Central Administrative Tribunal, Principal Bench

O.A.No.2069/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 6th day of June, 1997

Shri M.N.Sivasubramanian
s/o Shri M.M.Nallakruppapillai
r/o D-16, Devnagar
New Delhi - 110 005. ... Applicant

(By Shri K.K.Rai with Shri Tarkeshwar Nath, Advocates)

Vs.

1. Union of India
Through Secretary
Urban Areas and Employment
Nirman Bhawan
New Delhi.

2. Assistant Estate Manager
Shastri Bhawan
26, Haddowe Road
Madras - 600 006.

3. Director (Finance)
Planning Commission
Yojna Bhawan
Sansad Marg
New Delhi - 110 001. ... Respondents

(By Shri R.P.Aggarwal, Advocate)

O R D E R

The applicant, presently a Deputy Adivsor in the Planning Commission, was posted out at Madras as Assistant Director in March 1978 when he was allotted quarter No.25, Block No.5, Type 'D', Basant Nagar, Madras. He was transferred out of Madras w.e.f. 31.12.1981 and the allotment of the quarter in his name was cancelled w.e.f. 28.2.1982. He was however permitted to retain the accommodation on medical grounds from 1.3.82 to 30.8.82. He vacated the quarter on 15.2.84. He states that respondent No.2 wrote a letter on 16.5.84 claiming an outstanding amount of Rs.16.55 towards the licence fee due from him which was duly paid by him as per receipt annexed at A-2. He was posted back at Madras in March 1988 when he was allotted another

quarter No.4, Block 22, also in Basant Nagar. In December 1990, however, the applicant was promoted and posted to Delhi as Deputy Advisor, Ministry of Industry. He was allowed to retain the accommodation in Madras for a period of six months on payment of double the normal licence fee and was also informed vide A-3 that any overstay beyond the date of retention allowed will render him liable to pay damage rent at Rs.1030 per month. The applicant was posted to Madras Export Processing Zone in 1991 as Joint Development Commissioner. He applied for retention of the quarter which he was still occupying and in the hope of his request being accepted, he did not vacate the same. Respondent No.2 however passed an eviction order dated 28.1.92 against the applicant on the ground that his new office was located in an ineligible zone. Against this, the applicant filed an OA before the Madras Bench of this Tribunal but the same was dismissed. The applicant says that in the mean time, his office was also included in the eligibiliity list for accommodation from General Pool. The grievance of the applicant now is that though in pursuance of the respondent No.2's demand for an outstanding amount of Rs.16.55 in respect of his first allotment and stay till 1984, the respondents have raised a demand of Rs.4819.25 by way of damages for unauthorised use and occupation of the aforesaid accommodation. Similarly, he is aggrieved that though he had been intimated that the damage rent for overstay in the house allotted to him and cancelled w.e.f. 14.2.91 will ~~now~~ be at the rate of Rs.1030 per month, he is now being asked to pay damage rent at Rs.2006 per month.

2. He now seeks a direction to set aside the OM dated 21.8.96 Annexure A issued by the Planning Commission ordering recovery of Rs.15947 from his salary for the month of August 1996 as well as order at Annexure A-13 and A-14 whereby he has been asked to pay the damage rent of Rs.4819.25 in respect of his first allotment and Rs.11127.81 in respect of the second allotment.

3. The respondents in reply state that in respect of the unauthorised use of the government accommodation from 1.9.82 to 15.9.84, he was asked to pay an amount of Rs.16.55 on the basis of a wrong calculation. In the year 1992 it was found that there was a clarical/arithmatical mistake and the amount due was actually Rs.4819.25. The mistake occurred because the period frfom 1.9.82 to 15.2.84 was calculated as 5 months 15 days instead of one year 5 months and 15 days. In respect of the second demand at the rate of Rs.2006 it was due to the revision in damage rent w.e.f. 1.6.1991. The respondents also state that the proceedings in respect of the recovery of the dues as arrears in land revenue are also under process in the court of the District Judge. As the order of recovery under Section 7 of the PP Act has been passed by the Estate Officer, the time limit to file an appeal is to be reckoned under Section 9 of the same Act. The O.A. was accordingly required to be filed within 12 days. The respondents also point out that in terms of RASILA RAM & ORS. VS. UOI 1989(2) SLJ CAT 346, a Full Bench of this Tribunal decided that the applicant can either file a petition before the District Judge or the Tribunal but proceedings will not run concurrent in the Tribunal when these are going on in the court of the District Judge.

