

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 3rd DAY OF June 1998

Original Application No.143 of 1996

HON.MR.S.DAYAL, MEMBER(A)

K.K. Nigam aged about 61 years
Son of late Shri G.P. Nigam,
R/o 165/6/1-A Azad Nagar,
South Malaka, Allahabad.

... . . Applicant

(By Adv: Shri V.K. Goel)

Versus

1. Union of India through Director
General/Secretary Ministry of
Communication, New Delhi.
2. Chief Post Master General
Uttar Pradesh Lucknow
3. Senior Supdt Post office
Kanpur.

... . . Respondents

(By Adv: Shri N.B Singh/S.K. Anwar)

O R D E R (RESERVED)

HON.MR.S.DAYAL, MEMBER(A)

This is an application u/s 19 of the Administrative
Tribunals Act 1985.

2. The applicant has filed this application seeking the following reliefs:
 - (i) A direction to the respondents for setting aside the impugned order dated 8.1.96 relating to recoveries totalling Rs.68,145.75p only
 - (ii) To issue a direction to the respondents to release the amount of Rs.68,145.75 with penal interest.
 - (iii) Award cost of the application
 - (iv) A direction to the respondents setting aside order dated 15.1.93 passed by the respondents.

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3. The facts of the case as mentioned by the applicant are that the applicant was allotted official accommodation II/B-I in the old CTO compound Kanpur while he was working as complaint inspector Kanpur. He was transferred to Saharanpur in October 1978 and he was retransferred to Kanpur in August 1980. Proceedings under Public Premises Act were initiated against him and the Estate Officer and the instant Post Master General U.P. circle Lucknow passed an order dated 21.10.80 asking the applicant to vacate the quarter within thirty days. The applicant filed a misc. civil appeal before District Judge Kanpur for staying order of the Estate officer under Public Premises Act and the District Judge Kanpur stayed the eviction of the applicant from the disputed premises by interim order dated 17.11.80. It is seen that the operation of stay order continued till 4.8.88 and hence the period of occupation of the quarter upto 4.8.88 is claimed by the applicant to be authorised. The Assistant Director(Building and Establishment) for Chief Post Master General U.P. issued a letter No. Bdg/EN/4/7 dated 12.12.90 directing recovery of Rs.18,245.95p. This amount was sought to be recovered as market rate rent from 21.10.80 to 31.8.87 and as damage rent from 1.9.87 to 4.8.88 amounting to Rs.20,405.15 and Rs.7,748.80 respectively. Service charges of Rs.454.75 were added to make a sum of Rs.28,591.70 and after adjusting the amount of Rs.10,345.75 already paid by the applicant and a recovery of Rs.18,245.95 was ordered to be made from the applicant. On an application of the applicant the respondents passed order dated 19.9.91 reducing the recovery to Rs.13,608.85. The applicant contested this recovery in OA 103/92 in which the respondents maintained that the recovery of Rs.13,608.85 was valid because the rent for entire period was converted into market rate rent. The Tribunal in its judgment and order dated 17.9.92 upheld the levy of market rate rent from 21.10.80 to 4.8.88 from the applicant

directing the respondents to recalculate the amount from the applicant for the period 21.10.80 to 4.8.88 to remove any discrepancies. The applicant claims that the respondents passed a fresh order of recovery without receiving a copy of the judgment of the Tribunal in OA 103/92 and directed the applicant to pay damage rent amounting to Rs.70,994/- by applying a formula for calculation of damage rent which was applicable only in Delhi/New Delhi.

4. The arguments of Shri V.K. Goel for the applicant and Sri N.B Singh and Sri S.K. Anwar for the respondents were heard.

5. The first ground taken by the learned counsel for the applicant is that without cancellation of allotement the retention of quarter by the applicant could not have been treated unauthorised and the respondents were not empowered to recover anything more than the standard rent of the premises. The respondents in their counter reply have stated that the allotement of the house was cancelled by Sr. Supdt. of Post Offices Kanpur Division vide his letter dated 29.8.79. In addition to this contention of the respondents the notice of the Estate Officer also mentioned that the applicant was in unauthorised occupation of the premises in question. It is admitted by the applicant himself that he was transferred out of Kanpur and remained there for a period of merely one year and ten months. All these facts taken together do not support the ground of the applicant of not being in unauthorised occupation of the premises. The District Judge ultimately upheld the order of vacation passed by the Estate officer and gave the applicant sixty days time for vacating the quarter in question. In view of the same the applicant was subjected to payment of market rate rent.

