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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 399/1987

DATE OF DECISION 29.8.91

SHRI R. KAPUR

.....APPLICANT

VS.

DIRECTOR OF INSPECTION
(PRINTING & PUBLICATION)
INCOME-TAX & ANOTHER

.....RESPONDENTS

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SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

.....IN PERSON

FOR THE RESPONDENTS

.....SHRI P.P. KHURANA

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

Shri R.Kapur, retired Director General (OSD)

Income-Tax filed the application under Section 19 of
the Administrative Tribunals Act, 1985 ^{being} aggrieved by
the order dated 20.10.1986 in which the applicant was
informed that the payment of D.C.R.G. cannot be made
till No Demand Certificate is received from the Directorate

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of Estates. The applicant claimed the following reliefs :-

- (1) Since there is no amount legally payable by the applicant, the Director of Inspection, (Printing & Publication) Income-tax be directed to pay his full gratuity - now due Rs.1 lakh and pension relief to the applicant without delay alongwith bank interest of 18% p.a. from 1st March, 1986 till the date of payment;
- (2) The Directorate of Estates be directed to give effect to the orders of the Addl. Session Judge and High Court;
- (3) Order payment of costs.

2. The facts as given out in the application are that the applicant retired on 28.2.1986, but he has not been paid his gratuity. During the posting of the applicant at Delhi, he was occupying a pooled Central Government accommodation for which he had to pay a licence fee at the rate of Rs.88/- p.m. However, since January 1976 the applicant had to pay damages for use and occupation of the official residence equal to the market licence fee as may be determined by the Government from time to time in view of the changed rules regarding charging of licence fee. In May, 1979, the applicant was transferred out of Delhi, but he retained the official residence, though his allotment was cancelled from 1.7.1979. The applicant, however, continued to occupy the accommodation and the allotment was regularised in his name on his retransfer to Delhi in 1983. During the period of his

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unauthorised occupation, proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, damages were levelled against the applicant by the Estate Officer. The applicant went in appeal before the District Judge, Delhi and on transfer, the Additional District Judge heard the appeal and damages by way of market rent for the period of unauthorised occupation were reduced to Rs.176/- p.m. During the pendency of this appeal under the Public Premises Act, the applicant also filed Civil Writ No.665/1984 in the High Court of Delhi and in that Writ Petition, it was challenged that the excessive recovery from him from 1.1.1976 to August, 1979 was unauthorised. In the Writ Petition, the applicant contended that since 1.1.1976, Government has no authority to charge License fee higher than 10% of the pay of an allottee. The Hon'ble High Court, however, in its Civil Writ Petition passed an order that the applicant was given relief by the Additional District Judge from 1979 onwards. The petitioner was directed by the Hon'ble High Court to approach the department concerned on the view taken by the Additional District Judge in the appeal under Public Premises Act filed by the applicant and the department will give serious consideration to the points raised in the petition. This order was passed on 9.8.1984. The

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grievance of the applicant is that in spite of the order of the Additional District Judge dated 25.7.1984 and order of the Delhi High Court dated 9.8.1984, the Directorate of Estates has not determined the amount refundable to the applicant till today. It is stated by the applicant that he has requested the Directorate of Estates to work out the refund in his letter dated 19.12.1984.

3. The other grievance of the applicant is that the Directorate of Estates is alleged to have filed a Writ in the Delhi High Court against the order of the Additional District Judge dated 25.7.1984 also alleging that the said writ was admitted by the Hon'ble High Court in May, 1986. However, the applicant has not received any copy of any such Writ Petition.

4. The respondents contested the application and stated in the reply that the applicant was required to vacate the Government residence allotted to him by 31st December, 1975, failing which he was informed that he would be charged market rent w.e.f. 1st January, 1976 at the rate fixed by Government from time to time, but the applicant did not comply with the rules and he,

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therefore, became liable for the payment of market rent from 1.1.1976. The applicant was transferred from Delhi to Meerut in June, 1979 and as per rules, he was required to vacate the premises within two months from the date of his transfer. This was not done by him. Thus w.e.f. 1.9.1979, his occupation of the Government accommodation was unauthorised and without legal authority. The allotment of the said premises was cancelled in his name and he was required to pay the damages under SA-317-B-22 of the Allotment Rules of 1963 for his overstay. An application was filed under Section 7(ii) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for the recovery of damages for unauthorised occupation. The Estate Officer by the order dt. 12.3.1983 passed a decree of damages against the applicant, but on appeal, the same was modified by the Additional District Judge by the order dt. 25.7.1984 and the damages were levied for use and occupation under Public Premises Act at the rate of Rs.176/- p.m. from the original amount of Rs.1,070/- p.m. According to the respondents, the applicant has not cleared his dues and so the final No Demand Certificate could not be issued in his favour so far. It is said that a sum of Rs.1,18,074.07/- is due as shown in Annexure attached to the reply. It is further stated by the respondents that for the period from 25.2.1985 to 31.7.1987, the applicant remained in possession of Bungalow No.215 of Rouse Avenue. It is said that the

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applicant was still in possession at the time of filing the reply of the said premises of Rouse Avenue on 14.8.1987. Thus, the simple case of the respondents is that the payment of the D.C.R.G. has been withheld due to non clearance of dues by the applicant and so the No Demand Certificate could not be issued for making effective payment.

