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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1687/89

New Delhi, 30th September, 1994

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

G. C. Saxena,
R/O qr. No. C-386,
Sector-22, NOIDA,
Distt. Ghaziabad
Employed as Assistant
Supdt. of Post Offices (C),
Delhi North Division,
Delhi - 110054.

... Applicant

By Advocate Shri Pradeep Kumar with Shri Sant Lal

Versus

1. The Chief Postmaster General,
Delhi Circle, New Delhi-1.
2. The Estate Officer,
O/O the CPNG Delhi Circle,
Mahan Singh Place,
New Delhi - 110001.

... Respondents

By Advocate Shri M. K. Gupta

O R D E R

In this application Shri G. C. Saxena, Asstt. Supdt. of Post Offices, North Division, Delhi, has impugned the letters dated 23.1.1989 (Annex. A-1), 26.5.1989 (Annex. A-2), notice under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 dated 26.5.1989 (Annex. A-3), and letter dated 8.8.1989 (Annex. A-4) charging penal rent/damages from the applicant on the ground of subletting of the quarter allotted to him.

2. Shortly stated, the applicant was allotted a quarter attached to the post of Sub-Postmaster, Civil Lines, Delhi from the Postal Department on 10.9.1984 and started living there w.e.f. 13.9.1984. The allotment of this quarter was cancelled on 16.5.1986

on the ground of alleged subletting. Eviction proceedings were taken up against the applicant under the provisions of P.P. (EOUO) Act, 1971 and he vacated the premises on 10.11.1986. By order dated 23.10.1986, the applicant was called upon to pay penal rent of Rs.50,841.68 for the period 13.9.1984 to 31.10.1986. The applicant challenged this order in O.A. No. 1181/86. By judgment dated 11.9.1987 the impugned orders in so far as they related to the imposition and recovery of penal rent/damages were quashed on the ground that the quantum of penal rent payable by the applicant had not been specified; the order regarding the imposition and recovery of penal rent was not passed by the competent authority; and no show cause was given to the applicant. While quashing the impugned orders, it was clearly stated that this would not preclude the respondents from initiating a fresh proceedings for imposition and recovery of penal rent/damages after issue of show cause notice to the applicant in accordance with law and rules on the subject.

3. Accordingly, a fresh notice was issued to the applicant vide letter dated 23.1.1989 from the Estate Officer, calling upon him to show cause why penal rent should not be recovered from him for subletting of the quarter allotted to him. The applicant appears to have submitted his reply on 21.2.1989 which was rejected vide Estate Officer's letter dated 26.5.89 (Annex. A-2). Simultaneously, by a notice under Section 7 (3) of the P.P. (EOUO) Act, 1971 the applicant was called upon to pay penal rent/damages amounting to Rs.55,471/- for the period 13.9.1984 to

10.11.1986. It appears that the applicant submitted his show cause to the notice dated 26.5.1989, which was considered by the Estate Officer and was rejected vide his letter dated 8.8.1989. In that letter, it was reiterated that the applicant would have to pay Rs.55,471/- as penal rent/damages for the period 13.9.1984 to 10.11.1986 @ Rs.2,139/- per month, and that this payment would have to be made by 25.8.1989, failing which interest under Section 7 (2) (a) of the P.P. (EOUO) Act would be chargeable @ Rs.11.30 per annum on the above sum w.e.f. 25.8.1989 till final payment. It is against these orders that the applicant has approached this Tribunal.

4. The first ground taken, is that the competent authorities cancelled their earlier orders in so far as they related to imposition and recovery of penal rent without reserving their right for initiating fresh proceedings, lacks merit because the Tribunal's judgment dated 11.9.1987 specifically stated that it did not preclude the respondents from initiating fresh proceedings for imposition/recovery of penal rent/damages in accordance with law.

