

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.2221/93

New Delhi, this the 3rd day of June 1994

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A)

Shri Gautam Sharma
son of Shri Ghanshyam Sharma
working as Assistant Engineer
in Doordarshan Kendra, Jaipur &
residing at 10/36, Malviya Nagar,
Jaipur. ..Applicant.

(By Shri B.Krishan, Advocate)

Vs.

1. The Director General,
Directorate General Doordarshan,
Mandi House, New Delhi.

2. The Director,
Doordarshan Kendra,
Jallandhar (Punjab). ..Respondents

(By Shri JC Madan, Advocate)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A)

The applicant who is an employee of Doordarshan joined Doordarshan Kendra, Jullunder on 10-2-88 as Senior Engineering Assistant. He immediately applied for allotment of residential accommodation and as senior engineering assistants are eligible for special consideration in allotment as shift duty staff, he was allotted accommodation on 8-6-88. Thereafter he took up the possession immediately on 13-6-88. In the meantime the applicant had already been promoted as Assistant Engineer on 23-3-88.

In the category of Assistant Engineers not being eligible for special consideration shown to shift duty staff, the allotment made vide letter dated 8-6-88 was cancelled by further office order dated 15/17-6-88. In the letter sent by the Administration to the applicant, it was admitted that an error had been committed in allotting the accommodation meant for shift duty staff and advised to vacate the

quarter for making the same available to a properly eligible person. They also warned him that higher rent would be charged in case of non-vacation. On 13/16-6-89 an office order (An.A.15) was issued imposing damage charges @ Rs.926/- p.m. on the applicant with effect from 1-1-1989. A further office order dated 25-10-91 was issued increasing the damage charges to Rs.1433/- p.m. effective from 1-4-91. Such damage rent was charged till 25-7-92 when the applicant vacated the quarter.

2. This C.A. has been filed for quashing the orders of 13/16-8-89 and 25-10-91 imposing damage rent and for refund of the entire amount deducted from the applicant in excess of the normal rate of licence fee for the period from 13-6-88 to 25-7-92 alongwith the interest.

3. The ld. counsel of the applicant initially advanced the argument that even Assistant Engineers should be eligible for the consideration shown to the shift duty staff. At this stage the respondents produced a copy of the notification issued in the Gazette of India dated 8-9-84 by which the rules for allotment of residential quarters, 1983 issued by the Ministry of Information & Broadcasting got published. These rules were issued in the name of the President in exercise of the powers conferred by Rule 45 of the Fundamental Rules. In these rules under rule 2.5 shift duty staff has been defined as staff performing shift duty in terms of orders contained in the Ministry of Information & Broadcasting letter No.1/74-B(A) dated 31-7-83 (as amended from time to time) and belonging to categories specified in the said order appended to these rules as VII schedule. A perusal of the VII schedule attached to these allotment rules shows that only senior engineering assistants get covered under the schedule

and not the Assistant Engineers.

4. It was then argued by the applicant's counsel that damage rent could not have been charged without invoking rule 8 of P.P.E Act. This argument was countered by reference to relevant portion under rule 9 of the above mentioned rules which reads as under:-

" Overstay in quarters after cancellation of allotment.- Where, after an allotment has been cancelled or is to be cancelled under any provisions contained in these rules and the quarter remains or has remained in occupation of the officer to whom it was allotted or of any person claiming through him, such officer shall be liable to pay licence fee at penal rate as may be determined from time to time. To obtain vacant possession of the quarter, the Controlling Authority may, besides levy of penal rent, also undertake eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act 1971."

5. The rule position being what it is, the compulsion to follow the provision of P.P.E Act recovering rate for whatever in the licence fee at a penal rate which is to be determined from time to time, does not arise.

6. It was then argued that there is no basis for the damage charges of Rs.926/- p.m./Rs.1433 p.m. as mentioned in the orders dated 13/16-6-89 and 25-10-91. The applicant drew attention to the contents of the office memorandum dated 27-8-87 issued by the Directorate of Estates as per which the term market rate of licence fee which was being mentioned earlier was to be substituted by the word 'damages' and suitable amendments are to be carried out in the allotment of government residences (general pool in Delhi) Rules 1983. It was argued that no such amendment has taken place. On scrutiny it could be noticed that the Ministry of Information and Broadcasting published their own rules and the instructions of Director of Estates is only a ^{having} _{power} persuasive over them. The instructions issued by the Ministry of Information & Broadcasting incorporate the

provision of recovering/fee at penal rate/may be determined from time to time.

7. Respondents in the reply have referred to the correspondence with the C.P.W.D authorites for arriving at the relevant rates for unauthorised occupation. Since a specific provision is available for enhancing the licence fee from time to time the respondents cannot be faulted for levying the higher rate and calling it as damage.

8. Attention to office memorandum of Directorate of Estates dated 27-8-87 was again drawn to para 2.4 which states that the damage rates should be followed for a period of two years and revised rates should be prescribed thereafter. It was argued that after August 1989 i.e. after a period of two years after the issue of memorandum of Directorate of Estates i.e. 27-8-87 the damage rates cannot be enforced. It is not necessary to go into this technical aspect since it has been noticed that the Ministry of Information & Broadcasting have a separate set of rules and their rules provide for changing the rates from time to time.

9. The 1d. counsel for the applicant referred to the following citations in support of his case:-

(i) Supreme Court orders in I(1987)ATLT 332 in UOI & Another Vs. Wing Cdr. R.R.Hingorani

This is a case where damage rent was recovered from the commuted pension. Such recovery was held illegal in view of section 11 of the Pensions Act 1974.

The facts in this O.A. are different and the recovery which has already been effected from the salary of the applicant is on different footing. On the other hand, in the same order the Supreme Court has held that the liability to pay damages beyond the concessional period is an absolute liability.

(ii) Orders passed by this Bench of the Tribunal in OA No.686/93 on 18.1.94. It is not necessary to go into details of this case since the order itself states that this case shall not be treated as a precedent.

(iii) Orders passed by this Tribunal in OA No. 3342/92 dated 18-8-93 relate to a case where the initial allotment made by the concerned organisation did not make any mention that in the event of overstay the person concerned shall be liable to pay damage rent. It was only mentioned that regarding other matters the allottees will have to abide by the rules prescribed by the Directorate of Estates for general pool accommodation. In this connection the OM issued by the Director of Estates stipulates that ^{if} the unauthorised occupant does not agree to pay damages, the damages to be recovered from him or her will have to be pleaded before the Estate Officer in terms of Rule 8 of the PPE Rules. Accordingly the non observance of the procedure under Public Premises (Eviction of unauthorised occupants) Amended Act, 1980 was held to be irregular. This aspect has already been discussed and the special provision relating to the Ministry of Information and Broadcasting has been touched upon in earlier part of this order.

7. In the circumstances, the O.A. is dismissed.
No costs.

P. J. Thiru

(P.T.THIRUVENGADAM)
Member(A)