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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

OA.2135/92

Date of Decision: 13.8.93.

Om Prakash Vashist

Applicant

Versus

Union of India & Ors.

Respondents

Shri S.S. Duggal

Counsel for the applicant.

Shri Baldev Raj Prashar

Counsel for respondents

JUDGEMENT

(delivered by Hon.Member(J) Shri C.J.ROY)

This OA has been filed by Shri Om Prakash Vashist under Section 19 of the Administrative Tribunal's Act, 1985 aggrieved by the order dated 25.11.91 purporting to recover the outstanding amount before releasing the pensionary benefits of the applicant.

2. According to the applicant, he was appointed as L.D.C. in the Education Department on 28.4.1973. A quarter No.935, Kalyanwas, Delhi was allotted to him in August 1980 which remained in hispossession till his retirement on 30.6.1991. The quarter was handed over to the department on 11.5.92. He was not paid HRA during the period the quarter was allotted to him, till the date of his retirement, except for the recovery of the Licence Fee from his salary. On October 1985, without assigning any reason, he was called to appear before an officer on special duty vide letter dated 28.10.1985, failing which, ex-parte decision will be taken and no further opportunity will be given to him. He appeared accordingly and clarified his position. Vide letter dated 10.12.85, his allotment was cancelled with a direction to hand over the vacant possession under Clause 18(2) of the allotment Rules within 60 days, failing which, case for Eviction Proceedings will be initiated against in the Court of Estate Officer. He filed an appeal against the said order to the Secretary Land and Building Department, Delhi Administration on 7.2.86 explaining the whole case in detail and emphatically challenging that the said flat had never been sub let during his service tenure. In support

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of his appeal, he also attached two letters, one for Joint Secretary Kalyanvas Residents Welfare Association(Regd) Delhi Administration and the second one jointly signed by the allottees of the same block certifying that he was the lone occupant of the flat. Till retirement, he did not receive any letter rejecting his appeal. After six years, a letter dated 25.11.91 from the Accounts Officer was issued to the Principal G.B.Pant Polytechnic, Okhla, New Delhi to recover a sum of Rs.43,576/- assessed upto 31.10.91 from his pensionary benefit as allotment of flat was cancelled on 10.12.85 and accordingly penalty 4 times of the licence fee was imposed on him. The letter dated 25.11.91 states that a demand has been sent to the D.D.U Women Polytechnic to recover the licence fee @ Rs.650.45 p.m. w.e.f. 20.12.85 ie. after six years of retirement of the applicant whereas the licence fee have already been recovered from the pay and allowances, which was fixed at the time of allotment of the said quarter. The department has not released pensionary benefits till date, though a legal notice through advocate was served on 23.12.1991 to release the pensionary benefit, without any delay but no reply has been given. While issuing the impugned order for recovery of Rs.43576/- from the pensionary benefit, the Accounts Officer(Finance) did not apply his legality of mind but acted in a mechanical manner with malafide intention with oblique motive. No disciplinary action is pending against him. To impose the levy against the actual Licence Fee Rs.35/- p.m. to Rs.650/45 without assiging any reason, without giving show cause notice, without issuing charge sheet, without enquiry, and without affording any kind of opportunity to him, the said impugned order for recover is basically invalid, void, illegal, unwarranted and unconstitutional and against all norms of equity and justice. He has prayed for setting aside the impugned order dated 25.11.91 and to direct the respondents to pay dues of his retiral benefit with interest @ 20% as per decsion of the Supreme Court of India.

3. The respondents have stated that Quarter No.935, Kalyanwas Delhi was allotted to the applicant in August, 1980 and the applicant has handed over the possession back in the May 1992. The allotment was cancelled with effect from 10.12.1985 and it was found sublet by the allottee. As per the provision of the HRA Rules, allottee of Government accommodation is not entitled to HRA standard Licence Fee. A notice was issued and the applicant appeared before the officer of special duty and made a statement that he is not having any Ration Card as he is living at Mitraon Village near Najafgarh. He has said that the house was Sub-letted only for a short time. They did not deny the cancellation of allotment vide order 10.12.85. The representation of the applicant was rejected by the Secretary (Land and Building). It is admitted by the applicant that he was not residing in the accommodation due to various grounds mentioned in the representation. A copy of the representation is at Annexure A-111. In pursuance of this Office Order the D.D.O. was asked vide this office letter dated 20.12.1985 to recover licence fee @650.45 per month under the provision of Rule 45-A. A subsequent reminder was issued on 25.11.91 raising demand of Rs.42,517/- upto 31.10.1991. The demand was raised after cancellation of allotment w.e.f. 10.12.1985 by the Allotment Branch. In view of the above facts the application be dismissed with costs.

