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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2238 of 1994

New Delhi this the ^{8th} day of July, 1996

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

Dr. Pranvir Singh
R/o 48 Railway Colony,
Tuglakabad,
New Delhi.

..Applicant

By Advocate Shri K.P. Dohare

Versus

Union of India & Others

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.
 2. Chief Medical Superintendent,
Northern Railway,
Divisional Hospital,
Delhi.
 3. Divisional Superintendent Engineer
(Estate),
Northern Railway,
Delhi Division,
New Delhi.
- ..Respondents

By Advocate Shri R.L. Dhawan

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

This application is directed against the notice dated 28.9.1995 of unauthorised occupation of the Railway quarter No.48 at Tuglakabad Railway Colony by the applicant and also against the orders of the respondents dated 17.10.1992 charging penal rent for the aforesaid accommodation from that date.

2. The facts briefly stated are that the

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applicant while working as Divisional Medical Officer in the Delhi Shahdara Health Unit under the respondents was allotted quarter No.48 Railway Colony, Tuglakabad and he was temporarily transferred to the Delhi Shahdara by the order of the respondents dated 17.6.1993. The applicant retained the said quarter at Tuglakabad during the period of his transfer. The respondents cancelled the allotment of the aforesaid quarter by their letter dated 26.7.1993 against which the applicant filed an application in this Tribunal - O.A. No. 1872 of 1993. The O.A. was disposed of by the Tribunal on 15.4.1994 with the direction to the respondents to decide whether they propose to retain the applicant at Shahdara for the period of normal posting or not and in case they decide to retain him permanently, the applicant should be given an opportunity to represent against it and till his representation is rejected, the applicant is not to be posted at Tuglakabad it would be open to the respondents to take necessary steps to secure vacant possession of the Tuglakabad Railway quarter under the occupation of the applicant in accordance with law and the extant rules. It was also provided that in case it was decided to post the applicant back to Tuglakabad, the applicant shall be allowed undisturbed occupation of the Railway quarter and till the respondents take decision, the status quo of the applicant in regard to the above quarter shall continue. By the order

dated 13.5.1994, the respondents posted the applicant permanently in Shahdara and he was allotted the Railway quarter No.200-B Motia Bagh, Railway Colony, Delhi, which is stated to be the nearest Railway quarter to the place of the posting of the applicant in Shahdara. His representation dated 14.6.1994 was also disposed of by the respondents letter dated 13.9.1994 and the applicant was informed by the impugned order of this fact and he was treated as unauthorised occupation of the quarter from 14.5.1994 and was consequently charged penal rent from that date.

3. The applicant has challenged these impugned orders on several grounds. He alleges that the action of the respondents forcing him to vacate the quarter without providing him an alternative accommodation was illegal and arbitrary as instructions for allotment of residential accommodation for Gazetted Officers as per para 8.7(C) of Master Circular, have been violated. The applicant also alleges that there was a discrimination inasmuch as several Railway Medical Officers posted to Delhi from outside Delhi were allowed to retain their accommodation in the previous place and they were only charged normal rent and the applicant has cited 4 or 5 such cases in this behalf. Another ground taken is that in a similar case - O.A. 1682 of 1991, the Tribunal has held that no penal rent be charged from the petitioner till he was allotted an alternative accommodation

of his entitlement. The applicant also contends that although his representation was dealt with subsequently and was rejected, the respondents have treated him as being unauthorised occupant of the Tuglakabad Railway Colony from 14.5.1994 without waiting for the outcome of the representation and, therefore, charging from him the penal rent from the aforesaid date is clearly illegal and would not be in consonance with the direction of the Tribunal in O.A. 1872 of 1993.

4. The respondents have strongly contested the allegations and have maintained that there had been no violation of the direction of the Tribunal in O.A. 1872 of 1993. The order was passed in the O.A. on 15.4.1994 and the decision to post the applicant permanently was taken within a period of 2 months and the applicant's representation dated 14.6.1994 was also disposed of in September, 1994. It is only thereafter, that the impugned orders were issued. They maintain that the relief claimed by the applicant to allow him to retain the Railway quarter has already been adjudicated in the aforesaid O.A. and, therefore, he cannot claim same relief of retaining of the accommodation by filing a fresh O.A. The respondents have also contended that the applicant's prayer that he should be allowed retention of the accommodation till an alternative accommodation of his Type-V/Type-IV Special quarter be given at the place of duty at Shahdara is not tenable

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particularly in the light of the fact that no Type V accommodation was available in a medical pool in Motia Bagh Railway Colony and no quarter is available at Delhi Shahdara. Besides, he was also occupying a non pool railway quarter at Tughlakabad which could not be permitted for long. They also contend that it is in the administrative interest of the department that a Medical Officer is allotted and stays in a quarter close to his place of duty particularly to facilitate emergency calls of the Health Unit; besides the railway quarter allotted to him at Delhi is hardly 7 Kms. from his place of duty. The applicant's claim for retention of the quarter at Tuglakabad which is quite far from his place of duty will not be in public interest.

5. The learned counsel for the applicant relies on the decision in B.B. Aggarwal's case in O.A. 1682 of 1991. In this case, the facts were somewhat different. In that case it was held that the applicant should not be charged penal rent till such time, he was allotted a non pooled accommodation in the Railway Health Unit at Shakur Basti. As a non pooled accommodation which was available at Shakur Basti was not vacant, the applicant was granted a lower category of accommodation. In the instant case, however, the respondents have clearly averred that no Type V accommodation in the medical pool is available at Motia Bagh Railway Colony and no Railway quarter is available at Delhi Shahdara. Besides, in B.B. Aggarwal's case, the applicant was made clear that

no sooner than the non-pool accommodation at the Railway Health Unit at Shakur Basti was available, the applicant had to shift to the same. These facts are not parimateria with the present case. The curcial point here is that it is not as though ~~the~~ the quarter which is appropriate to his status is available and has not been granted at the new place. In the absence of any Type V accommodation in the medical pool, the applicant has been granted an alternate accommodation. This can be no ground for retaining accommodation at the old station. The said accommodation at the new station was allotted to him on 26.7.1993 itself and he was also permanently posted by the respondents by their letter dated 13.5.1994. His representation was also rejected by the respondents vide their letter dated 13.9.1994 and he was clearly told about the unauthorised occupation. In the circumstances, the action of the respondents in treating the continued occupation of the quarter at Tuglakabad as unauthorised or levying the penal rent cannot be considered illegal. On the contention of the applicant in regard to the respondents ~~not~~ not following the instructions contained in the Master Circular No.8.7 dated 8.9.1993 on allotment of quarter, I find that this contention is not tenable as it is clarified by the respondents that the two stations, namely, Tuglakabad and Shahdara do not fall within the same electrified suburban area and the conditions thereunder are also not fulfilled in the case of the applicant.

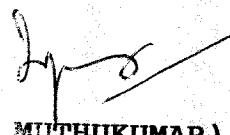
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5. The only question to be considered is the actual date from which the liability for penal rent would really arise. By the orders of the Tribunal in O.A. 1872 of 1993, his representation was finally disposed of by the orders of the respondents dated 13.9.1994 and it is, therefore, appropriate that any liability for penal rent would arise therefore, i.e. to say from 14.9.1994 till the date of actual vacation of the premises.

7. In the light of the foregoing, this application is dismissed but it is, however, provided that the liability for penal rent should be reckoned only from 14.9.1994 till the date of actual vacation of the quarter.

7. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

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