

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.226 of 2000

New Delhi, this the 15th day of March, 2001

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Banmali Das S/o late Shri N.L.Das
R/o II/254, Govt. of India Press Qrs.
Ring Road, Mayapuri, New Delhi
Formerly working as Compositor in
the Govt. of India Press
Minto Road, New Delhi

(12)
-APPLICANT

(By Advocate: Shri J.K.Bali)

Versus

1. Union of India through
The Secretary
Ministry of Urban Affairs & Employment
Nirman Bhawan, New Delhi
2. The Director
Directorate of Printing
B Wing, Nirman Bhawan,
New Delhi
3. The Manager
Govt. of India Press
Minto Road, New Delhi
4. The Manager
Govt. of India Press
Ring Road, New Delhi
5. The Asstt. Manager(Admn)
Govt. of India Press
Minto Road, New Delhi

-RESPONDENTS

(By Advocate: Shri Madhav Panikar)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant in this case has impugned order passed by respondents whereby the respondents have advised the applicant to deposit a sum of Rs.50, 000/- on account of damage charges for the period from 1.6.96 to 30.11.1997 in respect of Quarter No.E-19, Rouse Avenue allotted to him and he was further advised that if the amount is not deposited, action will be taken as per the rules.

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2. The facts in brief are that the applicant was an employee of the respondents and was working as Compositor in the Government of India Press, Minto Road, New Delhi. He retired on 31.1.1995. His son Sanjay Kumar got a job with the respondents in the Fore-Noon of January 31, 1995 itself. Thus the applicant claims that his son had become eligible for allotment of quarter in his possession, but instead of allotting the quarter, the respondents sought to evict the applicant from quarter, so the applicant as well as the son were compelled to file an OA which came up before the Tribunal as OA 2295/95 and was decided on 16.5.1996 wherein directions were given to respondent No.4 that they shall pass an appropriate order of allotment of quarter in favour of Sanjay Kumar Das within a period of three months from the date of the order and respondent No.4 shall see to it that after the passing of the order of allotment, the possession of the same is handed over to applicant No.2 within the aforesaid period and then the applicant shall have to vacate the quarter presently occupied by him. The applicants have to pay arrears of dues that may have been demanded or that may have already been demanded, shall be paid by the applicants and in case there was any dispute with regard to the arrears that may be demanded by the respondents. It was left open to the applicants to raise the dispute with regard to the dues in accordance with law.

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3. The applicant further claims that after the passing of the order he had deposited a sum of Rs.22,000/- for the period from 1.10.1995 to 31.5.1996 at the rate of Rs.2,750/- per month. Further the applicant submits that he was not liable to pay damage charges for overstay in the quarter beyond 30.9.95 because of the refusal of the respondents to allot the quarter in favour of his son. The applicant's son also represented for allotment of a Type-II quarter in OA 2295/95 but the department instead of allotting the quarter within a period of 3 months, allotted the quarter on 18.11.1997 and the possession was taken by the applicant's son on the same day but the applicant could vacate his quarter on 12.2.1998.

4. The applicant further submits that after his retirement on 31.1.1995 he was allowed to stay for a period of 4 months on payment of normal rent and for a further period of 4 months on payment of double the licence fee. His overstay commenced with effect from 1.10.1995 and for his overstay he is liable to pay rent at the rate of Rs.117/- per month upto 18.11.1997 since it was the respondent who took time to allot the quarter to his son and deliver the possession to him.

5. The applicant also agrees that he is liable to pay rent for the period 18.11.1997 (when his son was allotted and given possession of Type-II quarter) to 12.2.1998 when he vacated the quarter and claims that his total dues works out to be Rs.3258.70/-. As against this he had already deposited Rs.22,000/- as such he is entitled to the refund of the overstay amount amounting

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to Rs.18,751/-, but instead of refunding the amount, the respondents have demanded Rs.50,000/- for the period 1.6.96 to 30.11.1997 which is in addition to the amount of Rs.20,000/-. Accordingly, it is prayed that the letter Annexure A-2 be quashed whereby the respondents have demanded a sum of Rs.50,000/- as damages and it is further prayed that the respondents be directed that the applicant is entitled to pay normal rent for the period of overstay w.e.f. 1.10.1995 to 18.11.1997.

