

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A. ~~APX~~ No. 2165 of 1996

Decided on:

3/10/97

Shri Kashmiri Lal

....Applicant(s)

(By Shri S.K. Sawhney

Advocate)

Versus

U.O.I. & Another

....Respondent(s)

(By Shri R.L. Dhawan

Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? *yes*

2. Whether to be circulated to the other Benches of the Tribunal? *d*

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(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 2165 of 1996

New Delhi this the 3rd day of October, 1997.

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

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Shri Kashmiri Lal
S/o Late Shri Bagga Ram
R/o 11/240, Geeta Colony,
Delhi-110 031.

..Applicant

By Advocate Shri S.K. Sawhney.

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
 2. Divisional Railway Manager,
Northern Railway,
D.R.M. Office,
New Delhi.
 3. Divisional Superintending Engineer
(Estate),
D.R.M. Office,
Northern Railway,
New Delhi.
- ..Respondents

By Advocate Shri R.L. Dhawan.

ORDER

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

This application is regarding the applicant's grievance on the non-payment of D.C.R.G., leave encashment and other dues relating to additional DA and HRA and the release of post retirement Passes. Applicant retired as a Head Clerk under the respondent No.1 on 31.12.1994 and he was in occupation of the Railway Quarter allotted to him while in service. He was served with a show cause notice alleging unauthorised subletting of his quarter as a result of surprise check at the site by the representative of the respondents. The

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respondents subsequently cancelled this allotment with effect from 5.7.93. However, the applicant did not vacate the Railway Quarter and the respondents maintain that he had remained in unauthorised possession of the quarter till 2.5.95 and in the meanwhile, had retired from service on 31.12.1994. on attaining the age of superannuation. The respondents notified, by the impugned order dated 16.5.1995, that due to the cancellation of the Railway quarter and the unauthorised retention of the quarter till 2.5.95 by the applicant, recoveries at the rate of Rs.30/- per sqm. for 63.79 sqm. per month was to be made from 6.7.93 to 30.11.93 and Rs.34/- per sqm. for 63.79 sqm. per month was to be made from 1.12.93 to 2.5.95 and water charges at Rs.25.50 per month, Rs.4/- per month as conservancy charges of the period from 5.7.93 to 2.5.95 are to be made. The applicant has prayed for quashing of this order.

2. The applicant challenges the impugned order on the ground that the recovery of damages on the alleged charge of subletting is arbitrary as he has not been given any opportunity to defend himself against this charge. Secondly, he contends that the order of cancellation of the allotment is arbitrary and the respondents have also violated the provisions of Section 6 Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The applicant has also raised the grounds of non-payment of his leave encashment, additional DA, HRA etc.

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3. The respondents have filed a short reply. They have stated that no reply to the show cause notice was received in time and the allotment was cancelled with effect from 5.7.1993 by their letter dated 3.11.1993, a copy of which has been annexed as R-II. The applicant, having failed to vacate the Railway quarter and remained in unauthorised possession, was accordingly served with the impugned order for recovery of penal rent under the rules. On the disallowance of Railway Passes, the respondents contend that, for every one month of unauthorised retention of Railway quarter, one set of post retirement Passes had to be disallowed in terms of Railway Board Circular dated 4.6.1982, Annexure R-3. They also aver that these Railway Board instructions have the force of law as held by the Supreme Court. In Rajpal Wahi's case, the Apex Court have upheld the right of Railway Administration to withhold the passes for the period of unauthorised occupation of Railway quarter. In the light of these submissions, the respondents maintain that their action for imposing recovery of damage charge of rent for the period of unauthorised occupation of the Railway quarter and withholding of post retirement Passes are justified and in accordance with law.

