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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.669/2004

This the 21st day of May, 2004

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Smt. Vijay Rani Sharma ... Applicant
(by Shri S.K.Gupta, Advocate)

-versus-

Govt. of N.C.T. of Delhi & Ors. ... Respondents
(by Shri George Paracken, Advocate)

1. Whether to be referred to Reporter? yes
2. Whether to be circulated to other Benches? yes
3. Whether to be released to Press? NO

S. Raju
(Shanker Raju)
Member (J)



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-669/2004

New Delhi this the 21st day of May, 2004.

Hon'ble Shri Shanker Raju, Member(J)

Smt. Vijay Rani Sharma,
W/o late Sh. B.L. Sharma,
R/o 1589, Gulabi Bagh,
Delhi Administration Flats,
Delhi. Applicant

(through Sh. S.K. Gupta, Advocate)

Versus

1. Govt. of NCT of Delhi,
through Chief Secretary,
Delhi Secretariat,
Players Bhawan,
I.P. Estate,
New Delhi-2.
2. Principal Secretary,
PWD & Housing,
5th Level, 'B' Wing,
Delhi Secretariat,
Players Bhawan,
I.P. Estate,
New Delhi-2.
3. Director,
Directorate of Welfare,
Govt. of NCT of Delhi,
Feroz Shah Kotla,
Delhi Gate,
New Delhi.
4. Pay and Accounts Officer No.XIV,
Govt. of NCT of Delhi,
Delhi Fire Station Building,
Shankar Road, New Delhi. Respondents

(through Sh. George Paracken, Advocate)

O R D E R

Hon'ble Shri Shanker Raju, Member(J) -

Applicant assails respondents' orders dated 23.12.2003, 5.2.2004 and 27.2.2004 wherein it is intended to deduct dues of licence fee and damages to the tune of Rs. 3,15,536/- from the dearness allowance of the pension of applicant.

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2. Applicant was allotted government accommodation alongwith an attached garage. On inspection by the Under Secretary (Allotment) it was found that the garage was occupied by an unauthorised person. By an order dated 5.5.1999 the allotment of the premises was cancelled. As the applicant failed to vacate the premises notice under Section 4(1) of Public Premises (Eviction of Unauthorised Occupant) Act, 1971 (herein after referred as Act) was issued. Despite several hearings the applicant did not present herself before the concerned authorities. It was also informed to the applicant that penal rent would be charged. Applicant was asked to surrender the aforesaid accommodation with a direction to pay the outstanding dues for the period from 5.7.1999 to 19.12.2003.

3. Applicant superannuated on 31.1.2001. Against the recovery the present O.A. has been filed.

4. Learned counsel of the applicant Sh. S.K. Gupta contends that recovery on account of penal rent for an unauthorised occupation cannot be effected unless under the P.P. Act applicant is declared as an unauthorised occupant and under Section 7 of the Act recovery is ordered. Even after that the aforesaid recovery can be effected as a land revenue and cannot be deducted from the dearness allowance of the pension.

5. Learned counsel states that unless the proceedings under Section 4 of the P.P. Act are not finalised no recovery can be effected.

6. It is stated that the Estate Officer is seized of the matter and the pension cheque issued for the period March 2004 shows recovery from dearness allowance. Learned counsel as to the jurisdiction contends that as per Rule 72 of the CCS(Pension) Rules unless Directorate of Estates calculates the penal rent and damages i.e. recovery of dues pertaining to government accommodation, the same cannot be recovered. As such the order passed by the respondents has no concern with the P.P. Act - and the Tribunal has jurisdiction.

7. On the other hand, respondents' counsel contends that allotment of accommodation is not a condition of service and in the light of decision of the Hon'ble High Court in Smt. Babli and another etc. Vs. Govt. of NCT and others (2002(3)SLR 733). "Tribunal has no jurisdiction in the aforesaid matter."

8. I have carefully considered the matter in respect of jurisdiction of this Court. Hon'ble High Court of Delhi in Babli's case (supra) has observed as under:-

"We have gone through that judgment which proceeds on the premise that once eviction action was initiated for his unauthorised occupation of premises under the relevant Act. Tribunal could not

assume jurisdiction in the matter by reference to Sec.3(Q)(V) by treating it as "any other matter". That conclusively settles the issue once for all and it need be hardly expressed that law laid down by Supreme Court was binding on all including Tribunal and therefore its impugned orders could not be binding on all including Tribunal and therefore its impugned orders could not be faulted for that. This is so far the added reason that Eviction Act provided its own safeguards and remedies and where an employee felt aggrieved of any orders passed under this Act, he was to seek appropriate remedy provided therein instead of approaching the Tribunal with his grievance in this regard."

9. If one has regard to the above on a proceeding initiated under Section 4 of the P.P. Act ibid and allotment of government accommodation not being condition of service, this Court has no jurisdiction to entertain the claim of the applicant as a service matter. It is not disputed in the case that the order under Section 4 has been passed by the Estate Officer and the applicant has been called after cancellation of accommodation to appear before the concerned authorities. In that event the issue whether recovery is to be effected after enactment under Section 7 of the P.P. Act cannot be gone into by the Tribunal. May be the impugned order is passed by the respondents but in view of the notice issued to the applicant under Section 4 of the P.P. Act & in the light of the decision of the Apex Court in Union of India Vs. Rasila Ram & Ors. (C.A.Nos.1301-04/1990) this Court is not empowered with jurisdiction to entertain the present grievance. Accordingly, O.A. is dismissed for want of

jurisdiction.. However, this shall not preclude the applicant to assail her remedy in the appropriate forum.
No costs.

S. Raju
(Shanker Raju)
Member(J)

/vv/