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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1183 of 1993

This 12th day of August, 1994

Hon'ble Mr.B.K. Singh, Member (A)

E.K. Nafaria,
C.P.W.D.
N.S.G.P. Div. II
Gurgaon (Haryana)

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Applicant

By Advocate: None present

VERSUS

Union of India, through:

1. The Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi.
2. The Director General (Works),
Central Public Works Department,
Nirman Bhavan,
New Delhi.

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Respondents

By Advocate: Shri V.S.R. Krishna

O R D E R

This application is directed against the order contained in letter No. 1(3)/92-DCC-VII/GA/2128 dated 8.12.92 commanding endorsement No. 8(1)/EE/NSGP/Dn.II/92/665 dated 17.12.1992 by which the representation of the applicant against letter No. No.15(6)/SCD/91/931 dated 1.8.1991 directing the applicant to deposit Rs.23,236/- as penal rent for the quarter occupied by him, was rejected. The impugned letter is marked ~~comd~~ as annexure-1 of the paper-book.

2. The admitted facts of the case are these. The applicant was transferred to the CPWD Sub-Division, Silchar (Assam) w.e.f. 10.7.87 and he remained there till 24.6.1992 when he was shifted and posted as Asstt.

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Engineer (Civil), NSGP Circle-II, Gurgaon (Haryana). At the time of his transfer to Silchar the applicant was in occupation of government accommodation attached with Enquiry Office, Pushp Vihar, New Delhi. The applicant continued to retain the accommodation from 10.7.87 to 14.5.91. While he was away to Silchar, following Sections 4 and 5 ^{and 6} of the Public Premises Eviction Act, 1971, he was evicted from the said quarter. The eviction took place because of the allegation that the public premises in question was misused by the applicant.

3. It is also admitted that certain facilities have been given to the All India Service officers belonging to the cadres of Assam, Meghalaya, Manipur, Nagaland and Tripura and Union Territories of Arunachal Pradesh, Mizoram and Andaman & Nicobar Islands. They come on deputation to Delhi and when they are repatriated to their home States after completing their tenure in Delhi, they are allowed to surrender their quarter and opt for one type below their entitlement and retain it for a period of two years from the date ^{of completion} of their tenure in Delhi. The applicant has relied on the O.M. of the Ministry of Finance, Department of Expenditure dated 14.12.1983 where other civilian government employees are permitted to retain their accommodation at their last place of posting subject to payment of licence fee at the rate of 1½ times the standard licence fee as defined under FR 45-A or 15% of the emoluments drawn by them, whichever is less. A copy of this O.M. is marked as annexure-II of the paper-book. This circular also refers to the allowances and facilities admissible to civilian central government employees serving in the above-mentioned States/Uts. The decision of the

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President contained in circular No.12035(24)/77-Pol.II dated 15.2.1984 lays down that the alternative accommodation of one type below the type of accommodation which a civilian central government employee is occupying, will be made available to him in the nearby locality or he will be provided hostel accommodation if it is for bonafide use of his family members. A careful reading of the circular shows that it is obligatory on the part of the officer desiring alternative accommodation at the last place of his posting to accept one type below his entitlement failing which the above concession will be withdrawn and the provision of the Allotment of Government Residence (General Pool) in Delhi) Rules 1963 will be applicable.

4. There must be a specific request for retention of accommodation/allotment/alternative accommodation and it must reach the Directorate of Estates within one month of the relinquishment of charge at the last station of posting.

5. It is the sole responsibility of the officer concerned to intimate to the Directorate of Estates the date of relinquishment of charge immediately prior to his posting in the North-Eastern region and the date of handing over charge in that region. This information is a must and has to reach the Directorate of Estates within one month of the event. The orders were made effective from 1.11.1983 and remained in force till 31.8.86.

6. The applicant has sought the following reliefs:-

- (i) declare the recovery of Rs.23,236/- as arrears of licence fee, as wrong;
- (ii) direct the respondents to pay HRA to the applicant for the period from 14.5.91 to 22.6.92 during which he was never in occupation of any government accommodation;

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(iii) direct the respondents to recalculate the rental liability of the applicant at normal rates till he was

(iii) direct the respondents to recalculate the rental liability of the applicant at normal rates till he was evicted from the premises and the possession was taken over forcefully by the respondents.

