

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 174/2004

New Delhi, this the ¹⁵ ~~10~~ day of November, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Shri Avdhesh Kumar Sharma
502, Judicial Officers Complex,
Kakardooma, Delhi
(By Advocate : Shri Joginder Sukhija)

... Applicant

Versus

Govt. of National Capital Territory of Delhi
Through its Secretary,
Delhi Secretariat, I.P. Estate, New Delhi

The Secretary,
Public Works Department,
Govt. of NCT of Delhi,
PWD & Housing (Allotment-I Branch),
5th Level, B-Wing,
Delhi Sachivalaya, I.P. Estate,
New Delhi

Central Public Works Department,
Through its Director General of Works (DGW),
Nirman Bhawan, New Delhi
(By Advocate : Ms. Rachana Srivastav for respondents 1 & 2 and
Shri S.N. Anand, proxy for Shri D.S. Mahendru for Respondent 3) ... Respondents

O R D E R

By Sarweshwar Jha, A.M. :

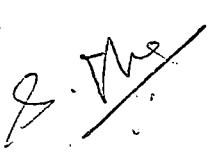
The applicant has prayed for quashing of respondents' letter dated 20.10.2003 conveying the decision of the Govt. of National Capital Territory of Delhi, PWD & Housing (Allotment-1 Branch) whereby it has been decided to allow him to surrender Flat No.42, Kalyan Vas, Delhi to the JE, PWD, Kalyan Vas. The said Govt., vide the said letter, informed the applicant that "It is without prejudice to the right of the Deptt. to recover the dues of licence fee/damage charges". As per assessment, a sum of Rs.2,25,694/- (calculated upto 09/2003) is found recoverable from the applicant as arrears of licence fee/damage charges. In addition, licence fee @ Rs.120/- p.m. will also be charged till the date of surrender of the above said flat. The applicant was asked to pay the above said amount immediately. It was also conveyed to him that final 'no due



certificate' will be issued after the vacation/surrender of the above said flat and clearance of all the dues. It has also been prayed by the applicant that the respondents (respondent No.1) be directed to refund the amount of HRA with-held by them since May, 2003 to November, 2003 and also the amounts charged by them towards Licence Fee for the above said period.

2. The applicant is originally an employee of the CPWD of the Govt. of India as Draftsman Grade-I and is posted at PWD (NCT of Delhi) in the Office of the Superintending Engineer (P&A) II, P.W.D. Zone II, (Govt. of Delhi). He was initially appointed in the CPWD on 18.11.1966 at Jodhpur as a Draftsman and was transferred to Delhi in the month of April, 1969. The PWD, Delhi does not have its own staff, and the staff of the CPWD are sent to work with the PWD, Delhi Govt. Recruitment, appointment, transfer and other administrative functions in regard to these employees are supervised and controlled by the CPWD even while they are working with the PWD, Delhi Govt. It was in this background that the applicant, as argued by him, joined the services of the PWD, Delhi Govt., though under the supervision and administrative control of the CPWD.

3. It was in June, 1982 that he was allotted Flat No. 42, Kalyan Vas, Delhi. House Rent Allowance and other applicable licence fee in respect of the said flat, according to the applicant, were deducted by the disbursing authority as per the Govt. rules. In December, 1993, he was transferred to the CPWD on his promotion as Draftsman Grade-I and served them as such from December, 1993 to November, 2002. He, accordingly, wrote a letter to the Under Secretary (Allotment), Delhi Administration on 8.12.1993 seeking clarification whether it was necessary for him to vacate the said flat. He received no reply from them. However, he has submitted that he kept on enquiring in the matter and he was informed that he was eligible to continue to retain the aforesaid accommodation on the normal terms in view of the letter dated May, 1997 (Annexure A/3). During the entire period from 1993 to November, 2002, HRA and applicable licence fees were deducted by the CPWD according to Govt. rules. The said deductions



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were also made by the PWD according to the rules when he was retransferred to PWD in November, 2002. He was not paid HRA either by the PWD or the CPWD from June, 1982 till date. He claims to have requested the respondents to take back the possession of the flat and issue a 'no due certificate' vide his letters placed at Annexures 5-A, 5-B & 5-C. The respondents offered him an alternative accommodation at 94 Timarpur vide Annexures 6A & 6B, as the previous flat had become inhabitable. The applicant handed over the possession of the flat in question to the respondents on 22.10.2003 and the respondents were intimated about this vide his letter dated 28.10.2003 (Annexure-8). A provisional No Due Certificate was issued vide Annexure-1, as already referred to above. The applicant made a representation against this letter on 21.10.2003 (Annexure A/9), but he has not received any reply from them so far nor has any action been taken by the concerned department on his representation as on date. Hence, this OA.

4. The applicant has clarified that he was never in unauthorized occupation of the premises in question nor was he ever treated as in unauthorized occupation by the authorities. He also claims to have paid licence fee in respect of the accommodation during the entire period. Damage charges claimed by the respondents are thus not legally recoverable. According to him, the demand raised by the respondent is thus illegal and arbitrary. In this connection, he has also referred to the decisions/circulars of the Department whereby employees of the CPWD can be transferred to the PWD and vice versa and these transfers are not deemed to be made on deputation in view of the DO letter dated 20/26 May, 1997. Referring to the employees allotted Govt. accommodation of Delhi Administration required to vacate the same on their posting to a Central Government Office eligible for allotment of accommodation from GPRA, the applicant has submitted that such employees are considered for their entitled type of accommodation in case their date of priority has been covered or otherwise by the next below type and that they are eligible to continue to retain the accommodation in their occupation on normal terms till such allotments are made from the general pool. In this connection, a reference has been made to the Office Memorandum of the Ministry of Urban Development placed at Annexure-10 to the OA whereby it has been provided that the employees like the

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applicant can continue to retain accommodation on normal terms. The matter appears to have become open-ended due to the fact that the applicant did not receive any reply from the respondents to his letter dated 8.12.1993 seeking to know from them whether he has to vacate the accommodation on his transfer to the CPWD. Claiming that he has been paying the licence fee all the years and have not drawn HRA during the said period, the authorities are penalizing him for no fault of his by ordering recovery of licence fee etc. at market rate.

