

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1181 / 1986.
T.A. No.

DATE OF DECISION 11.9.1987.

Shri G.C. Saxena

Petitioner Applicant.

Shri Sant Lal

Applicant.
Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondents

Mrs. Raj Kumari Chopra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Kaushal Kumar, Member (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether to be circulated to other Benches? No

R. Kumar
(KAUSHAL KUMAR)
MEMBER
11.9.1987.

8

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regd. No. O.A. 1181/1986.

DATE OF DECISION: 11.9.1987.

Shri G.C. Saxena Applicant.

V/s.

Union of India & Others Respondents.

CORAM: Hon'ble Mr. Kaushal Kumar, Member.

For the applicant Shri Sant Lal, Counsel.

For the respondents Smt. Raj Kumari Chopra, Counsel.

(Judgment delivered by Hon'ble
Mr. Kaushal Kumar, Member (A).)

JUDGMENT

The applicant, who is an Assistant Supdt. Post Offices, South East Division, New Delhi, has through this application filed under Section 19 of the Administrative Tribunals Act, 1985, called in question the order dated 16.5.1986 imposing upon him penal rent amounting to thrice the market rent in respect of quarter No. SPM Quarter at Civil Lines, Delhi (Annexure P-I to the application) and order dated 23-10-86 fixing an amount of Rs.50,841.68 as the amount to be recovered from him for the period from 13.9.84 to 31.10.86.

2. The applicant was allotted the quarter in question attached to the post of Sub-Post Master, Civil Lines, Delhi from the pool of accommodation placed at the disposal of the Postal Department on 10th September, 1984 and he had been living therein with effect from 13th September, 1984. The allotment of this quarter was cancelled on 16.5.86 on the ground of unauthorised sub-letting. Eviction proceedings were taken against the applicant under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and he vacated the said premises on 10.11.1986.

[Signature]

The impugned order regarding recovery of penal rent has been challenged on the ground of arbitrariness and as being discriminatory as also violative of the principles of natural justice and equity. It has also been contended that the impugned orders were not passed by the competent authority.

3. The case of the respondents is that a thorough inquiry had been made in regard to sub-letting of the quarter by the applicant, who had admitted that persons other than the members of his family were residing with him in the said quarter, that persons who had been sharing the accommodation had given evidence that they were paying rent to the applicant, that the sub-letting was without the approval of the Department and the competent authority and that eviction proceedings had been taken against the applicant under the relevant provisions of the law.

4. A perusal of the file, particularly Annexures R-I to R-IV filed along with the counter-affidavit on behalf of the respondents clearly shows that the Department had made an inquiry into the allegations of sub-letting by the applicant and that the applicant participated in the proceedings which were launched against him under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 before orders for his eviction were issued, as a result of which he vacated the premises. Since the applicant had been associated with the inquiry regarding allegations of subletting and sharing of the accommodation allotted to him and his statement had also been recorded, there is no ground for accepting the contention that cancellation of allotment is liable to be set aside on the ground of principles of natural justice having been violated.

5. As regards recovery of penal rent, the respondents have relied on Rule 28 (iii) of Rules for Allocation /



Allotment of Quarters issued vide D.G.P. & T. letter No. 2/20/66-NB, dated 25th June, 1966 addressed to all Heads of Circles etc. The said rule reads as follows: -

"(iii) Disciplinary action should be taken and penalties imposed in cases of unauthorised sharing / subletting and profiteering. In such cases penal rent is chargeable. Besides this, allotment is liable to be cancelled and the person at fault debarred for at least one year, for obtaining departmental accommodation and disciplinary action may be taken in addition to the penalties. In all such cases the rent is to be recovered from the allottees according to the emoluments drawn by them and not from the shares."

6. The above rule provides for charging of penal rent in the cases of unauthorised sharing / subletting and profiteering. However, it does not lay down any procedure for imposition of such penal rent. Any rules cannot override the provisions of the Act. Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 reads as follows : -

"Section 7. Power to require payment of rent or damages in respect of public premises."

(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order."

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment to damages

H. J. Alwyn

as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order require that person to pay the damages within such time and in such instalments as may be specified in the order.

(2A) While making an order under sub-section (1) and sub-section (2) the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978.

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue for a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections if any, and any evidence he may produce in support of the same, have been considered by the estate officer."