7. A notice was issued to the respondents who contested the application and grant of reliefs prayed for.

8. None was present on behalf of the applicant. Shri VSR Krishna, counsel, argued the case on behalf of the respondents. The case was argued at great length by the learned counsel for the respondents on 11.5.94. On that day Shri MP Raju, proxy for Shri J.P. Verghese, counsel for the applicant, stated that Shri Verghese had met with an accident, and sought adjournment on this basis. Since then the matter has been on board. Since nobody is present on behalf of the applicant, the matter is being decided on the basis of pleadings and arguments advanced by the learned counsel for the respondents who assisted the Bench on two occasions to arrive at correct findings.

9. In the counter reply the principal averments are these. The applicant while working as Jr. Engineer in MBR Divn. No.I under MBR Project, CPWD, New Delhi, was allotted Qr. No. 11, T-II, Sector IV, MB Road, CPWD Enquiry Office vide MBR Project Manager, MBR Housing Project, letter No. 1(2)85.MBRHP/2263 dated 23.7.85. This quarter was meant for "Essential Maintenance Staff" and the applicant being in charge of maintenance works was allotted this quarter with specific condition that in case of his transfer from essential maintenance works, he shall vacate the said quarter within 30 days of the transfer. This was a pre-condition for allotment of this quarter. Prior to the allotment of the quarter to him, the applicant had given an undertaking that the quarter being allotted to him is meant for essential maintenance and he will vacate it on transfer staff./ The applicant while acknowledging the receipt of

the allotment letter, agreed to vacate the quarter within 30 days of his transfer from the present post without waiting for a formal allotment of general pool accommodation to him.

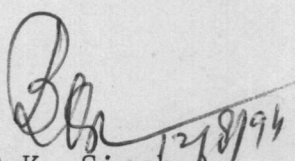
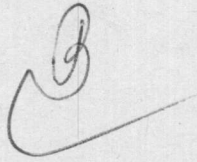
10. It is admitted that the applicant was relieved of his duties in MBR Project, CPWD on 24.7.1987 consequent of his transfer to Tripura Central Division, CPWD, on his promotion as Assistant Engineer and as per the condition already stipulated in the letter he was required to vacate the quarter on 23.8.1987. This was not a general pool quarter and as such the O.M. of Ministry of Finance, quoted above, will not be applicable in his case. Once the applicant did not vacate the quarter within the specified period of 30 days, i.e. on 23.8.1987 on his transfer to Tripura on promotion, the respondents wrote to the Executive Engineer, CPWD, Tripura vide letter dated 18.3.1988 to recover the licence fee in respect of the said quarter at the rate of Rs.88/-^{p.m.} being normal rent for August 1987 and from September 1987 till the date of its vacation Rs. 716/- being the penal rent per month. It was a quarter meant for essential maintenance staff directly under the the control of MBR Project, New Delhi and as such the O.M. of Ministry of Finance quoted above, was not applicable in his case. In view of the various undertakings given by him, that he would vacate the government quarter within a period of one month from the date of relinquishment of charge, ^{back on it.} This ^{and} he cannot go / quarter was not a general pool accommodation / I do not find any paper on record that he had ever approached the Directorate of Estates for allotment of a general pool accommodation ^{of} one type below his entitlement and as such he had no right to continue in this quarter beyond the permissible time-limit. His own undertakings will work as promissory estoppel against him. He was entitled to

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retain accommodation in question only upto 30 days after his transfer on promotion for which the respondents have charged Rs.88/- which was the normal licence fee and they were very much within their right to charge Rs.716/- per month as penal rent from the applicant after the expiry of one month and till the date the house remained in an unauthorised occupation of the applicant. The said quarter was meant for those employees who are posted specifically for 'essential maintenance works' and as such this will be called as an 'earmarked quarter'.

11. In this particular case the allotment has not been made by the Directorate of Estates. The competent authority to allot this quarter is the Project Manager, MBRHP (now Superintending Engineer, Delhi Central Circle-III) and it is he who is competent to recover the penal rent. I have also gone through the rejoinder filed by the applicant which is nothing but a reiteration of the facts narrated in the OA. The plea that the applicant retained the quarter for bonafide use of his parents is not tenable. There is a specific averment that this quarter was in possession of unauthorised persons and these unauthorised persons were rightly evicted following the procedure laid down in PPE Act 1971 ^{and} _{of} charging ^{also} _{penal} rent from the applicant is perfectly in order.

12. I do not find any merit in the application and the same is dismissed as devoid of any merit and substance, but without any order as to costs. The interim order passed by this Tribunal on 28.5.1993 is vacated.


(B.K. Singh)
Member (A)