3. I have heard the learned counsel for the applicant and perused the documents on record.

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4. After the pleadings are complete, /the respondents nor the counsel entered appearance inspite of several adjournments pending argument on 22.3.93, 21.4.93, 7.5.93, 13.5.93 and finally on 1.6.93. A pass over was given upto afternoon conveniencing the respondents to appear before the court for argument with a direction that the case will be decided on the basis of the available records if the respondents fail to turn up for argument in the afternoon. Since none had entered appearance on behalf of the respondents, I proceed accordingly to dispose this application on the basis of the records available.

5. Annexure P-6 is a letter dated 7.2.86 by the applicant addressed to the Secretary, Land & Building Department, Delhi Administration, PWD, wherein the applicant has stated that he was living alone in the said quarter and out of frustration he was going to join his brother or sister, that the water in that area was hard and heavy the use of which had caused intestinal disorder to him, that he does not have a ration card, that he was declared as a TB patient and that no tenant will accept a residential accommodation without electric connection there. At page 24 is a letter from the Kalyanwas Residents' Welfare Association certifying that the applicant is residing physically in the relevant quarter, at page 25 is a joint letter in Hindi from the residents of that area reasserting the above fact and on page 26(Annexure F-7) is a letter dated 25.11.91 (impugned herein) from the Delhi Administration, addressed to the Principal, GB Pant Polytechnic asking him to recover licence fee @ Rs.650-45 per month from 10.12.85 to 31.10.91 amounting to a total of Rs.43,576/- before releasing his pensionary benefits.

6. I find at Annexure P-5 is an order dated 10.12.85 which says that a show cause notice was issued and personal hearing was given to the applicant and it was found that the said flat was sub-let and mis-used, thus cancelling the allotment and the applicant was asked to hand over the vacant possession within sixty days failing which licence fee at market rate would be charged and eviction proceedings would be initiated against him.

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However, I do not find any eviction order or the disposal of the appeal dated 7.2.86 of the applicant from the respondents.

7. The applicant, having been retired with effect from 30.6.1991, has not been paid the retiral benefits on the ground that he has sublet the government accommodation and an amount of Rs.43,576/- is to be recovered from him. On the other hand, the applicant claims that he was not paid any HRA during the period of his occupation of the said quarter and licence fee was regularly deducted from his salary until his date of retirement.

8. The learned counsel for the applicant has brought to my notice the decision in OA 528/92 dated 11.12.92 decided by the Madras Bench of CAT, wherein it has been held that if no judicial proceedings had been instituted against the Government servant on the date of retirement, he would be entitled to his pensionary benefits and not merely to a provisional pension. I feel that this is relevant in the instant case as it does speak about provisional pension as well as his pensionary benefits.

9. Since neither the respondents nor their counsel appeared, it is not clear why the respondents have taken more than six years, that too after the applicant has retired on 30.6.1991, to come with the impugned letter after cancellation of allotment vide their letter dated 10.12.1985.

10. The applicant has since handed over possession of the quarter on 11.5.1992.

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11. In the circumstances, the respondents are directed to release the retiral and other benefits with 10% interest from the date of retirement till the date of payment to the applicant. They are also directed to hold an enquiry after giving him an opportunity of being heard and determine the period of unauthorised occupation of the quarter by the applicant and how much damage rent is to be recovered from him. They are entitled to recover the amount as per extant rule. This exercise may be completed by the respondents within two months from the date of receipt of this order by them.

The application is thus disposed of. No costs.

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(C.J. Roy} 13/8/93
Member (J)