5. The respondents in their reply have referred to the applicant having been allotted Flat No. 452, Kalyan Vas, Delhi vide their OM dated 16.6.1982 in which it was made clear to him that in the event of his transfer from Delhi Administration (Now Govt. of NCT of Delhi), the allotment shall stand cancelled and he will be charged licence fee according to rules (Annexure R/1). During the period that the applicant remained posted with the Central Government Office and drew his salary from that Office, he continued to occupy the Delhi Govt. accommodation and did not pay licence fee as per rules of the Delhi Government. The respondents have referred to the provisions of the Office Memorandum of the Ministry of Housing dated 2.4.1976 relating to a situation when an officer is transferred to the Office of the Central Government located in the Union Territory of Delhi and how things are to be dealt with in such situations and have pointed out the steps which the applicant should have taken. The same are enumerated in paragraph 10 of the reply. According to the respondents, the applicant did not take those steps nor did he inform the Delhi Govt. about his transfer. They have argued that the applicant remained in unauthorized occupation of the accommodation, as he did not intimate the Delhi Govt. about his transfer nor did he make any request for allotment of accommodation to the Directorate of Estates nor did he surrender the Delhi Govt. accommodation. Resultantly, the applicant is liable to pay the damage rent for unauthorized occupation of the quarter for the period from December, 1993 upto November, 2002.

6. Reply has also been filed on behalf of respondent No.3, i.e., CPWD. On perusal of the same, it is observed that they have not denied most of the things, as submitted by the applicant. They have confirmed that HRA and applicable licence fee were deducted from the salary of the applicant as per Govt. rules. They have, however, dis-associated



themselves from the impugned letter of the respondent No.1 and have simply stated that it is not relevant to them. This stand on the part of respondent No.3 is not appreciated. They have also confirmed that the applicant made a representation on the subject on 21.10.2003 against the impugned order against which a reply is still awaited. Suddenly, without giving any appropriate back-ground of their view, as expressed in paragraph 8 of the reply, respondent No.3 has taken the position that the applicant is not entitled to any relief from the Tribunal qua the answering respondent. This position is again not clear to me. There has to be some basis for the said respondent having taken this position.

7. On perusal of the facts of the case, it is observed that the applicant is an employee of the CPWD and served the PWD of the Delhi Government for some period and shuttled between the CPWD and the PWD of Delhi. During that period he was allotted a Delhi Govt. accommodation and for which necessary licence fee was deducted by the CPWD, as admitted by them. It has also been confirmed by them that he was not paid HRA during that period. It is thus quite clear that the payments due in respect of the said accommodation were always deducted by one authority or the other. The arrangement regarding deductions in respect of the employees of the CPWD, who also serve the PWD of the Delhi Government together with their other terms and conditions of service need to be give a proper shape by the CPWD as well as the PWD of the Govt. of NCT of Delhi. The applicant appears to have got involved in the cross fire, so to say, between the CPWD and the PWD, the former taking a very passive position while filing the reply, not coming to the rescue of its own employee.

8. It is quite surprising that a representation has been filed by the applicant on the subject after he was transferred to the CPWD in the year 1993 and the same was not answered by the authorities concerned. It has also not been contested by the respondents; instead, they have referred to a number of steps which the applicant should have taken in the event of his transfer. It is also surprising that while the CPWD employees serve the PWD, their transfer back to the CPWD is not in the knowledge of the PWD nor do they take any step in regard to vacation of quarters/accommodation etc. allotted to such employees. They appear to be taking shelter under the general guidelines and not keeping a regular watch on actual transfers and consequential actions required to be taken in the





matter. It is also not appreciated as to why the respondents have not cared to give a reply to the representation filed by the applicant on 21.10.2003 against the impugned letter dated 20.10.2003. There is no doubt that the entire matter relating to the arrangement that should apply to the CPWD employees while they are serving the PWD including their accommodation etc. deserves to be given a very serious thought and very clear instructions and appropriate advice to implement them are put in place so that instances like the present one do not arise and inconvenience is not caused to the CPWD employees who are posted to the PWD or the CPWD, as the case may be, on transfer and not on deputation and in whose cases deductions are made towards Licence Fee etc. Incidentally, the submissions of the applicant that he had not been served any notice before the impugned letter was issued and which aspect has not been commented upon by the respondents is also a reflection on the way the matter has been dealt with by the respondents.

9. Under these circumstances and having regard to the facts of the case as submitted by both the parties, I am inclined to allow this OA with a direction to the respondents to take appropriate steps keeping in view the above observations. Their impugned letter dated 20.10.2003 (Annexure-1) is quashed and set aside. The respondents are directed to issue 'No Due Certificate' to the applicant within a period of two months from the date of receipt of a copy of this order. As regards refund of the amount of HRA withheld by them from May, 2003 to November, 2003 and also the amount charged by them towards Licence Fee for the said period are concerned, the respondents are directed to consider the same with reference to the relevant rules on the subject and shall be apprising the applicant of the out-come of such consideration through a reasoned and speaking order. With this, the OA stands disposed of with no order as to costs.

10. MA No.1232/2004 also stands disposed of, which is inherent in the above order.



(Sarweshwar Jha)
Member (A)