

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2762 of 1997 decided on 29.6.99

Name of Applicant : Kishori Lal

By Advocate : Shri A.K. Bhardwaj

Versus


Name of respondent/s Union of India through the
Secy., Indian Rly. Conference Association and
another

By Advocate : Shri P.S. Mahendru

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No


(N. Sahu)
Member (Admnv)

29.6.99
28.6.99

(97)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2762 of 1997

New Delhi, this the 29th day of June, 1999

HON'BLE SHRI N. SAHU, MEMBER(A)

Kishori Lal,
S/o Shri Khuman,
R/o Quarter No.5/3,
Railway Colony, Daya Basti,
New Delhi.

-APPLICANT

(By Advocate: Shri A.K.Bhardwaj)

Versus

1. Union of India, through

The Secretary,
Indian Railway Conference Association,
Chelmsford Road, DRM Building,
New Delhi-110001.

2. The Divisional Engineer,
Estate, Northern Railway,
New Delhi.

-RESPONDENTS

(By Advocate: Shri P.S.Mahendru)

O R D E R

By Hon'ble Shri N. Sahu, Member(A)

The prayer in this O.A. is to declare the recoveries as illegal from the pay of the applicant from August, 1994 without any basis of an order and to stop further recoveries. Further recoveries were stayed by the order of this court dated 11.12.97 and the stay order continues.

2. The applicant was allotted Quarter No.126/8 in Kishan Ganj Railway Colony in 1975-76 and on his promotion as Neutral Train Examiner, he became entitled to a type-III quarter in the year 1988. He was sent to Phulera on 4.12.1988 with responsibilities entrusted to him in nearby towns. He worked like this for about one year. The applicant stated that he was under the

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impression that there was no transfer to a particular place as he was made to work at four different places and, therefore, he continued to stay in his old Kishan Ganj quarter. He found recoveries from his pay from August, 1994 onwards. His grievance is that no show-cause notice has been issued to him before effecting the recoveries. There is no order cancelling the allotment of Kishan Ganj Rly. quarter nor did the respondents issue any eviction order to him.

3. He filed O.A. 693/95 but it was conveniently withdrawn. There was a notice dated 1.2.1996 asking him to show-cause why the notice of eviction could not be issued and, thereafter, there was another notice to show-cause why recoveries of penal rents/damages could not be initiated. The applicant stated that these notices were served on him in January, 1997. He therefore impugns the recoveries made before the issuance of the notice dated 1.2.96. He stated that he vacated the quarter in November, 1995 and therefore, a subsequent show-cause notice has no meaning and no relevance. He cites the decision of the Hon'ble High Court of Delhi in the case of Harbhajan Singh vs. Union of India, SLR 1973(1) 305, wherein it is held that when the allotment had not been cancelled, the respondents are not competent to recover any penal rent or damage rent. Accordingly, the present O.A. was filed on 2.7.1997.

4. The respondents stated in the counter that the applicant was transferred on promotion to Phulera and was relieved from New Delhi on 12.12.88. His allotment of railway quarter was cancelled w.e.f. 13.2.89. He became

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an unauthorised occupant thereafter. A notice dated 22.1.90 was served on him for vacation of the railway quarter. He was also informed of the damages/penal rent, recoverable from him. When he became a Neutral Train Examiner w.e.f. 19.12.88, he was only entitled to a type -II quarter but no such quarter was available. Para 4.10 of the counter reads as under:-

"Para 4.10. As already submitted the Applicant was served with notice to vacate the quarter and was also informed about the damages/penal rent recoverable from him vide Annexure-R/1. It is submitted that the Applicant was transferred from Tughlakabad to Phulera on promotion w.e.f. 12.12.88. He was permitted to retain railway quarter at Tughlakabad for 2 months on normal rent. He then requested for retention of quarter for six months on educational grounds when he was asked to produce a school certificate which he failed to produce. The Applicant continued to retain the railway quarter unauthorisedly. Hence, on receipt of Audit Report deduction of penal rent from the Applicant was commenced in 90 instalments. In the circumstances it is denied that the Applicant did not know as to on what account the deductions had been made."

5. The respondents reassert that recovery of penal rent for unauthorised occupation commenced only after a notice to this effect was served on the applicant by the Divisional Engineer(Estate), Northern Railway, New Delhi.

6. I have carefully considered the rival submissions. It is important to note that the applicant never filed a rejoinder, therefore, the factual averments made in the counter has gone unrebutted. There was a Annexure R-1 which is a notice dated 22.1.90 on the

subject of unauthorised occupation of railway quarter no.126/8. This notice shows that the applicant was required to vacate the quarter by 13.2.89, consequent on his transfer. Accordingly he was directed to pay damage charges at the rate of Rs.399.45 per month plus water, conservancy and electrical charges. In the O.A. filed by the applicant, the annexures themselves clearly establish the disconnection of electricity and water facilities and thereafter due notice was given under Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which refers to earlier notice dated 10.1.90. It also conveys to the applicant that normal rent was to be charged only from 13.12.88 to 12.2.89 and Rs.427/- per month from 13.2.89 to 28.2.90 and at the same rate from 1.3.90 till vacation of the quarter. The earlier O.A. also contains annexures relating to the audit note for unauthorised occupation. Page 2 of the rejoinder to O.A.693/95 shows that the applicant was aware of the notice declaring him as unauthorised occupant from 13.2.89, issued on 22.1.90.

7. I have heard the learned counsel for both the parties. I am of the view that there is absolutely no merit in this O.A. There is no need to give any show-cause notice when the rules are specific. The applicant on transfer can retain the accommodation only for two months. Thereafter he can retain the quarter for six months on medical or educational grounds. In spite of opportunities, the applicant did not adduce any proof. He was declared as unauthorised occupant and thereafter the prescribed rate of charge was also communicated to him for occupation after 13.2.89 at the rate of Rs.427/-

per month. Thereafter the respondents approached the Divisional Engineer(Estate) to initiate eviction proceedings. Meanwhile, the applicant was transferred to Tughlakabad on 10.11.91. He did not make any representation before the competent authority for regularisation of the quarter after transfer. Thereafter, there was an audit objection and accordingly the arrears of rent were deducted in 90 instalments.

8. I am satisfied that the applicant has been under notice at every stage. He was aware of the rules. He was aware that he over-stayed. He did not furnish anything to substantiate his claim. The respondents did not act arbitrarily. Unauthorised occupation entails with it automatic charging of rent at higher rates and as published rules are specific and as the applicant was in know of the situation, there was no need to give any other show-cause notice. Even so the above discussion shows that the applicant had been given the relevant notice several times. Notice dated 22.1.90, notice of the Divisional Engineer(Estate) thereafter intimating disconnection, the next notice by the Senior Divisional Engineer(Estate) intimating the rates of damage rent/penal rent and finally the audit note. Collection of arrears of rent is a civil liability. The rent charges and the rules of occupation are well publicised. In my view, there is absolutely no merit in this O.A.

9. That apart, this O.A. can also be dismissed in limine on the grounds of resjudicata because

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O.A. 693/95 was withdrawn only after the pleadings are complete and the applicant did not find any merit in that O.A.

10. In the result, the O.A. is dismissed. No costs.

Narasimha Sahu,
29-6-99
(N. SAHU)
MEMBER(A)

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