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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No. 334/90

New Delhi: January 27, 1995.

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

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Ved Prakash Sharma,
s/o Shri Lakshmi Narayan,
Motor Mistry,
Tuglakabad, Diesel Shed,
Northern Railway,
New Delhi.

.....Applicant.

By Advocate Shri K.N.R.Pillai.

Versus

Union of India
through the Secretary,
Ministry of Railway (Railway Board)
New Delhi.

2. The General Manger,
Northern Railway,
New Delhi.

.....Respondents.

By Advocate Shri P.S.Mahendru.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member(A).

In this application, Shri Ved Prakash Sharma, Motor Mistry, Tughlagabad, Diesel Shed, Northern Railway, has impugned the order dated 27.5.89 (Annexure-AII) directing realisation of rent @ Rs.55/- per month and electric charges @ Rs.47/- per month in respect of Railway Quarter No.137/8 DCM Railway Colony, Delhi w.e.f. 1.7.87 and refund of recoveries already made with interest thereon @ 12%.

2. The applicant's case is that he was the allottee of Quarter No.56A (Type II) in Tughlagabad Railway Colony, New Delhi, and was in occupation of that quarter which is located in South Delhi. Since his relatives were residing mostly in North

District, sometime in 1983 he applied for a change of quarter to the D.C.M Railway Colony and by letter dated 14.3.84 (Annexure-A1) he was allotted Railway Quarter No.137/8, DCM Railway Colony in lieu of Quarter No.56A, Tughlagabad Railway Colony. However, upon inspecting Quarter No.137/8, DCM Railway Colony he found it not to be vacant and in the possession of antisocial elements and was advised not to live there. He claims that he visited the office of the Inspector of Works Estate who controls allotments in the DCM Railway Colony and informed the staff there that he did not want the quarter offered upon which he was told that he could reject the offer if he so chose, and for this purpose was asked to sign on a piece of paper, which he did, being illiterate. He states that in addition to the refusal for change recorded in the IOW Estates Office, he informed the authority controlling the railway accommodation at Tughlagabad that he had not taken possession of the quarter offered in the DCM Railway Colony and may be permitted to retain Quarter No.56A Tughlagabad Colony and in pursuance of that was allotted and continued to reside in Tughlagabad Railway Colony till July, 1985 and rent was also recovered from him till date. On 3.7.85, he surrendered Quarter No.56A, Tughlagabad Railway Colony and shifted to his own private residence. However, in May, 1989, staff from the office of the IOW Estates visited his office and told the Bill Clerk that the applicant was in occupation of Qr. No.137/8 DCM Railway Colony and on that basis rent @ Rs.55 p.m and electric charges @ Rs.47/- p.m. are being deducted from his salary w.e.f. 1.7.87 and representations against the same being of no avail, he was compelled to file this O.A.

3. The respondents have contested this application and in their ^{reply} deny that Qr.No.137/8, DCM Railway Colony, New Delhi was in the occupation of anti social elements. They state that the previous occupant Shri Roshan Lal vacated the quarter on 27.1.84, and the applicant took possession of the same on 19.3.84 and till date had not been surrendered by him to the Railway Administration. They deny that his signature was taken on a blank piece of paper as alleged by him, and contend that he is liable to pay arrears of rent and electric charges for the quarter in his possession since 19.3.84. They also state that it was wrong of him to have retained two Railway Quarters viz. 56A Tughlagabad Railway Colony and 137/8 DCM Railway Colony.

4. After hearing both parties on 8.6.94, we had directed the respondents to have an enquiry conducted by a senior Railway official to ascertain whether the applicant had in fact submitted anything in writing (after he had taken possession of Qr. No.137/8 DCM Railway Colony) by which he had returned ~~as~~ sought to return possession of the said quarter to the authorities and also whether he was in physical occupation of the said quarter from 19.3.84 onwards, and if not, who was in physical occupation of the said quarter. The DRM (Estates) Northern Railway, New Delhi was directed to conduct the inquiry and submit his findings on affidavit together with information whether the applicant had continued to pay rent for quarter No.56A, Tughlagabad Railway Colony from 19.3.84 onwards.

5. The respondents have filed the conclusion of the inquiry on affidavit in which it is stated that
i) the applicant did not give anything in writing to the Estate Department that he was surrendering

possession of quarter No. 137/8 DCM Railway Colony;

ii) the applicant was not in physical possession of that quarter and another person was found living in the quarter since the date of its allotment to the applicant as disclosed by one Smt. Saida Begum who was present in the quarter at the time of inquiry;

iii) no rental recovery was made in respect of that quarter prior to 1.7.1987;

iv) the applicant did not pay rent for both quarters, and surrendered possession of quarter No. 56-A, Tuglakabad Railway Colony in July, 1985.


6. We have heard Shri Pillai for the applicant and Shri P.S. Mahendru for the respondents. We have also perused the materials on record and given the matter our careful consideration.


7. There appears to be merit in the averments made in the applicant's rejoinder that if indeed the applicant had taken possession of the quarter No. 137/8 DCM Railway Colony on 19.3.1984, there would have been a vacation slip showing vacation by the previous owner and an occupation slip which follows the allotment letter showing actual physical occupation by the applicant, but the respondents have produced neither ⁱⁿ evidence, ^{or} with their reply or during hearing. The fact that the applicant never took physical possession of Qr. No. 137/8 DCM Rly. Colony, as claimed by him, is further supported by the respondents' own inquiry report on affidavit that one Smt. Saida Begum was found living in the quarter since the date of allotment to the applicant. During hearing Shri Mahendru suggested that the applicant in fact ^{may} himself have inducted Smt. Saida Begum and her family into that quarter, but no evidence was produced to ^{support} ~~suggest~~ this allegation.

8. Moreover, if indeed Qr. No. 137/8 DCM Colony was in the occupation of the applicant, it is not clear under what circumstances, the respondents allowed the applicant to retain two quarters at the same time, which is manifestly against rules.

9. Furthermore, if indeed the applicant was in physical possession of Qr. No. 137/8 DCM Colony from 19.3.1984 onwards, it is not understood why the respondents are charging the applicant rent and electricity charges from 1.7.1987 and the impugned order slip issued as late as 27.5.1989.

10.. In the facts and circumstances of the case therefore, this DA is allowed. We hold that the impugned order dated 27.5.1989 charging rent and electricity charges with arrears from the applicant in respect of quarter No. 137/8 DCM Colony w.e.f. 1.7.1987 is arbitrary and illegal, and we accordingly quash and set aside the same. The interim orders passed on 23.3.1990 staying further recoveries are made ^{as} absolute, and recoveries already made, if any, from the applicant are directed to be refunded to him within 3 months from the date of receipt of this judgement with simple interest @ 12% per annum. No costs.


(LAKSHMI SWAMINATHAN)
Member (J)


(S.R. ADIGE)
Member (A)