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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2219/94

New Delhi, this 17th day of January, 1995.

Shri P.T.Thiruvengadam, Hon'ble Member(A)

Shri Gopesh Chaturvedi
s/o Shri Charan Lal
Qr.No.109/7, Thompson Road
New Delhi

.. Applicant

By Shri Anis Suhrawardy, Advocate

Versus

1. General Manager
Western Railway
Bombay Central, Bombay

2. Sr. Accounts Officer
(FTS Office/DKA)
Western Railway
Shakurbasti, New Delhi .. Respondents

By Shri Romesh Gautam, Advocate

ORDER

The applicant was in possession of Government accommodation at the time of his retirement on 31.7.93. He was allowed to retain the accommodation on normal rent for the first four months beyond the date of retirement and on special licence fee i.e. ~~the~~ double the normal rent for the next four months. The second spell of four months was on account of medical reasons and ended on 31.3.1994. Since he did not vacate ~~that~~ accommodation thereafter, the respondents issued the letter dt. Nil of 4/94 (Annexure A-I of OA 2219/94) to the following effect:

"...You are, therefore, advised that quarter should not be continued under occupation, unauthorisedly otherwise the following action will be taken.

1. DCRG will not be released
2. Damage rent of Rs.30/- per sq.m. of plinth area in respect of Type II quarter will be charged. In addition other charges as are applicable will also be recovered.
3. For every month of unauthorised retention of Rly. quarter i.e. part of month exceeding 10 days in calendar month will be taken as a full month, one set of post retirement passes will be disallowed.

4. Eviction proceedings will be started

It is, therefore in your interest that quarter is not retained unauthorisedly and the same is vacated and advised to the office to take further action for your settlement dues." A

2. The applicant challenged this letter in OA 948/94. He had also prayed for declaration that rules governing release of retiral benefits as violative of Article 14 of the Constitution of India.

3. The OA 948/94 was filed on 9.5.94. The prayer for interim relief that he may be allowed to continue in the accommodation which he was occupying was not granted. However, the OA was finally disposed of on 6.7.94. The operative portion of the order reads as under:

"6. Within three months from the date of receipt of this order, the respondents are directed to pay all the retiral benefits to the applicant and as soon as he receives the amount, the applicant is simultaneously directed to vacate the impugned quarter. This three-month period is given to him to enable him to take rest so that he would be able to make a move. The respondents are also given liberty to recover the rent for the quarter as per extant rules"

4. In compliance with the above order, the respondents released the balance portion of gratuity. For retention of the accommodation beyond 1.4.94, damage rent as per specified rates were charged. One Shri D.C.Jain, Accounts Assistant was deputed to the residence of the applicant on 28.9.94 with a cheque for the balance amount as above. The letter dated 28.9.94 was sent alongwith Shri Jain bringing out the details of calculation. This amount was not acceptable ^{to} ~~by~~ the applicant who has filed this OA (OA 2219/94), challenging the letter of 28.9.94. Further, a prayer has been made that the applicant should be allowed to retain the accommodation till payment is made to him by deducting normal rent only for the entire period. The applicant is still in occupation of the accommodation.

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5. The respondents have not exercised their right to file the reply. The learned counsel for the respondents mentioned that the Rules position being clear, the respondents are not proposing to file reply and that he would be arguing the case.

6. Based on the papers filed and the arguments advanced by both the sides, this OA is being disposed of.

7. During the course of argument the only point pressed was with regard to quantum of rent deduction beyond 1.4.1994. The learned counsel for the applicant argued that retention of accommodation was as per the orders of this Bench in OA 948/94 and hence damage rent can not be charged. He was prepared to concede that rent beyond 1.4.94 may be charged at double the normal rent (at special licence fee rate) and any higher charges would be illegal.

8. The learned counsel for the respondents argued that the orders passed in OA 948/94 has given liberty to the respondents to recover rent as per extant rules. The orders have not mentioned that the recovery should be on ~~maximum~~ normal rent basis or on double normal rent basis. For unauthorised retention beyond the allowable period, damage rents are to be charged as per rules.

9. After hearing both the sides I note that the short point for consideration is the extent of ~~damage~~ rent to be charged beyond 1.4.94. It is not in dispute that from 1.4.94 till atleast the date of orders in OA 948/94 (orders dated 6.7.94) the accommodation was retained on unauthorised basis. Para 8.22 of ^{No. 9} ~~Ministry~~ circular on allotment of quarter and retention thereof issued by the Ministry of Railways (Railway Board's circular No.12/93 dated 19.1.93) mentions that allotment of quarter is to be deemed to have been terminated

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automotically on expiry of the permissible/permited period. Since there can be no dispute about damage rent being charged beyond 1.4.94, the point that may arise is whether by the orders of this Bench dated 6.7.94, retention of the house beyond 6.7.94 can still be treated as unauthorised. It is not necessary to go into this aspect since the issue involved is the rent to be charged. The Railway Ministry has issued letter dated 7.7.89 on the subject of retention of railway quarter on overstyal in residence after cancellation of allotment etc. (Letter No.F(Ex)/I/88 dated 7.7.89 - Annexure to Master Circular No.49). This letter brings out that the expression Market rent being used earlier stands substituted by the expression damages rate. Contents of Supplementary Rule 317-B-22, which read as under, are also relevant:

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

10. In this case, there has been overstyal beyond 1.4.94 and such overstyal irrespective of the reasons for overstyal should attract damage rent.

11. In the circumstances, the contents of the impugned letter dated 28.9.94 can not be held to be illegal. Other prayers which were not pressed already figured as reliefs sought in the DA 948/94.

The DA is, therefore, dismissed. No order as to costs.

P.T. Thiruvengadam

(P.T.Thiruvengadam)
Member (A)

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