4. The learned counsel for the applicant argued at great length the apparent inconsistency in the impugned order. He pointed out that on the one side of the impugned letter date is shown as 7.1.1993 and on the left hand side of the letter the date is shown as 8/93. After the applicant received this letter, he sent a representation by his letter dated 27.9.1993 explaining the circumstances of his case in regard to his Railway

quarter, and that his relatives had come for help as his skin was under treatment after having lost vision in the right eye and was under treatment. He denied any subletting of the Railway quarter. The learned counsel contends that the respondents have not considered his representation at all and have unilaterally cancelled the allotment and held him to be in unauthorised occupation. He also maintained that after his retirement on 31.12.1994, he sought permission for retaining Railway quarter for 4 months and after expiry of 4 months, he vacated the premises in May, 1995 and, therefore, he had not retained the accommodation unauthorisedly. The learned counsel pointed out that the impugned letter has not clearly shown when the surprise check was held, there is also inconsistency in the dates of communication of the impugned letters. He alleged that while the respondents have been saying in para 2 of the reply that the surprise check was conducted on 5.7.93, the show cause notice shows was dated as 7.1.1993 and there is sufficient indication that the letter was approved on 7.1.1993 but the office stamp indicates it as 10.9.93. So the counsel contended that on the face of it, the notice seems to have been clearly manipulated and it is fairly clear that the notice was prepared earlier to the alleged date of surprise check. Another point that he has made is that the respondents themselves admit having pasted the notice on his residence on or about 20.9.93 but have cancelled the allotment retrospectively with effect from 5.7.1993 by their letter dated 3.11.1993. In view of this, the learned counsel pointed out that while on the one hand, the respondents have unilaterally cancelled the allotment after so called surprise check on

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5.7.93, they have sent the show cause notice on 7.1.1993. The respondents have also not denied the fact of having received his representation dated 27.9.93 explaining the circumstances in reply to the show cause notice dated August, 1993 received by him in September, 1993. (17)

5. During the hearing, the learned counsel for the respondents was asked to clarify the apparent contradiction in the dates mentioned in the letters. The learned counsel submitted that the surprise check was conducted on 5.7.93 and there is apparently some error in the date and as there was no reply from the applicant, the allotment was cancelled and he was treated as unauthorised occupant. On a careful perusal of the impugned letter No.159-EO/2-7-92 dated ___/8/93, it is seen that the respondents have stated that the show cause notice had been issued to him under their office letter of even No. dated 7.1.1993 and the same had been pasted in the Railway Quarter of the applicant on 22.9.93 but no reply had been received from his side so far. On the face of it, this does not seem to be plausible as it is admitted by the respondents in para 2 of the counter-reply that the surprise check was conducted on 5.7.1993 and the show cause notice was issued to him on 10.9.93 whereas the show cause notice bears the date of 7.1.1993 with the office seal of 10.9.93 and the subsequent letter of 3.11.1993 also indicates the date of show cause notice as 7.1.1993. Even assuming for a moment that there has been a mistake in the date as shown in the impugned show cause notice as 7.1.1993, the fact remains that the applicant was informed of the show cause notice on 22.9.93 on the basis of which, he had made a

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representation on 27.9.1993. The respondents have not given any opportunity to the applicant either by way of consideration of his reply to the show cause notice nor by way of any personal hearing before cancellation of the allotment. They have also not shown any corroborative evidence or record to indicate the fact of subletting by the applicant.

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6. I have heard the learned counsel for the parties and perused the record.

7. I find from the records produced by the learned counsel for the respondents that his representation dated 27.9.1993 is seen on record at page 8/1 of the relevant file No.159-E0-2/7-92. The respondents do not seem to have considered the representation at all nor have they inquired into this matter fully. In the circumstances, it cannot be said that the applicant had been given a fair opportunity before the cancellation of the allotment. In view of this, it would not be appropriate for the respondents to treat the retention of the accommodation as unauthorised. It is an admitted position that the applicant had retired on 31.12.1994 and that he had vacated the said quarter after the permissible period of 4 months and, therefore, the impugned orders cannot be sustained.

8. In the light of this, the O.A. is disposed of with the following directions:-



(i) The respondents are directed to release the DCRG after recovering the normal licence fee for the period from 5.7.93 to 2.5.95 under the rules.

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(ii) The respondents are also directed to release the post retirement Passes under the rules.

(iii) Respondents may release the arrears of additional DA and HRA and leave encashment for 46 days if not already released. For this purpose, the respondents are directed to give details of payments made for information of the applicant within one month from the date of receipt of the order. Liberty is given to the applicant to agitate this matter, if he has not received the payments due to him.

No costs.


(K. MUTHUKUMAR)
MEMBER (A)

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