

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

22

O.A./T.A. NO. 353 of /19<sup>94</sup> Decided on : 22.12.95

C.S.I.R.

... Applicant(s)

( By Shri A. Sikri Advocate )

versus

Shri K.L. Mago

... Respondent(s)

( By Shri K.B.S. Rajan Advocate )

CORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not ? Yes
2. Whether to be circulated to other Benches of the Tribunal ? Yes

(DR. A. VEDAVALLI)  
Member (J)

(S.R. ADIGE)  
Member (A)

26

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.353/94

New Delhi : 22<sup>nd</sup> December, 1995.

HON'BLE MR. S.R.ADIGE, MEMBER (A)

HON'BLE DR. A .VEDAVALLI, MEMBER (J)

1. Council of Scientific & Industrial Research  
( A Society registered under the Societies  
Registration Act)

Anusandhan Bhawan,  
Rafi Marg,  
New Delhi - 110 001.

2. National Physical Laboratory,  
Hillside Road,  
New Delhi - 110 012. ....Applicants.

By Advocate Shri A.Sikri with Shri V.K.Rao.

Versus

Shri K.L.Mago,  
Ex- Section Officer,  
National Physical Laboratory,  
r/o 8-B/1, NPL Colony,  
Hillside Road,  
New Delhi - 110 012.

.....Respondents.

By Advocate Shri KBS RAJAN.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

In this application, the CSIR( a  
Society registered under the Societies Registration  
Act) have sought a direction that the retention of  
staff quarter No.8-B/1, NPL Colony, Hillside Road,  
New Delhi by Respondent Shri K.L.Mago , Ex. Section  
Officer, NPL is illegal and unauthorised and  
he should therefore handover possession of the same  
to the applicants, and till he does so he would be  
liable to pay license fee/ penal rent as detailed  
in annexed statement ( Annexure -A2) and @ Rs.2500/-  
p.m. till he vacates the staff quarter together with  
electricity and water charges.

2. The applicant's case is that the said

24

quarter is one amongst the staff quarter in New Delhi for their employees which are allotted to them during their service time in accordance with the Rules on the subject (Annexure-A1). The respondent was employed in the NPL and was allotted the said quarter <sup>until his retirement on superannuation on 31.12.82</sup>. While in service he was governed by the FR's and SR's, which have been made applicable to all employees in CSIR. The applicants state that as per allotment Rules, an employee is entitled to retain the staff quarter for two months after retirement on normal license fee @ Rs.37.75 p.m.; for further six months on medical ground at double the normal license fee i.e. Rs.75.75 p.m.; for further two months on market license fee @ Rs.178/- p.m., and thereafter at 3 times the market license fee i.e. Rs.534/- p.m. They state that by letter dated 20.9.83, with effect from that date the applicants introduced penal market license fee @ Rs.2000/- p.m. They allege that the respondent has been continuing to occupy the quarter illegally since 1.12.82 and is, therefore, liable to pay license fee @ Rs.534/- p.m. till 20.9.83 and license fee @ Rs. 2000/- p.m. thereafter 22.7.92 and @ Rs.2500/- p.m. w.e.f. 23.7.92 till date till ✓, in addition to electricity and water charges. They state that despite several notices the respondent has failed to vacate the quarter, nor paid license fee/ market rent.

3. The respondent has contested the O.A. and claims that the Tribunal has no jurisdiction in the matter. It is contended that a petition by the applicants under Section 14(1) and 22 of the Delhi Rent Control Act is pending before the Addl. Rent Controller since the last 9 years, which has not been pursued by the applicants and now they have filed

A

28

this O.A. when that petition is still pending.

It is also contended that Respondent's <sup>son</sup> Shri V.K. Mago is employed with the applicant since 27.3.73 and became entitled to allotment of the same type of quarter, and as he is living with Respondent (his father) he is entitled to be allotted that quarter, but his claims have been superseded by his junior. It is also contended that rent/license fee is being deducted from Respondent's son Shri V.K. Mago as he is not being paid HRA and the electricity charges are also being paid directly to the concerned authorities.

