineer, High Power Transmission AIR, Kingsway, Delhi as he was among the shift duty Staff who was required to perform duties in odd hours and in emergencies at short notice. On 5.6.93 he was transferred from High Power Transmission Kingsway to P &D Unit of AIR. Upon his representation to the AIR authorities he was finally permitted to retain the said quarter till 4.2.94 on payment of concessional rent. Meanwhile he had also approached

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the Directorate of Estates for allotment of a quarter from their general pool on out of turn basis to enable him to vacate UOD-6, Radio Colony. He was informed by them on 4.3.94 that he was not eligible under rules for allotment on out of turn basis. The applicant thereupon filed O.A.No.1190/94 praying for quashing of the Directorate of Estates' letter dated 4.3.94 rejecting his request for allotment of general pool accommodation on out of turn basis, and seeking a direction to the AIR authorities to permit him to retain UOD-6 Radio Colony till the allotment of general pool accommodation from the Directorate of Estates materialised, and also a direction that he would not be made liable to pay any sort of penal rent/damage rent/market rent etc.

2. That O.A. was disposed of after hearing the applicant as well as the AIR authorities, by judgment dated 7.10.94. In that judgment, it was noted that although the Directorate of Estates was a party, no reply had been filed by them. This judgment took note of the Directorate of Estates' Memo dated 14.3.85 which made the applicant ineligible for adhoc allotment of general pool accommodation under the Directorate of Estates on out of turn basis, to enable him to vacate UOD-6, Radio Colony. However, as the AIR had its own pool of residential accommodation (general pool), the AIR authorities were directed to consider allotting the applicant alternative accommodation from their own general pool. It was further observed that it would be open to the AIR authorities to allow the applicant to continue in UOD-6, Radio Colony till such time as alternative accommodation was provided to him from the AIR general pool, or till such time as the AIR authorities considered

appropriate in view of the applicant's circumstances, subject to payment of rent for the period beyond the period of authorised occupation as per rules.

3. The applicant has now filed the present O.A. impugning the S.E.HPT AIR's letter dated 15.11.94 (Annexure-A1) directing the Pay and Accounts Officer (IRLA) Computer II Section, Ministry of I & B to start recovering license fee from the applicant's salary at the following rates:-

- i) Rs.135/- p.m. for the period 6th June to 5th August, 1993 (normal rates of license fee).
- ii) Rs.270/- p.m. for the period 6th August to 5th February, 1994 (double the normal rates of license fee).
- iii) Penal rent @ Rs.2600/- p.m. w.e.f. 6.2.94 onwards.

4. The grounds taken are firstly that the impugned deduction of damages is arbitrary and illegal, being in violation of the AIR (ARQ) Rules, 1983 and the judgment dated 7.10.94 in O.A.No.1190/94; secondly that recoveries from salary is illegal; thirdly recoveries in excess of normal license fee can be made only under the PP(EUO) Act, 1971; fourthly that recovery @ Rs.3661/- p.m. from the applicant is violative of Article 21 of the Constitution; fifthly that the applicant cannot be treated as an unauthorised occupant, the allotment not being cancelled under the P.P.(EUO) Act; and the respondents are under obligation to provide the applicant alternative accommodation to enable him to vacate the present premises; sixthly that the respondents' action is capricious and seventhly that their action is arbitrary as executive instructions cannot override statutory rules.

5. I have considered these grounds carefully. It has now been settled by the Tribunal (Full Bench)

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judgment dated 29.5.95 in O.A.No.2684/93 and connected cases ' Liaqat Ali Vs. Union of India' that no Govt. employee has an enforceable right to Govt. accommodation; and allotment will depend on availability. It follows therefore that a Govt. employee has to await his turn for Govt. accommodation unless he falls in a special category entitling him to Govt. accommodation on out of turn basis. This general principle would also be applicable in cases such as the applicants, who was allotted accommodation in HPT as he was on Shift duty Staff and was required to perform duties in odd hours, but consequent to his being transferred from HPT is now required to vacate that accommodation. The judgment dated 7.10.94 in O.A.No.1190/94 had noticed the Director of Estates' Memo dated 14.3.85 which made the applicant ineligible for out of turn allotment of accommodation from the general pool accommodation of the Directorate of Estates, and that finding has not been impugned in the present O.A. As the AIR had its own general pool of accommodation, by the judgment dated 7.10.94 the respondents were called upon to consider allotting the applicant accommodation from their own general pool on out of turn basis to enable him to vacate his present premises. The respondents have carried out that exercise and by their letter dated 23.2.95 (Annexure-R3) have pointed out that they have no general pool accommodation unit of their own in Delhi which can be allotted to the applicant on out of turn basis to enable him to vacate his present premises. This is a statement of fact which is also borne out by the contents of Schedule II appended to the AIR (ARQs) Rules. Respondents'

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counsel Shri Sudan has stated at the bar that the only accommodation available with the AIR within Delhi is at Khanpur and Kingsway and at both these locations the accommodation is earmarked for HPT Staff. In the absence of any materials produced by the applicant to controvert the same, I have no reason to doubt the correctness of the averments made by the respondents, and under the circumstance the applicant cannot legitimately complain if he is called upon to vacate the premises which continues to be in his occupation much beyond the authorised period, or pay license fee at penal rates for continued retention beyond the authorised period.