5. We have heard the learned counsel for the respondents and the applicant in person at great length. The learned counsel for the respondents, Shri P.P. Khurana has no objection to the release of D.C.R.G. in view of the law laid down by the Hon'ble Supreme Court in case U.O.I. 23-4-1990 Vs. Sheocharan CA 2002/90 dt. ⁱⁿ as well as in the Full Bench of the Tribunal/Wazirchand Vs. U.O.I. OA 2573/89 dt. 25.10.9. The applicant, however, pressed that he should be paid interest at the rate of 18% p.a. and in this connection has placed reliance on the case of State of Kerala Versus Padmanabhan Nair (1985) 1 S.C.C. 429. It has now been decided that the payment of D.C.R.G. and recovery of damages for unauthorised occupation by an employee are different matters and the D.C.R.G. cannot be withheld, if the employee has not vacated the allotted premises during the course of employment. In the present case, though award of interest is in the discretion of the Court, but it is noticed that the applicant continued to retain the allotted residence even ^{long} after his

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retirement. The applicant has unsuccessfully challenged the vires of F.R. 45-A(iv)(c)(ii)(8) in the Writ Petition 2665/85 which was filed before the Hon'ble High Court, Delhi and was transferred to the Central Administrative Tribunal under Section 29 of the Administrative Tribunals Act, 1985 and was registered as T.A. No.191/86. This Transfer Application/Writ Petition was dismissed by the order dt. 8.2.1991. By this order, the Tribunal has rejected the prayer made in the said Writ Petition/T.A. by the applicant for issuing orders or direction to the Director of Estates to refund to the petitioner excess amount charged over and above the pool licence fee, which is payable by non house owning officers and held the vires of F.R. 45-A(iv)(c)(ii)(8) aforesaid. In view of the above facts and circumstances, 10% p.a. interest will meet ends of justice.

6. The other relief claimed by the applicant in this case is for the implementation of the order of the Additional District Judge dt. 25.7.1984. By this order of July, 1984, the Additional District Judge, while allowing the appeal, reduced the damages awarded against the applicant at the rate of Rs.1,070 p.m. to Rs.176 p.m. which covered period from 1.10.1979 to 20.11.1981. The applicant has made representations to the respondents that for the aforesaid period, the recovery should be affected at the rate of

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Rs.176/- p.m. (double the amount of pooled licence fee) and the excess recovery made from the applicant be refunded to him. The respondents have not refunded that amount also. The applicant has made a representation on 19th December, 1984 (paper No.23 of the paper book), but it appears that the applicant has not been given any specific reply. In view of this fact, the respondents are directed to dispose of the representation of the applicant dt. 19.12.1984 and, further, if any such representation is not available, then call for^a fresh representation from the applicant and the damages for the period should be realised from the applicant as directed by the Additional District Judge in the order dt. 25.7.1984, i.e., damages for the period from 1.10.1979 to 20.11.1981 should be realised @ Rs.176/- p.m. and the excess amount recovered from the applicant should be refunded to him. The respondents, however, have shown that certain dues^{are} outstanding against the applicant for subsequent period from February, 1985 onwards. The Writ Petition filed by the applicant C.W. 2665/85/T.A. 191/86 has since been dismissed, so the respondents shall be within their right to recover the amount of damages in accordance with F.R. 48-A(iv)(c)(ii)(8).

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7. The applicant has also prayed that the respondents be directed to give effect to the orders of the High Court and probably by this, the applicant means the orders passed by the Delhi High Court in Civil Writ Petition No.665/84 dt. 9.8.1984. By this order, the High Court directed the respondents that the respondents may consider the case of the applicant for the period from 1976 to 1979. There is no specific direction issued to the respondents in this regard and the applicant cannot come before this Tribunal for getting a direction of such and order.

8. In view of the above discussion, the application is disposed of as follows :-

- (a) The respondents are directed to pay the outstanding amount of D.C.R.G. to the applicant with interest at the rate of 10% p.a. for the period from 1.6.1986 till the date of payment.

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The respondents are directed to adjust the damages for use and occupation of the allotted premises for the period from 1-10-1979 to 20-11-1981 @ Rs.176/- p.m.

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and if any excess amount has been recovered as ordered by the Estate Officer @ Rs.1.070/- p.m., subsequently reduced to Rs.176/- p.m. by Additional District Judge then the same shall be refunded to the applicant. The respondents shall be at liberty to adjust this amount towards any other amounts due or which may become due against the applicant for the any period as per F.R.45-A (iv)(c)(ii)(8) and SR-317-B-22 and as a result of dismissal of T.A.191/86.

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Regarding a direction on the basis of the order of the High Court dated 9-9-1984 the matter ends by the representation preferred by the applicant.

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The respondents should comply with the above directions with in four months from the receipt of the copy of the order.

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9. In the above circumstances, the parties to bear their own costs.

J. Sharma
(J.P. SHARMA) 29.8.91
MEMBER (J)

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A) 29/8/1991