7. Sub-section (2) of Section 7 provides for recovery of damages in respect of unauthorised occupation and sub-section (3) provides that no order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of notice to the person calling upon him to show cause as to why such order should not be made or until his objections, if any, have been considered by the Estate Officer. Assessment and recovery of damages for misuse of Government accommodation through subletting or sharing would be covered by the provisions of Section 7.

8. Admittedly in this case, no show cause notice was issued to the applicant in regard to the imposition of



penalty or its quantum or the period for which it was being imposed. The impugned order shows that the penal rent / damages are sought to be recovered for the entire period during which the applicant was in possession of the said quarter. It is not clear as to whether the unauthorised subletting started right from the very date when the applicant occupied the quarter in question or from any subsequent date. Further the order regarding recovery of damages is required to be passed by the "estate officer". "estate officer" has been defined in Section 2(b) of the Act to mean "an officer, appointed as such by the Central Government under section 3" of the Act. From Annexures P-6 and P-7 to the application in regard to eviction proceedings, it transpires that the Estate Officer who issued notices dated 20.6.86 and 26.9.86 to the petitioner were signed by the Estate Officer and that the Asstt. Postmaster General, Office of the Postmaster General, Delhi Circle, was designated as the "estate officer" whereas Annexure P-1 dated 16.5.1986 regarding imposition of penal rent / damages is signed by someone "For Postmaster General, Delhi Circle, New Delhi-110001" and the order dated 23.10.86 (Annexure P-2) is signed by the Sr. Supdt. of PO's, New Delhi South East Dn., New Delhi. Obviously these orders were not signed by the authority competent to impose any damages by way of penal rent.

9. The learned counsel for the respondents Smt. Raj Kumari Chopra referred to the ruling of the Supreme Court in *Union of India & Another v. Wing Commander R.R. Hingorani (Retd.)* (Judgments Today 1987 (1) S.C. 290) in support of her contention that damages could be imposed and penal rent recovered for subletting without issue of a show cause notice.

10. What the Supreme Court observed in the above

M. Anand

mentioned case is as follows: -

"7.The construction placed by the High Court on the two provisions contained in SR 317-B-22 and SR 317-B-25 is apparently erroneous. It is plain upon the terms of SR 317-B-22 that the liability to pay damages equal to the market rent beyond the concessional period is an absolute liability and not a contingent one. Both the learned Single Judge as well as the Division Bench were clearly in error in subjecting the liability of a Government officer to pay market rent for the period of unauthorised occupation to the fulfilment of the condition that the Director of Estates should serve him with a notice that in the event of his continuing in unauthorised occupation he would be liable to pay market rent."

11. From the above observations, it follows that where the liability to pay market rent or damages is clearly spelt out in the rules themselves and the quantum thereof is also defined, the Government servant concerned, who is the allottee of the accommodation is fully aware that in case of any breach on his part which is defined and covered by the rules, he will be liable to pay a certain amount as prescribed in the rules. In such an event, there is no discretion on the part of the concerned authority to vary the quantum of amount liable to be recovered; nor does it involve exercise of a quasi-judicial function. Therefore, issue of a show cause notice would not be necessary. In such a case, any waiver of recovery can only be by relaxation of rules and that too in favour of the Government servant concerned. In the present case under consideration, the rules produced by the respondents merely provide for imposition of penalty of penal rent



in case of subletting. Rule 28(iii) merely states that in cases of unauthorised sharing / subletting and profiteering, penal rent is recoverable. The quantum of penal rent is not defined. Therefore, exercise of discretion is involved in determining the quantum of penal rent / damages. This is necessarily to be done with reference to the period of subletting and taking into account all the relevant factors.

12. Further in the aforesaid case, proceedings were duly initiated by the Estate Officer under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to recover a certain amount as damages and further the Estate Officer had duly served notices on the respondent under Section 7(3) of the Act from time to time and the respondent appeared in the proceedings and contested the claim. Admittedly in the case under consideration, no such procedure was followed. The order regarding imposition and recovery of penal rent was not passed by the competent authority and no show cause notice was given to the applicant. Accordingly the order in so far as it relates to imposition and recovery of damages / penal rent is liable to be set aside.

13. In view of the above discussion, the application is allowed to the extent that the impugned orders dated 16.5.1986 and 23.10.86 in so far as they relate to the imposition and recovery of penal rent / damages are quashed. This will, however, not preclude the respondents from initiating afresh 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.

14. There shall be no order as to costs.


(KAUSHAL KUMAR)
MEMBER
11.9.1987.