

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI

O.A. No.2270/90

New Delhi, dated the 30th November, 1994

CCRAM

Hon'ble Shri N.V. Krishnan, Vice Chairman(A)  
Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Shri R.S. Kapoor,  
s/o Shri Harbhajan Kapoor,  
r/o Rly. Qr. No. 92-D/2, T-II,  
Rly Colony, Tuglakabad, N/Delhi

... Applicant

(None for the applicant )

V/s

Union of India through D.S.E. Estates,  
Northern Rly., New Delhi

... Respondents

(By Advocate Shri P.S. Mehendru)

ORDER (ORAL)

(Hon'ble Shri N.V. Krishnan, Vice Chairman (A))

This applicant filed this O.A. on 25.10.90 challenging the impugned letter dated 11.9.90 intimating him that the rent of his quarter would be at Rs 152 P.M. from 22.4.85 to 30.6.87 and @ Rs 797 P.M. from 1-7-1987 till vacation. When the OA was taken up for admission an interim order was issued on 5.11.90 stay the recovery of penal rent.

2. Subsequently, the applicant ~~has~~ filed M.A-130/91 seeking an amendment of the OA itself

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enclosing a copy of the O.A. as it would be after amendment. That O.A. seeks direction to the respondents restraining them permanently from charging penal rent from the applicant w.e.f. 11.9.90 i.e. the date when the applicant resumed duty on completion of deputation period.

However, on 12.3.91, MA 130/91 seeking amendment was dismissed as withdrawn with the result, that what remains to be heard is the original unamended O.A.

3. The brief facts of the case are as follows:-

3.1. The applicant, an employee of the Railways, was sent on deputation to Zibava in Africa for the period from 23.4.1985 to 31.12.1989.

3.2. It is claimed that the applicant had a right to retain the Govt. quarter No. 92-D/2 Type-III, Rly Colony, Tughlaqabad, New Delhi during his absence on his deputation.

3.3. However, the respondents tried to dispossess his family of the accommodation.

3.4. A suit was filed by the applicant's wife and it is stated that the respondents had given an undertaking before the Sub Judge,

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Delhi that they would not disposses/forcibly  
and illegally.

3.5. However, subsequently, without  
serving notice ~~any~~<sup>is</sup> to the applicant, who  
was out of India, or his wife, the respondents  
initiated eviction proceeding and an eviction  
order was passed on 29.11.1988. The applicant's  
wife filed an appeal against that order in  
the Court of Additional District Judge (Delhi).  
That appeal was dismissed in default on  
1-10-90.

3.6. An application for restoration  
(order XLI -Rule 19) was filed on the same  
date and it is stated to be still pending.

3.7. On his return from deputation on  
1.1.90, the applicant filed an application  
in the same appeal under Order I Rule 10  
read with section 151 CPC (for change in  
name of plaintiff), which is pending in the  
same Court.

3.8. In the meantime, the respondents have  
issued the impugned letter dated 11.9.90  
relating to rate at which rent is recoverable  
from the applicant. The applicant moved  
the Court of the Addl. District Judge, where  
the aforesaid appeal was dismissed but the  
court did not interfere in view of the pendency  
of the applications and under order XLI-Rule 19  
order I rule 10.

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3.9 It is stated that the applicant filed an appeal No.194/90 on 25-9-90 before another Court of Addl.District Judge which was dismissed on the ground that it was premature and that the order was not passed by the Estate Officer under the Public Premises Act.

3.10. It is in these circumstances that the applicant has prayed that the impugned order dated 11.9.90 be quashed.

3.11. The main ground is as follows:-

Because, the respondent legally cannot charge the penal rent as per the orders/letter dated 11.9.90(4.9.90) as the retention of the quarter was within the provisions which are as under:-

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

It is also contended that this order was not passed by the Estate Officer and that further, in any case, after his return on 1.1.90 the allotment cannot be treated as unauthorised

4. The respondents have filed a reply contesting the claim made by the applicant. It is stated that as the applicant went ~~an~~ abroad on

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deputation, he was liable to vacate the quarter. A notice was served on 30.9.85 to vacate the quarter. It is ~~deemed~~ that the respondents tried to dispossess the applicants' wife forcibly. Applicant wife filed suit for injunction against the respondents. Eviction proceeding were initiated under the Public Premises Occupants) Act, 1971, by the Estate Officer. The other facts are generally not disputed.

5. We have heard the learned counsel for the respondents. He has not been able to tell us the position of the case as on date. However, he claims that the order of eviction that has been passed has not been set aside. Hence, the applicant is liable to be pay penal rent for unauthorized occupation.

6. We have carefully, considered the application. In the OA, no averment has been made that the order of eviction has been set-aside. Apparently, some proceedings are still pending, for restoration of the appeal against the eviction which was dismissed in default and the prayer for impleading proper party as applicant.

7. One of the grounds raised has been mentioned in para 3.11. supra. In the first place the applicant has *li*

not averred that free passage has not been allowed for the family, which is a condition present to get the benefit of the provision mentioned therein.

Secondly, as an order of eviction has already been passed, this plea cannot be raised independently in this O.A. It is barred by resjudicata.

8. In the circumstances, we do not see any illegality or impropriety in the impugned letter dated 11.9.90 intimating the applicant about the rate and which he has to pay rent.

9. Therefore, we dismiss this O.A with the further observation that the recovery of rent at the rates indicated in the impugned letter will, however, be subject to any order passed by the competent court in the proceedings relating to appeal against the eviction order.

Lakshmi Swaminathan  
(Lakshmi Swaminathan)

Member (J)

N.V. Krishnan  
(N.V. Krishnan)

Vice Chairman (A)

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