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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

27.05.1992

OA 787/92

SHRI KISHAN

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

...SHRI S.K. SAWHNEY

FOR THE RESPONDENTS

...MS. B. SUNITA RAO

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P.SHARMA, MEMBER (J))

The applicant retired as Driver 'C' on 31.12.1990 from Northern Railway, Loco Shed, New Delhi and assailed the order dt.8.2.1991 (Annexure A1) which is a notice under Sub Section 1 and Clause B (i) of Sub Section 2 of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 regarding Railway Quarter No.71/B-5 Motia Bag, Delhi.

The applicant has prayed that the DCRG which was paid to him was paid less to the tune of Rs.13,182 and the respondents after the applicant was exonerated in the departmental enquiry was to be paid Rs.2424 which were recovered during the tenure of his service from his pay as

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penal rent in excess of the licence fee. That refund voucher was prepared, but the same was not paid to the applicant. He has also claimed interest on delayed payment and on the withheld amount of DCRG at the market rent and also the post retirement passes.

The respondents filed the counter opposing the application.

I have heard the learned counsel for both the parties at length. The short point involved is that the applicant after retirement vacated the Railway Quarter No.71/B-5 Motia Bag, Delhi on 9.4.1991 and he had obtained permission of retention of that quarter till that period. The respondents have served the applicant with a chargesheet (Annexure A2) under Rule 9 of the Disciplinary and Appeal Rules, 1968 dt.18.8.1988 charging the applicant that he has sublet the accommodation from 11.12.1987 and why he not be departmentally proceeded for violating the allotment rules which amounts to misconduct. It appears that after completion of that enquiry the Disciplinary Authority by the order dt.6.1.1989 exonerated the applicant and so the chargesheet against the applicant stands dropped. The relevant portion of the order is reproduced below :-

"I have carefully gone through the enquiry report submitted by the E.O. and accepted the same. As the charges levelled against Shri Siri Ram Kishan has not been proved. I exonerated him of the charges levelled against him"

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Even after this order of January, 1989 exonerating the applicant of the charge of subletting, the matter has proceeded with the Estate Officer under PP(EOU) Act, 1971 and it appears that the department has calculated an amount of Rs.13182 as due on the applicant on account of penal rent for the period for which the applicant is alleged to have sublet the accommodation to third person. Earlier this period was from June, 1988 to January, 1989, but subsequently this period has been antedated to 11.12.1987 to January, 1989.

The learned counsel for the respondents argued that though the applicant admittedly was discharged in the chargesheet for subletting, served on him by the order dt.6.1.1989, but the matter of subletting was considered by the prescribed authority, i.e., the Estate Officer under the provisions of PP(EOU) Act, 1971 and so the damages were calculated as per the order of the said authority. It does not stand to reason that when a person has been proceeded both in a departmental disciplinary proceeding as well as under the special enactment, i.e., PP(EOU) Act, 1971, then the respondents can choose the verdict which favours them. In fact, both the organs, one ordering the departmental enquiry and the other initiating the proceedings under PP(EOU) Act, 1971 are the same under the same shelter in the same office. There cannot be any division of responsibilities on that account, as argued by the learned counsel for the respondents. In this case, when once the charge of subletting has been

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disproved, then the proceedings under PP(EOU) Act, 1971 themselves become redundant and any order passed in those proceedings will be void ab-initio. It cannot be said that the departmental representative was not carrying out vigilantly the departmental proceedings and so they have gone by default. Even if that may be so, then the principles of natural justice come into play. When once a person has been exonerated on a charge, then he cannot again be proceeded with on the same accusations and that will amount to double jeopardy. In view of this, the contention of the learned counsel for the respondents cannot be accepted that Public Premises Authority has held the applicant liable for payment of damages of penal rent on account of subletting.

I, therefore, find that the contentions raised by the respondents cannot be accepted and the application is, therefore, allowed and disposed of as follows :-

- (a) The respondents are directed to pay the withheld amount of DCRG-Rs.13,182 with interest @10% p.a. from the date one month after the retirement of the applicant till the date of payment.
- (b) The respondents are directed also to reimburse the applicant the amount of Rs.2,424, which was already ordered to be paid to the applicant and was not paid, but without any interest.

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- (c) The other prayer for award of interest is not considered just and so disallowed.
- (d) The respondents are also directed to release post retirement passes to the applicant.
- (e) The respondents shall comply with the above directions within a period of two months from the date of receipt of a copy of this judgement.

In the circumstances, the parties shall bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J) 27.5.92
27.05.1992