4. The applicants in their rejoinder have denied the contents of the reply. They state that the Tribunal has full jurisdiction in this matter under sec. 3(q) AT Act as has been held in the O.A. No. 2415/89 CSIR Vs. R.B. Lal decided on 23.2.92 and the petition filed before the Addl. Rent Controller has since been withdrawn. They state that Respondent is not a tenant as claimed by him but a licensee and had been allotted the said quarter only for the duration of his service with the applicant. They, however, admit that license fee is being recovered from the respondent's son, but state that this is being rightly done for the reason that the respondent and his son are unauthorisedly occupying the quarter.

5. We have heard Shri V.K. Rao for the applicant and Shri K.B.S. Rajan for the respondent. Shri K.B.S. Rajan has also made written submissions, which are placed on record.

1

29

6. We note that the Respondent Shri K.L.Mago retired on superannuation on 31.1.82. He was permitted by the applicants to retain the premises in question, which was a Type B quarter, at the time of allotment, since upgraded to Type 'C', until 30.11.82 under rules, and was to have been vacated by the respondent on 1.12.82, but vacant possession of the premises has not been handed over to the applicants till to-day leading the applicants to file this O.A.

7. In this connection, during the course of hearing, we had inquired from the applicants' counsel, the circumstances under which they had stated in paragraph 7 of ~~this~~ rejoinder that they were rightly recovering license fee from the respondents' son, who was said to be residing with the respondents in the premises in question. In reply the applicants have filed an additional affidavit on 24.11.95 stating that no incense fee was being charged from the respondent's son at any point of time. On the other hand the respondent has also filed an affidavit in reply on 24.11.95 stating that license fee amounting to Rs.1204.74 p. was deposited through three cheques in 1982-83 which were duly received by the applicants. In any event no document has been produced before us regularising the allotment of this quarter in the name of the respondent's son.

8. At the outset, respondents' counsel Shri Rajan has questioned the maintainability of this O.A. He has contended that the CAT has no jurisdiction to entertain this O.A. as the CSIR does not fit into

^

30

any of the provisions of Section 19, 20, 21 and 23 of CAT Act to move an application before the Tribunal as it cannot be a person aggrieved; nor is there any order against it by the employee, much less has it exhausted the remedies available and the A.T. Act does not afford an opportunity to the employer (CSIR) to sue the employee. However, the point of jurisdiction has been conclusively settled in the Tribunal's judgment dated 23.2.92 in O.A. No.2415/89 CSIR Vs. R.B. Lal which was an identical case of a CSIR employee retaining the accommodation allotted to him beyond the authorised period. That judgment which fully covers the present case, itself referred to earlier judgments wherein it had been categorically held that the cause of action relating to the reliefs prayed for fell within the definition of service matters and the CAT therefore had full jurisdiction over such matters. We have also been informed by the applicants' counsel Shri Sikri that a SLP filed against that judgment dated 23.2.92, was dismissed in *limine* by the Hon'ble Supreme Court and in the absence of any *evidence* to the contrary furnished by respondents' counsel, we have no reason to doubt the accuracy of this statement. Furthermore, we note that in S. Tiwari Vs. U.O.I AIR 1975 SC 1329 the Hon'ble Supreme Court has held that the CSIR is not a State, nor a statutory body. That being so, the Public Premises (EGD) Act would not be applicable in respect of accommodation owned by it, and in any event, no Estates Officer has been appointed ~~there~~.

For the Bench

A

31

Furthermore, the CSIR has been notified under Section 14(2) A.T. Act. Under the circumstances the maintainability of this O.A. before the Tribunal on the point of jurisdiction is no longer open to doubt or challenge.