6. Respondents are contesting the OA. They admit that the applicant was employed with the respondents and had retired on 31.1.1995. It is also admitted that the applicant had applied for regularisation of quarter in the name of his son and for this purpose an OA was filed which was disposed of with a direction to the respondents that respondent No.4, i.e., Govt. of India Press, Ring Road, New Delhi will allot an entitled quarter to the son of the applicant and till then, the applicant shall not be evicted from the quarter. However, the respondents plead that no clear instruction was made regarding the damages which was increasing day-by-day towards the applicant for retention of Type-III quarter and the applicant had only deposited Rs.22,000/- as damages on 11.6.1996 which was the charges assessed for the period 1.10.1995 to 31.5.1996 for unauthorised occupation of the said quarter.

7. I have heard the learned counsel for the parties and have gone through the record.

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8. The learned counsel for the respondents submitted that as per the latest judgment of Apex Court in Rasila Ram Vs. U.O.I. and others, this court is not left with the jurisdiction to decide the matter and the case should be right away rejected. However, in reply to this counsel for the applicant submitted that the decision of the Apex Court in Rasila Ram's case (Supra) does not apply to the facts of the present case since no order has been passed by a competent Estate Officer under the P.P. Act for assessing the damages on account of unauthorised occupation of the quarter.

9. The counsel for the applicant further submitted that in the earlier OA the Tribunal had held that the applicant's son was entitled to allotment of quarter and the applicants were not to be evicted till a quarter is allotted to the son of the applicant as per his entitlement, so his stay in the quarter was a regular one and was protected under the orders of the Court, as such no damages could have been charged from him.

10. I have gone through the judgment reported in SLJ page 249 entitled as U.O.I. Vs. Rasila Ram and Others wherein it has been held that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was enacted for eviction of unauthorised occupants from public premises. To attract the said provisions, it must be held that the premises was a public premises, as defined under the said 'Act' and the occupation must be held as unauthorised occupation, as defined under the said Act. Once a Government servant is held to be in occupation of a public premises as an unauthorised

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occupant within the meaning of Eviction Act and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act and by no stretch of imagination the expression "any other matter" in section 3(q)(v) of the Administrative Tribunal Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. So a perusal of the judgment shows that the Hon'ble Apex Court had in a way restrained the Tribunal to go into the question of legality of the orders passed by the competent authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In this background we have to see whether the impugned order Annexure A-2 has been passed by the competent authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or not. If it can be said to be an order passed under the said Act, then of course I will restrain myself to go into the legality of the order. But a perusal of the order Annexure A-2 shows that the applicant had been requested to deposit a sum of Rs.50,000/-. He was further advised to deposit the said amount within 7 days failing which action will be taken to recover the amount dues as per rules meaning thereby that the order Annexure A-2 has not been passed by the competent authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Thus I feel that there is no embargo for this Tribunal to examine the impugned order Annexure A-2 in the light of the grounds taken up by the applicant in his OA. As it has already been held in the earlier OA filed by the applicant and his son whereby the Tribunal had held

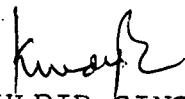
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that the applicant's son was entitled to be allotted a quarter commensurate to his entitlement and the applicant was supposed to vacate the quarter immediately on the possession of a quarter handed over to the applicant's son. That means that the applicant was allowed to stay in the quarter in question and was protected by judicial order passed by the Tribunal, so on the basis of this the applicant could not have been advised to pay Rs.50,000/- as damages. Even otherwise letter Annexure A-2 does not give a basis on which a flat damages of Rs.50,000/- has been demanded as it does not disclose the rate and on what rate rent/damages have been charged. So in view of these peculiar circumstances, letter Annexure A-2 cannot be sustained and the same has to be quashed.

11. Accordingly, I hereby quash and set aside letter Annexure A-2. However, it will be open to the department to claim rent/licence fee and/or damages if any in accordance with law. For this purpose first they will calculate the rent/licence fee/damages after giving a notice to the applicant and if any amount is found due that may be charged from the applicant and for that purpose the applicant shall also be given the adjustment of the amount already deposited by him with the department. This shall be done within a period of 4 months from the date of receipt of a copy of this order.

12. OA stands disposed of with the above directions. No costs.


(KULDIP SINGH)
MEMBER (J)

Rakesh