4. I have heard the counsel on both sides. Shri K.K. Rai, ld. counsel for the applicant, urged that in respect of the first demand, the respondents themselves stated that the penal rent standing against the applicant was Rs.16.55 and the same having been paid, the respondents were now estopped from reopening the matter after a gap of eight years. Similarly, they had themselves intimated to the applicant that he was liable to pay a damage rent of Rs.1030 per month which they have arbitrarily revised to Rs.2006 per month. He pointed out that in this case also the applicant had made full and final payment of the damage rent at the stipulated rate of Rs.1030. The ld. counsel also pointed out that the applicant had been posted back to Madras and though the office to which he was transferred was initiallly not considered an eligible office for allotment of accommodation from the General Pool, later on respondents themselves got it included in the list of eligible offices. In this background, it was patently unjustified to subject the applicant to payment of damage rent at all. The stand taken by the respondents was that the arithmetical/clerical mistake in respect of the first demand or the intimation of a certain rate of damage rent could not act as an estoppel. The ld. counsel in this context relied upon the judgement of the Supreme Court in UOI and ANR. VS. WG.COM. R.R. HINGORANI 1987 (2) ATC 939.

5. I have carefully considered the matter. The respondents have shown a calculation sheet regarding the rent due in respect of the first demand which indicates that the calculations were made on the basis of overstay

of five months and not 17 months 15 days. Copy of this calculation sheet has been taken on record. It is clear that a less demand was raised on the basis of a clerical/arithmetical mistake. In UOI VS. WG. COM. Hingorani (Supra), it was held that no relaxation in the Rule is permissible and a government servant having accepted the allotment under the conditions of the rules, cannot claim a relaxation from the rules. It was held that the Rule of Promissory Estoppel cannot operate against the Government in such a situation. In view of this position, the applicant is clearly liable to pay the revised demand of Rs.4819.25 for the period 1.9.1982 to 15.9.1984. In regard to the second demand also, it is the case of the respondents that the intimation that the damage rent would be charged at the rate of Rs.1030 per month was sent in March, 1991. The damage rent rate was however revised w.e.f. 1st June 1991. The ld. counsel for the respondents pointed out that upto 30th May the outstanding has been calculated at the old rate and it is only after June that the revised rate has been applied. It is not in dispute that the applicant was in unauthorised occupation for the period for which damage rent is being claimed by the respondents. His occupation being contrary to the rules, he cannot claim that the penal rent once fixed is not liable to revision at all or that having been in unauthorised occupation from a date prior to the revision of the rates, he cannot be charged the revised rate. His unauthorised occupation, continuing from day to day, is liable to result in any penalty under the rules the respondents are competent to impose. The respondents have not imposed the revised damage rent with retrospective effect but only from the date these were revised. The applicant therefore cannot

allege discrimination. I have already stated above that in the ratio of Hingorani case (Supra), there cannot be a Promissory Estoppel against the Government that having intimated one rate they were barred from revising it. If the rules permit such a revision and the respondents have the power to do so, then from the date new rates are made effective, anyone placed in the position of an unauthorised occupant would be liable to pay the same.

6. In the light of the above discussion, I conclude that the claim of the applicant is untenable and his allegations are misconceived. Therefore, finding no merit in the O.A., the same is dismissed. No order as to costs.

(R.K.AHOOJA)
MEMBER(A)

/AVI/