

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1293/96
T.A. No.

199

DATE OF DECISION 12.8.96

Shri Jagdeep Singh

Petitioner

By Adv. Shri B. Krishan

Advocate for the Petitioner(s)

Versus

The Executive Engineer, CPWD,
New Delhi.

Respondent

By Adv. Shri M.K. Gupta

Advocate for the Respondent(s)

CORAM

The Hon'ble Mrs. Lakshmi Swaminathan, Member(J).

The Hon'ble Mr.

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. 1293/96

New Delhi this the 12th day of August, 1996.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Jagdeep Singh,
S/o Shri Sadhu Singh,
Quarter No. 6, Type-II,
CPWD Enquiry Officer,
Shahjahan Road,
New Delhi.

...Applicant.

By Advocate Shri B. Krishan.

Versus

The Executive Engineer,
N-Division, CPWD,
Indraprastha Bhawan,
I.P. Estate,
New Delhi-2.

...Respondent.

By Advocate Shri M.K. Gupta.

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application being aggrieved by the order dated the 30th May, 1996 issued by the respondent directing recovery of damages from his salary, on the ground that he had overstayed in the Government Quarter No. 6, Type-II, CPWD Enquiry, Shahjahan Road, New Delhi and directing him to vacate the said premises, and also the order dated 19.5.1996 (sic. 18.5.96) passed by the Additional District Judge Delhi (Annexures A-1 and R-4).

2. The applicant has filed a number of applications previously in this Tribunal which would be relevant to mention, namely;

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- (1) O.A. 1856/92 decided on 30.1.1995;
- (2) O.A. 717/95 decided on 10.5.1995;
- (3) RA 149 in O.A. 717/95 decided on 4.7.1995;
- (4) O.A. 612/96 decided on 25.3.96. (Copies of these orders are placed in the file)

and now the present O.A.

3. According to the applicant, he was allowed to retain the said premises by the decision of the Tribunal in O.A. 717/95 and that the premises shall be got vacated by following the provisions of law under Sections 4 and 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the PPE Act'). He states that in terms of the said judgement, a show cause notice was issued on 8.6.1995 to which he replied and an eviction order was finally passed by the respondents vide order dated the 28th August, 1995.

4. Among the main grounds taken by the applicant, he submits that in the show cause notice dated 8.6.1995 while there was mention of the rate of damages but no seprate notice u/s 7 of the PPE Act was ever served upon him. Shri B. Krishan, learned counsel for the applicant, submits that the respondents have started deducting damages for occupation of the quarter @ Rs.1993/- per month from the salary of the applicant in respect of the premises in an arbitrary and illegal manner and without following the provisions of Sections 4 and 5 of the PPE Act. He further submits that the rate of damages is

exorbitant and there are no statutory rules under which the respondents ^{could} have levied these damages. According to him, under the fundamental rules, the respondents are permitted to only deduct standard rent from the salary of the applicant, and not damages. He submits that by such deductions, the applicant is being deprived of his livelihood as almost his entire salary is being deducted on account of damages for unauthorised occupation of the quarter which is not according to the rules. He relies on Olga Tellis & Ors. Vs. Bombay Municipal Corporation & Ors. (AIR 1986 SC 180).

5. Another ground that the learned counsel has taken is that the Executive Engineer/Estate Officer has neither been properly appointed nor his territorial jurisdiction has been defined under the relevant provisions of the PPE Act. In particular, the learned counsel submits that the provisions of Rule 8 of the PPE Rules, 1971 made under the PPE Act have not been complied with by the Estate Officer. He submits that no opportunity was given to the applicant to represent against the levy of damages and he did not appear before the Estate Officer on 20.5.1996. He also submits that the impugned order dated 30.5.1996 is not in accordance with Form 'E' given in the PPE Rules, 1971.

6. Shri B.Krishan, Learned Counsel further submits that the applicant, even after his promotion as Work Assistant, continues to work in fact as a Plumber in the same office and so he should be allowed to continue in the same quarter which was allotted to him when he was holding the post of Plumber.

7. The respondents have filed the reply and I have also heard Shri M.K. Gupta, learned counsel for the respondents. According to the respondents, the applicant, who was initially appointed as a Plumber, was allotted an essential service quarter in 1980 as his services were essentially required round the clock at the CPWD enquiry office. In 1990, the applicant was promoted to the post of Work Assistant which is a supervisory post and he ceased to be an essential service employee and as such he was asked to vacate the premises, in question. He states that in spite of the orders of the Tribunal in O.A. 717/95 against which R.A. was also dismissed by the order dated 4.7.1995, the applicant did not vacate the premises, in question. They have stated that the eviction proceedings were initiated by the Estate Officer which led to the passing of the order dated 28.8.1995. This eviction order was also challenged by the applicant in the court of the Additional District Judge, Delhi, which was also dismissed by order dated 18.5.1996. PPA No. 545/95 filed against his order was also dismissed by the order of the Addl. District Judge, Delhi dated 30.5.1996 (Annexure R-10). The respondents have submitted that the applicant has been provided adequate opportunity of hearing by the Estate Officer before passing the impugned order. They have also submitted that the applicant has himself by letter dated 27.5.1995 filed before the Estate Officer, sought two months time for vacating the premises, in question. According to the respondents

