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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1226/90

DATE OF DECISION: 31.8.1990.

SHRI KANWAR SINGH

APPLICANT
VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

SHRI O.P. GUPTA

COUNSEL FOR THE APPLICANT

SHRI O.N. MOOLRI

COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE SHRI T.S. OBEROI, MEMBER (J)

HON'BLE SHRI I.K. RASGOTRA, MEMBER (A)

JUDGEMENT

(DELIVERED BY HON'BLE SHRI I.K. RASGOTRA, MEMBER (A))

The applicant Shri Kanwar Singh has filed this petition against the order of illegal recovery of amount of Rs. 35,000.00 from his wages vide notice dated 14.5.1990 (read with Estate Officer's order dated 28.3.1990).

Before we go into the merit of the case it will be necessary to state the position of the Indian Railway Construction Co. (IRCON). IRCON is a public sector undertaking under the administrative control of Ministry of Railways and draws its personnel from the railways for its project work, inside/outside India. On secondment to IRCON, therefore, the railway employees cease to have a right to continue in occupation of the railway accommodation, unless specifically permitted.

The case of the petitioner is that he was seconded to IRCON on 25.10.1985 and was sent to Iraq on an IRCON project on 31.10.1985. The family members stayed behind in the railway quarter allotted to him. He was not paid any HRA and at the same time rent amounting to Rs. 1584/- was recovered from him from 11.8.1985 upto 28.8.1986. The quarter was retained by him under the statutory provision. (Annexure - H - Page 19 of the paper book). The provision for retention of the quarter reads as under:

2

(4)

"In the case of deputation of Railway Servants abroad which is sanctioned by the Railway Board, the staff can be permitted to retain the Railway Quarters for the period of deputation to avoid inconvenience to their families provided free passage has not been allowed for the family".

The applicant has submitted that he had not availed of the family passage for the period of deputation abroad. The benefit of the above rule will not be available to him as he was seconded to IRCON and not sent on deputation directly by an order of Ministry of Railways. The applicant resumed duty in Delhi after completion of his secondment with IRCON on 9.10.1986. In the meantime efforts to get the railway accommodation vacated seem to have been going on, which led to filing of Suit in 289/86 by the applicant in the Court of Sub-Judge, Ist Class, Delhi. From the orders of the Sub-Judge, Delhi, it is observed that the the Railway Administration have made a statement in the Court that "the plaintiff shall not be dispossessed from the quarter in question except with due process of law and the threat of the dispossession dated 20.5.1986 will not be implemented and there will not be any disconnection of electricity and water." In view of the above statement of the Railway Administration, the suit was dismissed on 17.2.1987. Separately, the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were instituted by the administration and the case was decided by the Estate Officer, vide judgement dated 28.3.1990 (page 11 of the paper book). The Estate Officer in the judgement dated 28.3.1990 observed that:

"He was allotted a type-III quarter on 20.8.1988 and thereby he vacated Qr. No. 90-A/2 TKD on 20.8.1988. He does not have any authority for occupation of the said quarter from 28.12.1985 to 20.8.1988 as the tenancy of this quarter was cancelled vide DSE/E/NDLS letter dt. 17.4.1986.

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3

"A/W Shri Lakhbir Singh, IOW/E stated that the tenancy of the quarter No.90-A/2 stands cancelled from 28.12.1985 as per the notice issued to the respondent. There is nothing on record to show that Quarter No.90-A/2 was vacated by the respondent on 20.8.1988....."

The case for eviction was dismissed by the Court. It is apparent from the above that the applicant had vacated the quarter in question on 20.8.1988 after he had been allotted a higher type of quarter according to his entitlement. However, for the period the applicant was away on deputation to IRCON, from 28.12.1985 to 30.6.1987 for the period thereafter upto 20.8.1988 when he vacated the quarter to occupy the one of higher class, the respondents have claimed market rent. The issue before us, therefore, is only in regard to the regulation of recovery of rent from the applicant for the period when the occupancy of the quarter was not covered by any authority.

The respondents' preliminary objection raised in the written statement that the impugned order regarding recovery of the rent at the market rate has been passed in pursuance of the judgement of the Estate Officer dated 28.3.1990 and that the said order of 14.5.1990 cannot be entertained by the Tribunal as the proper forum for the applicant is the Court of Additional District Judge or the High Court. The contention of the respondents, however, is not acceptable as the Estate Officer dismissed the case for eviction vide his order dated 28.3.1990 - the applicant having already vacated the quarter. The recovery of the rent at the market rate, therefore, does not flow from the judgement of the Estate Officer nor is it covered by any other proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on the record before us.


2


The admitted facts are that the applicant was sent on deputation through IRCON to Iraq. He resumed duty in his parent department in India on 9.10.1986 on completion of his secondment. There seems to be no occasion for treating him as unauthorised occupant in any case for the period beyond 9.10.1986, as on return he was entitled to the quarter on out of turn basis according to normal rules. Again in the judgement of the Estate Officer, it has been noted that the tenancy of the applicant of Quarter No. 90-A/2 was cancelled on 28.12.1985. Thus the only period for which market rent can be claimed from the applicant would relate to 28.12.1985 to 9.10.1986 and not 28.12.1985 to 20.8.1988. The order dated 14.5.1990 in the circumstances is irrational and arbitrary.

The learned counsel for the respondents in the course of the hearing submitted that in view of the interim orders passed by the Hon'ble Supreme Court staying the Full Bench judgement of the Tribunal in the case of Rasila Ram Vs. UOI, the Tribunal had no jurisdiction in the matter as the order of 14.5.1990 was in pursuance of the proceedings in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. As discussed above there is no material before us substantiating the contention of the learned counsel for the respondents.

In the facts of the case we quash the order dated 14.5.1990. The respondents shall, however, be at liberty to review the case and pass necessary orders for recovery of rent for the unauthorised period of occupation from 28.12.1985 to 9.10.1986 in the light of the above findings.

The OA is disposed of at the admission stage.


(I.K. RASOTRA)
MEMBER(A) 31/8/90


(T.S. OBEROI)
MEMBER(J)