6. Another contention of learned counsel for the applicant is that the period from 21.10.80 to 4.8.88 was covered

by stay of the district court and therefore the respondents were not authorised to charge any rent higher than the standard rent from the applicant. It transpires from the order of District Judge Kanpur in M.A 342/80 against the order of Estate officer dated 21.10.80 that the stay was directed towards eviction of the applicant from the disputed premises. No stay appears to have been sought or given by the court for recovery of penal rent. Even otherwise a stay granted and then vacated by another ^{interim or} ~~interim order~~ final order ^{has} as the effect of restoring statusquo ante and the applicant would become liable to pay whatever penalty is legally imposed on him for retention of the premises in question unauthorisedly.

7. The learned counsel for the applicant has also raised the question of estoppel and stated that since the respondents have stated in OA 103/92 that the amount of Rs.13,608.85 was valid he could not have increase the amount after passing of the order by the Tribunal in OA to any amount higher than the amount xxxxxxxxxxxx indicated above. The respondents have also raised this point in their counter reply and have contended that the matter had already been settled in OA 103/92 and the recovery of Rs.70,994.25 raised against the applicant had been raised on the basis of calculations given by Advisor, Internal Finance. Thus the recovery was correct and that the applicant was subjected from raising this question again by the Tribunal in the OA.

8. The respondents have calculated different amounts of recovery amounting to Rs.18,245.95 in the order dated 12.12.90, Rs.13,608.85 in the order dated 19.9.91, recovery of Rs.70,994.25 as mentioned in the respondents order dated 31.1.93 and the recovery amounting to Rs.57,640. as as contained in letter dated 8.1.96 of the respondents and finally calculations given in letter dated 22.4.97 issued by the respondents pertaining to the premises occupied by the applicant in Kanpur and some other premises in Lucknow in

which different ~~ways~~^{rates} have been applied to the calculation of amount to be recovered.

9. In order to settle these controversies, the best way would be to ~~strike~~^{See} the directive portion of the judgment and order in OA 103/92 which reads as follows:

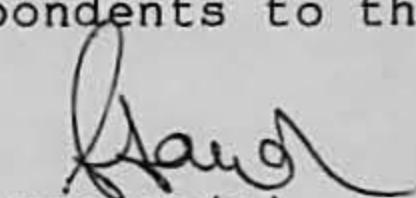
"Having considered all the facts and circumstances of the case and all the aspects of the matter, I find that the applicant was rightly called upon to pay market rate of rent as per extant rules and in the order dated 19.9.91 in (Annexure1), and there is no illegality and invalidity in this regard. However, I find that the calculation chart as given in counter-affidavit by the respondents does not appear to be quite and accurate and as such the matter regarding calculation of rent for the period as specified above at the above rate shall remain open between the parties, and I find it expedient to direct the respondents to calculate the rent at the above rate from the period i.e. 21.10.80 to 4.8.88 and recover only that much amount which is found appropriate and accurate as per extant rules and regulations."

10. It is clear from the above excerpt that the OA upheld the order dated 19.9.91 and the principle of imposition of market rate rent amounting to Rs.13,608.85 as per order dated 19.9.91. However, calculation chart as given in the counter affidavit by the respondents was not found to be accurate and therefore the calculation of rent for the period from 21.10.80 to 4.8.88 was kept open and the respondents were asked to recalculate the rent and recover only that amount which was found accurate as per extant rules and regulations. The respondents have interpreted this order to ~~mean~~^{mean} that this order authorised them to increase the rent to a total of Rs.70,994.25. I do not find that such a conclusion can be drawn after reading para 5 of the judgment of the OA. The principle of market rate of rent was upheld by the Tribunal in the OA and application of principle of damage rent to the entire period could not have been resorted to by the respondents within the ambit of the order of the Tribunal. What appears to have been intended by the Tribunal is that any error of calculation which may have occurred in arriving of totalling of Rs.13,608.85 should be considered and the amount

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to be recalculated by elimination of those errors. THE respondents have not done that. I do not consider it necessary to again ask them to recalculate the rent for that period.

11. In the light of the above discussion, the respondents are directed to refund the excess amount recovered from the DCRG and encashment of leave after making a recovery of Rs.13,608.85 from the total amount of Rs.52,800 due as DCRG and Rs.40,346 due as leave encashment to the applicant within a period of three months from the date of communication of this order alongwith an interest of 12% per annum on the amount due to be refunded to the applicant from the date of retirement to the date of payment. The cost of the application shall be paid by the respondents to the applicant.


MEMBER(A)

Dated: 3.6.1998

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