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by the notice u/s 7(3) of the PPE Act dated 24.4.1996, the details of arrears of rent/damage rent have been given, which is payable by the applicant. In this notice, he has also been intimated that he could show cause against this notice on or before 20.5.1996. Shri Gupta, learned counsel, submits that after the order of eviction has been passed, and the applicant had challenged the same before the Additional District Judge, Delhi, who had rejected the same by order dated 18.5.1996, the chapter of eviction is over and cannot be challenged again by the applicant in these proceedings. He relies on the Full Bench judgement of this Tribunal in Rasila Ram & Ors. Vs. Union of India & Ors., SLJ 1989(2) (CAT) 342, and submits that the Tribunal has no jurisdiction to review the decisions of the Addl. District Judge. In reply to this, the learned counsel for the applicant has submitted that this case has been superseded by the case of Ganga Ram & Ors. Vs. Union of India & Ors., (Full Bench Judgements, 198991 (Vol.II), page 441). He also relies on the recent decision of the Tribunal in Smt. Sheela Vs. The Principal, Lady Hardinge Medical College & Smt. Sucheta Kripalani Hospital, New Delhi & Anr (O.A. 669/1996), decided on 23.5.1996, that this Tribunal has jurisdiction to entertain applications under Section 19 of the Administrative Tribunals Act, against the order passed by the Estate Officer or the Appellate authority under the PPE Act. The only question, therefore, for consideration is one of damages.

8.. The respondents have referred to the Gazette notification issued by the Ministry of Works and Housing dated 15.9.1976, S.O. 3443, by which the Executive Engineer, 'N' Division, CPWD, New Delhi, has been appointed as Estate Officer for the purposes of

PPE Act, who has been empowered to perform the duties imposed on the Estate Officer by or under the said Act. The categories of the public premises and local limits of jurisdiction are prescribed in this S.O.

9. Shri Gupta, learned counsel, has also placed on record a copy of the Rules entitled 'The Allotment of Government Residence (Under the Control of the Central Public Works Department) Rules, 1981' (hereinafter referred to as 'the CPWD Rules'). He submits that these are the relevant rules applicable to the case. The preamble of the rules shows that these are Supplementary Rules, Part VIII S.R. 317 Division xxvi-BBI which have been made in exercise of the powers conferred by the proviso to Article 309 of the Constitution read with Rule 45 of the Fundamental Rules. He submits that these rules are in addition to the rules contained in S.R. 317. He has, in particular, referred to the provisions relating to the allotment of residences and officers - S.R. 317 BB-7, (1) (e) dealing with cancellation of allotment; Period for which Allotment subsists and the Concessional Period for further retention - S.R. 317-BB-9 and the Table, clause (v); and Overstay in Residence after cancellation of Allotment - S.R. 317-BB-21.

10. The learned counsel submits that since the rules have been complied with before the impugned order dated 30.5.1996 has been passed claiming damage rent w.e.f. 1.5.1995 which was also in accordance with the judgement of the Tribunal dated 25.3.1996 in O.A. 612/96, there is no infirmity or illegality in the order. The learned counsel has also referred to the paragraph given below SR 317BB21 of the CPWD Rules, which reads as follows:

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"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 person claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges, equal to the panel licence fee or twice the licence fee the officer was paying, whichever is higher, as may be determined by Government from time to time"

In accordance with these provisions, the Government has issued the O.M. dated 27.8.1987 containing the revised rate of damages from the then rate of Rs.20/- per sq. mt. of living area p.m. to Rs.40/- per sq. mt. p.m. in respect of Type A to Type D (Type I to IV) and from Rs.21/- per sq. mt. of living area to Rs.45/- per sq. mt. p.m. in respect of type E and above type V and above) including hostel accommodation to be recovered from unauthorised occupants of general pool accommodation in Delhi. In addition, garden and other charges as applicable are also to be recovered. The learned counsel submits that in accordance with the decision of the Government, in the notice issued to the applicant dated 24.4.1996, the rate of rent/damage rent at Rs.45/- per sq. mt. of the living area, i.e. 44.29 Sq.

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Mt. (45 X 44.9 = Rs.1993/-) has been clearly indicated. He submits that there is no prejudice caused to the applicant because the liability of the applicant is clearly established and, if at all, it can only be considered that the procedure for recovery has not been strictly followed which in any case cannot be held to be prejudicial to the applicant. He relies on the decision of the Supreme Court in State of Patiala Vs. S.K. Sharma, (JT 1996(3) 722 at 724).