6. In this connection, it must be mentioned that the applicant was allotted the premises in question in accordance with SR 317 XXVI T-9 AIR (ARQ) Rules, 1991. T-9 (iv) of those rules specifically lays down that the allotment of the quarter would automatically stand cancelled on the expiry of two months from the date of the allottee's transfer. Thus in the present case even without any formal cancellation order, the applicant's allotment would automatically have stood cancelled w.e.f. 5.8.93. However, in view of the applicant's circumstances the respondents permitted the applicant to retain the premises on double the normal rent i.e. Rs.135/- p.m. for six months beyond 5.8.93 i.e. till 5.2.94. The applicant's own conduct makes it clear that he was fully aware of the administrative instructions, because he made laying down the consequences of occupation beyond authorised period a demur as long as he was charged only double the normal license fee i.e. the concessional rate of Rs.270/- p.m., obviously

because it suited him, and protested only when respondents charged him license fee at penal rate of Rs.2600/- p.m. w.e.f. 6.2.94 when he refused to vacate inspite of the concession that had been shown to him.

7. Coming to the first ground, SR 317 XXVI T-10 AIR(ARQ) Rules, 1991 specifically lays down that where-after an allotment has been cancelled or is cancelled under any provisions contained in these Rules and the quarter remains or has remained in occupation of the Officer to whom it has been allotted or any officer claiming through him, such officer shall be liable to pay license fee as determined from time to time, and to obtain vacant possession the Controlling Authority may besides levy of penal rent also undertake eviction proceedings under the PP(EUO) Act. Thus, under the Rules themselves recourse to PP(EUO)Act is only an alternative procedure, and the applicant's contention that the recovery of penal license fee is violative of the AIR (ARQ) Rules therefore falls to the ground. It may be mentioned that the Hon'ble Supreme Court in NDMC Vs. Kalu Ram= AIR 1976 SC 1637 has also held that recourse to the PP(EUO) Act is only an authoritative procedure, which was relied upon by the Tribunal (Calcutta Bench) in its order dated 16.9.93 reported in 1994 (26) ATC 28 and quoted in judgment dated 26.9.94 in O.A.685/94 Ishwar Singh Vs. UOI & others. Applicant's counsel Shri Krishan has laid great stress on the contents of Directorate of Estates' O.M. dated 27.8.87 laying down a damage rate of Rs.20/- per sq.mt. of living area for general pool(Type I to IV) accommodation in Delhi in addition to garden and other charges, on the basis of which the impugned penal license

fee of Rs.2600/- p.m. is allegedly being charged from the applicant. Shri Krishan's contention is that the said O.M. stated that suitable amendments were being carried out in the Allotment of Govt. Residences (General Pool) in Delhi Rules, 1963 to delete the words 'market license fee' and to substitute the same by word " damages" and other Ministries/ Departments were advised to carry out similar amendments in their own rules, but the amendments had not been carried out in the AIR (ARQ) Rules which was sufficient to vitiate the action taken by the respondents. This contention is baseless, because the AIR (ARQs) Rules, 1991 are complete in themselves, the contents of which have not been specifically impugned by the applicant, authorising the Controlling Authority to realise the license fee for unauthorised occupation at rates to be determined from time to time. These rates have been determined by the respondents vide their Office Order dated 17.2.88 on the basis of which license fee/damage charges for various type of quarters as calculated by Directorate letter dated 10.9.87 following the recommendation of the IV Pay Commission were given for information of all concerned. This office order stated that the rates of license fee (earlier called rent) were effective from 1.7.87 and the arrears, if any, would be recovered from the allottee in future months. A copy of this office order was marked to all Notice Boards, and it is in accordance with this office order dated 17.2.88, that damage charges are being charged from the applicant, together with arrears. As a copy of this office order was directed to be pasted on all Notice Boards, the applicant cannot contend that he had no knowledge of the consequences of retention of the premises beyond the authorised

period. Thus, it is clear that there has been no violation of the AIR (ARQs) Rules. The action of the respondents also does not conflict with anything contained in judgment dated 7.10.94 in O.A.No.1190/94 because the respondents have considered allotting accommodation to the applicant from the AIR general pool and in the absence of any accommodation, Units have expressed their inability to make actual allotment. Furthermore, judgment permitted the respondents to recover license rent for the period beyond the period of authorised occupation as per rules and this in no way can be construed to mean that the respondents are debarred from realising penal license fee/ damage charges for the period beyond the period of authorised occupation in accordance with rules. Hence the first ground fails.

8. Coming to the second ground, the applicant has not produced any rule or instructions to show that the respondents are prevented from recovering the damage charges from the applicant's salary. The applicant has contended that under the General Financial Rules no deductions other than the standard deductions can be made but no specific rule has been quoted. It is for the applicant to establish that damage charges cannot be recovered from his salary, and in the absence of any rule to that effect quoted by him, this ground also fails.