5. The second ground that the Estate Officer acted as both prosecutor and judge, also lacks merit because he acted in the manner that the law provides, ^{in the background of the Tribunal's judgement dated 11.9.87.}

6. The third ground taken that the allotment was cancelled with immediate effect from 16.5.1986, but the penal rent has been ordered to be paid with retrospective effect from the date of allotment, i.e., 13.9.1984, also lacks merit because the allotment was

cancelled immediately it came to the light that the applicant had sublet the quarter, but he was treated as an authorised occupant and made liable to pay penal rent/damages for violating the terms of the allotment, from the date of allotment itself. Moreover, from the letter dated 26.5.1989 at Annex.-2 it is clear that during inquiry in which the applicant was associated, it had been established that he had sublet the premises from September, 1984 onwards.

7. Another ground taken is that opportunity to show cause was denied. The letter dated 26.5.1989 (Ann. A-2) clearly states that the applicant did show cause on 21.2.1989 (Annex. A-11) and his objections were considered and rejected. The direction to the respondents in the judgment dated 11.9.1987 in O.A. No. 1181/86 was that they may initiate a fresh proceedings for imposition/recovery of penal rent/damages after issue of show cause notice to the applicant in accordance with law and rules on the subject. This mandate was, therefore, complied with and by notice dated 26.5.1989 under Section 7(3) of the P.P. (EOUO) Act, the applicant was called upon to pay Rs.55,721.25 as penal rent/damages for the period 13.9.1984 to 10.11.1986. He cannot now legitimately argue that his further letter dated 9.6.1989 seeking detailed particulars of the above sum was not considered, because as correctly mentioned in the letter dated 26.5.1989 the liability to pay penal rent/damages is contained in the rules themselves and the quantum thereof is also defined, which every Government servant is expected to know. Furthermore, to establish his own bonafides, the

applicant could have made at least part payment towards this amount, but he failed to do that either. Hence, this ground fails.

8. The next ground is that notice dated 26.5.1989 was issued under Section 7(1) P.P. (EUO) Act, whereas it should have been correctly issued under Sec. 7(2). It is well settled that it is the substance and not the form that is of relevance, and the fact that the notice was issued under Section 7(1) and not under Section 7(2) is not a fatal infirmity.

9. The next ground taken that in some other cases of alleged subletting no such damages were realised, also lacks merit. It is well established that Art. 14 and 16 of the Constitution cannot be invoked, for violation of laws and rules, on the ground that someone else has not been penalised for similar infraction.

10. The next ground taken that the applicant has been visited with more than one punishment, is also without merit. The rules prescribing realisation of penal rent, damages for subletting arise out of infringement of the terms and conditions of the allotment, and are independent of any other departmental action that might be taken against the employee for misconduct unbecoming of a Government servant.

11. The next ground taken that damages are leviable only when the occupation is retained after the period allowed by the Estate Officer for vacation on finalisation of eviction proceedings, also lacks force

as cancellation of allotment and liability to pay penal rent/damages is specifically provided for in the rules in cases where subletting is established.

12. Although it was not taken in the pleadings, and it is, therefore, open to me to reject the same summarily, I would advert to the ground taken by Shri Sant Lal for the applicant during hearing, that the order dated 18.7.1989 issued by the PMG, Delhi Circle nominating Shri I. A. Gulati, Asstt.PMG (Bldg) as Estate Officer was not notified in the official gazettee and for that reason the letter dated 8.8.1989 (Annex. A-4) signed by him as the Estate Officer is null and void. Section 3 of the P.F. (EUO) Act states that the Central Government "may", by notification in the official gazettee appoint such persons being gazetted officers of Government or officers of equivalent rank of the statutory authority, as it thinks fit, to be estate officers for the purpose of the Act. The respondents have not shown whether the order dated 18.7.1989 was notified in the official gazette or not, but the wordkig of the order itself states that it was notified for the information of all concerned. The purpose of issuing a notification in the official gazette is to bring it to the notice of all concerned for their information, and this appears to have been done by the respondents as stated in the body of the order itself. Furthermore, the applicant has failed to show how any prejudice was caused to him even if the order dated 18.7.1989 was not notified in the official gazette. Under the circumstances, this ground also lacks merit.

13. In the result, I see no reason to interfere with the impugned order. This application is dismissed and the stay orders passed earlier are vacated. No costs.

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(S. R. Adige)
Member (A)

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