11. Finally, Shri Gupta, has also submitted that many of the arguments advanced by the learned counsel for the applicant are outside the pleadings and should, therefore, be ignored and the application should be dismissed.

12. I have carefully considered the pleadings, record and arguments of the learned counsel for both the parties.

13. The applicant had been allotted Quarter No. 6, Type-II, CPWD Enquiry, Shahjahan Road, New Delhi when he was a Plumber in accordance with the provisions of the CPWD Rules and SR 317 BB-7 (1) (a) (viii). In this rule, it is clearly mentioned that residences attached to enquiry offices of the CPWD shall be deemed to be reserved for the essential staff and will have to be vacated by the occupant on his transfer, etc. as soon as the successor reports for duty. Under sub-clause (a) of Rule 1 of SR 317 BB-7, the Divisional Officer has been empowered to decide for the particular enquiry office, the categories of staff, out of the list of categories given thereunder, for which residences may be earmarked. Sub-clause (viii) of Clause (a) of Rule 1 refers to the 'Plumber or Assistant Plumber' as being among the staff to whom

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such accommodation may be earmarked. The Divisional Officer has been defined in Rule 2(c) of the CPWD Rules, to mean the Executive Engineer (Civil) or (Electrical) of the CPWD who is empowered to decide the categories of staff from the list attached who would be entitled to allotment of accommodation. Admittedly, the applicant has been promoted as Work Assistant in 1990 which post does not fall under the essential staff categories contained in the list under Rule 1(a) above, which permits him to occupy the accommodation. The learned counsel for the applicant has strenuously argued that even as a Work Assistant, the applicant was, in fact, working as a Plumber in the same office and was, therefore, eligible to retain the quarter and there was no reason why he should vacate the quarter. This argument cannot be accepted because the rules clearly provide only for allotting accommodation to the essential staff, including a Plumber or Assistant Plumber and not to a Work Assistant. Therefore, this argument is rejected.

14. The other main argument of the learned counsel for the applicant is that there are no rules applicable to his case for cancellation of the quarter. This argument again is totally misconceived as it is clear from SO 2474 that the CPWD Rules made under the proviso to Article 309 of the Constitution read with Rule 45 of the Fundamental Rules are clearly applicable to this case. Under these rules (317-BB9), since the applicant no longer comes within the essential staff category as provided under the rules, the allotment of the quarter, in question, shall be deemed to be cancelled after the permissible period of

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retention of residence which in this case is two months. Under the CPWD Rules - SR 317-BB7(1)(e) - the allotment of the quarter may be cancelled without providing alternative accommodation if the allotting authority at any stage considers that the services of the allottee Government servant is not essential at the enquiry offices, working sites etc. As has already been mentioned, the applicant no longer continues to be in the essential staff category which entitles him to continue in the aforesaid quarter after he was promoted in 1990.

15. In the Tribunal's order dated 25.3.1996 in O.A. 612/96, the earlier order dated 30.4.1995 passed by the Tribunal in O.A. 717/95, has been noted in which it had been observed that the applicant is liable to pay damage rent beyond 30.4.1995. It was also directed that if the house occupied by the applicant is not vacated, the same should be got vacated by following Sections 4 & 5 of the PPE Act.

16. The respondents have in the notice dated 24.4.1996 which was issued after the decision of the Tribunal, indicated the arrears of rent/damage rent @ Rs.45/- per sq. mt. of the living area, i.e. 44.9 sq. mtr. per month from the first day of May, 1995 upto the date of vacation. I, therefore, find no substance in the arguments advanced by the learned counsel for the applicant that the procedure under Rule 8 of the PPE Rules has not been followed or that the notice issued to him is defective on account of the fact that the rate of damages and the calculation of the damage rent has not been indicated to him. These arguments are also rejected.

17. Under the CPWD Rules, after the allotment of the quarter is cancelled or deemed to be cancelled under

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the rules, which is the position in the present case, after two months of his promotion to a post where he was not eligible to occupy the essential staff quarter, the applicant was liable to pay for use and occupation of the residence, services, furniture, etc. rent equal to the penal licence fee or twice the licence fee the officer was paying, whichever is higher, as may be determined by the Government from time to time.

18. In a recent judgement of the Supreme Court in Union of India & Anr. etc. Vs. M. Bhaskar & Ors. (Civil Appeal No. 5410/91, with connected cases) dated May 6, 1996, the Supreme Court, while dealing with Rule 1-A of the Indian Railway Establishment Code (Volume — I), held as follows:

"Rule 1-A which had come to be made pursuant to the power conferred by the proviso to Article 309 and having stated that the recruitment in the lowest grade will be made in accordance with the instructions laid down by the Railway Board from time to time, the rule itself permitted the Railway Board to issue necessary instructions, and the memorandum of 1987 having been issued by the Railway Board in exercise of this power, we hold that Board have valid authority to issue the memorandum".