9. As regards the third ground, as stated above, the AIR (ARQs) Rules are complete in themselves and Rule T-10 specifically permits recoveries of damage charges for occupation of Govt. premises beyond the

period of authorised occupation at rates as determined from time to time and the P.P.(EUO) Act is only an alternative procedure, and hence this ground also cannot be sustained.

10. As regards the fourth ground, if a considerable portion of the applicant's salary is being deducted on account of damage charges, it is he himself who has to be blamed for retention of premises beyond the authorised period, and he cannot throw the blame on the respondents for his own acts of omission and commission. If he continued to retain the accommodation beyond the authorised period, he cannot claim to be unaware of the administrative consequences of doing so,^{and} it must be held that he is acting in full knowledge of the consequences and is fully responsible for his actions. Hence this ground also fails.

11. Coming to the fifth ground as pointed out above, S.R. T-9 (iv) specifically lays down that the allotment of the quarter would automatically stand cancelled on the expiry of two months from the date of allottee's transfer. The applicant was transferred on 5.6.93 and the allotment would have normally stood cancelled on 5.8.93 but the respondents permitted the applicant to retain the quarter on double the normal rates of license fee till 4.2.94 on which date, the applicant was informed vide letter dated 25.1.94 (Annexure-R2) that the allotment stood automatically cancelled. Hence the applicant's contention that he cannot be treated as unauthorised occupant, because the allotment was not cancelled under the P.P.(EUO) Act, is without merit, because as stated above, P.P.(EUO)Act provides only an alternative procedure. During argument Shri Krishan stated that the

Superintending Engineer was not competent to cancel the allotment, but it is clear from the letter dated 25.1.94 that the cancellation had been ordered by the Director General, AIR who was the Controlling Authority in respect of this accommodation. In this connection, it has also been urged that the respondents was under obligation to provide the applicant an alternative accommodation but as stated above, it has now been held that no Govt. employee has an enforceable right to Govt. accommodation, ^{is a concession which} and ^{allotment/} would depend upon availability. Hence the respondents were under no obligation to provide the applicant an alternative accommodation on out of turn basis to enable him to vacate the present premises.

12. In so far as sixth and seventh grounds are concerned, in view of what has been stated above, the action taken by the respondents cannot be termed as capricious or arbitrary or based only on executive instructions, and not statutory rules.

13. During hearing, applicant's counsel Shri Krishan also contended that the Supdt. Engineer could not assess the penal damages and could deduct only standard license fee under FR 45A. This has no merit because the recoveries from the applicant are being made in accordance with SR T-10 which is a statutory rule as pointed out above. Similarly Shri Krishan's argument that the payment of license fee was a personal liability, and recovery from salary was only a convenience and could not be made an

instrument for recovery of damage charges, has also no merit, because clearly the applicant is in unauthorised occupation of the Govt. quarter and being in unauthorised occupation, the respondents are entitled to adjust the damage charges from the salary payable to the applicant till the applicant continues to remain in unauthorised occupation. Shri Krishan has also contended that the action taken by the respondents was coercive and his right of appeal is snatched away, but as mentioned above the rules themselves permit recoveries of license fee to be made at penal rates as determined from time to time from the person who continues to occupy the quarter beyond the authorised period, and these rules, which the applicant has not impugned, do not provide for any appeal.

14. Shri Krishan has referred to various judgments including AIR 1987 SC 808; 1994(28)ATC 622; 1994(26) ATC 176; AIR 1976 SC 1637; AIR 1987 SC 386; Rajdhani Law Reporter 1984 page 241; and AISLJ 1994(3) 367. However, a careful perusal of these judgments makes it clear that nothing contained in these judgments relied by Shri Krishan leads me to hold that the action taken by the respondents is illegal, arbitrary, perverse, or malafide, or in violation of Articles 14 and 16 of the Constitution. To summarise the position, the applicant should have vacated the premises by 5.8.93 itself as on that date as per rules, the allotment stood cancelled. However, the respondents, having regard to the applicant's circumstances,

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permitted him to occupy the quarter till 4.2.94 on double the normal rates of the license fee and informed the applicant that if he failed to vacate the quarter by 4.2.94, his allotment would automatically stand cancelled. The applicant cannot claim to have been unaware of the consequences of the cancellation of the allotment that he would have paid the license fee at penal rates as per rules, but inspite of that he had continued to occupy the quarter. The respondents were not under obligation to give him alternative accommodation for which he has to await his turn, and as per rules he was not eligible for alternative accommodation on out of turn basis from the Directorate of Estates either. Inspite of that, the applicant had continued to occupy the premises and when the respondents are seeking to make recoveries of license fee at penal rates from him for continue retention of quarter beyond the authorised period, which they are fully empowered to do under S.R. T-10, the applicant is seeking to make a grievance of it.

15. In the result, no interference in this matter is warranted. This application fails and is dismissed. No costs.

Adige
(S.R. ADIGE)
MEMBER (A)

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