9. Shri Rajan has also assailed the O.A. on the grounds of limitation. It has been contended that the applicants had initially filed a petition with the Rent Controller u/s 14(1) and 22 Delhi Rent Control Act, and after about 9 years, during the pendency of that petition, this O.A. has been filed. In this connection we note from the applicants' rejoinder dated 9.9.94 that the said petition before the Rent Controller was withdrawn while this O.A. was filed in July, 1993. In view of the fact that the petition before the Rent Controller was withdrawn, it cannot be said that the applicants are seeking the same remedy in two different forms, and as the applicants were pursuing their legally enforceable right to recover possession of their premises through the alternative legal remedy of a petition under the Rent Control Act and filed this O.A. during the pendency of that petition, it cannot also be said in the facts and circumstances of the present case that this petition is hit by limitation u/s 21 A.T. Act. We may mention, here that this O.A. is also not hit by limitation, as the continued occupation of the premises in question by the respondent gives the applicants a continuing cause of action. Hence this ground also fails.

✓

32

10. The next ground taken is that the respondent's son who is living with the respondent in the premises in question is employed with the applicant organisation since 27.3.73 <sup>and is</sup> entitled to regularisation of the quarter in question; has not been claiming H.R.A., and in fact license fee for this quarter has been deducted from the monthly salary of the respondent's son. It has been contended that despite several representations, the applicants <sup>has</sup> not regularised the quarter in the name of the respondent's son in accordance with the relevant instructions which permit regularisation of quarters in the names of wards of retiring/deceased employees, subject to the fulfilling <sup>of</sup> the prescribed conditions. It is also contended that while such regularisation has been permitted in the case of similarly situated employees, the respondent's son has been subjected to hostile discrimination in as much as the premises in question has not been regularised in his name.

11. We note that there is only one respondent before us namely Shri K.L. Mago retired Section Officer, N.P.L. His son has not been made a party by the applicants in this O.A. and the respondent Shri K.L. Mago also does not appear to have made a prayer at any stage for impleadment of his son. Under the circumstances, the respondent cannot plead hostile discrimination, or ~~seek~~ <sup>seek</sup> any benefit on behalf of a person who

✓



33

has not been made a party to the proceedings.  
Hence this ground also fails.

12. From the above analysis, it is abundantly clear that the respondent has been in unauthorised occupation of the premises in question since 1.12.82. None of the grounds taken by the respondent are tenable, and the rulings relied upon by the respondent including 1990 (3) SLR 649; 1990 (13) ATC 747; ICAR Vs. R.N. Gupta bearing O.A. No. 1917 of 1992; as well as U.N. Swamy Vs. UOI & Ors. (citation not given) and UOI Vs. R.J.P. Verma reported in Swamy's case Law Digest 1993 are not of any help to him.

13. In the result this application is allowed and the respondent is directed to hand over vacant possession of the premises in question within one month from the date of receipt of a copy of this judgment. In the event <sup>that</sup> the respondent defaults it will be open to the applicants to get the possession of the premises from the same agency after evicting the respondent in the same manner as is available to the Director of Estates in respect of Central Govt. pool accommodation.

M

3A

14. In so far as the recovery of penal license fee and other connected charges from the Respondent is concerned, we note that in O.A. No. 2415/89 CSIR Vs. R.B. Lal, which, as stated above, was an identical case of a CSIR employee retaining accommodation beyond the authorised period the Tribunal in its judgment dated 23.2.92 had directed the respondent<sup>^</sup> (Shri R.B. Lal) to pay to the applicants, penal license fee of Rs.2500/- p.m. w.e.f. 1.7.88 till the date of actual handing over possession to the applicants and Shri Sikri applicants' counsel has informed us that the SLP against that judgment was dismissed in limine by the Hon'ble Supreme Court which has not been refuted by the Respondents' counsel Shri Rajan. Hence we are fortified by that judgment dated 23.2.92, and in the present case also we direct that the penal license fee and connected charges due against the respondent be recovered from him as per rules, for which purpose, the applicants may fix suitable instalments, so that the recoveries are made in a phased manner.

15. In the event that the respondent defaults, it would be open to the applicants to effect recoveries in the same manner as the Director of Estates effects recoveries in respect of penal license fee dues relating to Central Govt. pool accommodation.

16. This O.A. is disposed of in terms of the contents of paragraph 13, 14 and 15 above. No costs.

*A. Veda Valli*  
(DR. A. VEDAVALLI)  
Member (J)

*S. R. Adige*  
(S.R. ADIGE)  
Member (A)

/GK/