(Emphasis added)

In the present case, there is a similar provision in the CPWD Rules that after cancellation of the allotment of the

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quarter in accordance with the rules, the person who remains in occupation is liable to pay damages for use of the premises, services, furniture, etc. at the rate as may be determined by the Government from time to time. The Government has decided to revise the rates of damages by the O.M. dated 27.8.1987. Having regard to the decision of the Supreme Court in M. Bhaskar's case (Supra), therefore, the action of the respondents to assess the liability of the applicant at the rates of damages as determined by the Government in the O.M. dated 27.8.1987, is valid. It is also clear that in the notice issued to the applicant dated 24.4.1996 these rates of damages have been clearly spelt out and the applicant was, therefore, fully aware that for overstaying in the quarter after cancellation he is liable to pay damage rent of Rs.1993/- per month w.e.f. 1.5.1995. This date is in accordance with the order of this Tribunal dated 10.5.1995 in O.A. 717/95. This has also been noted in the order dated 25.3.1996 in OA 612/96. Hence, charging of damage rent from this date, i.e. 1.5.1995 is also in order.

19. By the Gazette notification dated 15.9.1976, the Executive Engineer has been appointed as an Estate Officer and his jurisdiction has also been defined. The contrary submission made by Shri Krishan, learned counsel for the applicant, is, therefore, rejected.

20. Regarding the submissions made by Shri B. Krishan, learned counsel, that the impugned order dated 30.5.1996 has been passed without complying with the principles of natural justice, this is contrary to the

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records. The applicant has been given and has also availed of the opportunity of hearing by filing his reply on 20.5.1996 which has been duly considered by the Estate Officer while passing the impugned order. This order is also a detailed and speaking order taking into account all the points raised by the applicant. Therefore, the plea taken by the applicant is without any basis and is accordingly rejected. This order is also in accordance with the Rules and Proforma provided in the PPE Rules, 1971.

21. Regarding the averments made by the learned counsel for the applicant that no proper action has been taken for declaring the applicant as an unauthorised occupant for eviction under Sections 4 and 5 of the PPE Act, the learned counsel for the respondents has rightly pointed out/that there is no basis for it and that the necessary notices have been issued on 8.6.1995 and 29.8.1995 to which the applicant has also replied. These have also been noted in the earlier decision of the Tribunal in O.A. 612/96 (Supra) and the same issue cannot be reagitated again. Besides, in O.A. 717/95 (Supra) the Tribunal has held that the applicant should have vacated the house by 30th April, 1995 as already directed by the Court. Further, it was observed that the applicant has no vested right to retain the house which belongs to CPWD. The appeals filed by the applicant against the eviction order have since been dismissed by the learned Addl. District Judge, Delhi by the orders dated 18.5.1996 and 30.5.1996.

22. The Tribunal in Smt. Sheela's case (Supra) (O.A. 669/96), has, after considering the Full Bench judgement in Rasila Ram and Ganga Ram's case (Supra), held that 'there is no embargo for the Tribunal in entertaining an application against an order passed by the Estate Officer or the Appellate Authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971'. The Tribunal further held:

"As this Tribunal is a substitute of a High Court it has the jurisdiction to entertain applications under Section 19 against the order passed by the Estate Officer or the Appellate Authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as also to issue appropriate interlocutory orders or directions to meet the ends of justice pending adjudication of the application".

23. In view of the above judgement of the Tribunal in Smt. Sheela's case (supra), the argument of the learned counsel for the respondents that this Tribunal does not have jurisdiction to exercise judicial review of the orders of eviction passed by the Estate Officer or the appellate authority, is rejected. However, in this case, the applicant has failed to show any illegality or infirmity in the orders passed by the appellate authority, which on merits justifies any interference. Therefore, the plea to set aside the impugned orders of the learned Addl. District Judge dated 18.5.1996 and 30.5.1996 dismissing the applicant's case, is also dismissed.

24. I have also considered the other arguments advanced by the learned counsel for the applicant as also the cases in Olga Tellies & Ors. (Supra) and S.C.

Bose Vs. Comptroller and Auditor General of India

(1995 Supp (3) SCC 141). These cases are not relevant in any way and do not support the case of the applicant. The other arguments on behalf of the applicant are also without merit and are rejected.

25. In the result, I find no merit in the application and it is accordingly dismissed. Having regard to the facts and circumstances of the case, including the nature of the earlier applications filed by the applicant before the Tribunal/Courts and the judgements/orders thereon, cost of Rs.1000/- (Rupees one thousand) is awarded in favour of the respondents against the applicant.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J) 12/8/96.

'SRD'