

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1056 of 1996

Allahabad this the 20th day of October, 2000

Hon'ble Mr. Rafiq Uddin, Member (J)

Anirudh Bahadur Singh, Aged about 60 years,
 S/o Late Sri Sant Bux Singh, 58, Gandhigram,
 Kanpur.

Applicant

By Advocate Shri H.S. Srivastava

Versus

1. The Union of India through Secretary,
 Ministry of Defence(Finance), New Delhi.
2. The Financial Advisor, Ministry of Defence,
 (Finance), New Delhi.
3. The Controller General of Defence Accounts
 West Block-V, R.K. Puram, New Delhi.
4. The Chief Controller of Accounts(Fys) 10-A,
 Auckland Road, Calcutta.
5. The Controller of Accounts(Fys), Field Gun@
 Factory, Kanpur.
6. The General Manager, Ordnance Equipment
 Factory, Kanpur.

Respondents

By Advocate Shri D.S. Shukla

O R D E R (Oral)

By Hon'ble Mr. Rafiq Uddin, Member (J)

The applicant-A.B. Singh was working
 at the relevant time as Accounts Officer in the
 Office of the Ordnance Equipment Factory, Kanpur

Rn

:: 2 ::

and was in occupation of Government accommodation no.1/2 Type III, Shanti Nagar, Kanpur. The applicant thereafter was transferred to Small Arms Factory, Kanpur and was relieved on 18.2.1993. Since the applicant was not allotted any accommodation at Small Arms Factory, Kanpur, he continued to occupy the aforesaid accommodation during the period from 18.2.1993 to 07.3.1994. It is an admitted case that the applicant as such was entitled to occupy the aforesaid accommodation till 29.5.1993. The respondents thereafter charged the market rent from the applicant w.e.f. June, 1993 at the rate of Rs.506/- per month as against the normal rent of Rs110/- per month. The applicant retired from service on attaining the age of superannuation w.e.f. 31.3.1994. The applicant vacated the aforesaid accommodation on 18.3.1994.

2. The applicant has two grievances, first that ^{he} should have been charged the normal rent for the period he was occupying the Government accommodation in Ordnance Equipment Factory, Kanpur and second that he should have also been paid the H.R.A. during the period he was occupying the Government accommodation and also after ^{vacating} ~~having~~ the accommodation till his date of retirement, because the applicant had ^{acquired} ~~cleared~~ some private accommodation on rent after vacating the Government accommodation. The applicant thereafter has filed this O.A. seeking

R₁

:: 3 ::

directions to the respondents to pay H.R.A. at the rate of Rs.600/- per month from 22.2.1993 to 21.10.1993 and from 08.3.1994 to 31.3.1994 as admissible at Kanpur and also to refund the sum of Rs.3653/- with interest at the rate of 19% per annum ^{till} ~~at the~~ date of payment.

3. Learned counsel for the respondents has contended that the Government accommodation occupied by the applicant, was vacated by him only when he was proceeded under the provision of Public Premises Act, 1972 w.e.f 08.3.1994. Therefore, he is not entitled for normal rent as claimed by him.

4. I have heard Shri H.S. Srivastava, learned counsel for the applicant and Shri D.S. Shukla, learned counsel for the respondents.

5. Learned counsel for the applicant has not disputed the fact that the accommodation in question was vacated by the applicant after proceedings against him under the Provision of Public Premises Act. Learned counsel for the applicant relying on Army Instruction No.26 of 1970, which has been annexed as annexure no.R.A.-2, ~~and~~ has urged that the applicant was entitled to occupy the Government accommodation on payment of normal rent because no accommodation was available for him in his new duty station. The relevant

:: 4 ::

portion of the Instructions is as under:-

"Civilian personnel including personnel of the Defence Accounts Department paid from the Defence Services Estimates and the staff of D.G.O.F. Organisation as also of Director of Audit, Defence Service who have been allotted accommodation in cities mentioned below, and their suburbs but who are employed in nearby stations may be permitted to continue in occupation of their quarters on payment of normal rent provided no accommodation is available for them in their new duty stations:-

BANGALORE
GREATER BOMBAY (INCLUDING KALYAN)
MADRAS
POONA
AGRA
ALLAHABAD
JABALPUR
BARRACKPORE/CHAPUR
CALCUTTA
DEHRADUN
JHANSI
KANPUR
MEERUT
AMBALA
AMRITSAR
DELHI
FEROZEPORE
JULLUNDUR
SIMLA."

6. On perusal of the above instructions, which is applicable in the case of the applicant, it is clear that the applicant was occupying the Govt. accommodation in Kanpur City and he was transferred to another Organisation situated in Kanpur City, therefore, he should have been permitted to continue in occupation of the quarter on payment of normal rent, because admittedly no accommodation was made

available for him in the new Organisation namely Small Arms Factory, Kanpur. Therefore, there was no justification to charge the market rent from the applicant in respect of Govt. accommodation and his claim on this point is justified.

7. Learned counsel for the applicant has also contended that the applicant is entitled for ~~to~~ H.R.As at the new station namely Small Arms Factory till 8 months from the date of his transfer despite his occupying ~~Govt.~~ Government accommodation in the Ordnance Equipment Factory authorisedly or unauthorisedly and has referred to H.R.A. Rules. It is pertinent to mention here that the applicant is being granted a relief of entitlement of occupying the Government accommodation at normal rent, therefore, it does not appear convincing that he is also entitled for H.R.A. The applicant is ~~never~~ however, entitled for H.R.A. from the date he vacated the Govt. accommodation. Learned counsel for the applicant has referred ^{to} a case namely 'Lakhan Lal Vs. Union of India and Others 1993(1)A.T.J.41, ^{decided} ~~the order~~ passed by the Calcutta Bench of this Tribunal. But the view expressed in the judgment is not of any help to the applicant, because it clearly mentioned that a person in unauthorised occupation would render him open to liability of certain civil consequences and for realisation of damages etc. from him. But payment of H.R.A. depends only on allotment of house and not anything else.

:: 6 ::

An unauthorised occupation is really a tortuous act, which may give rise to a ^ucase for claiming damages, but that cannot by any stretch of argument, amount to an allotment of an accommodation. But in the present case, since the applicant is being ^{authorised} treated as occupant of Govt. accommodation and is being permitted to occupy the same on normal rent, he is not entitled for H.R.A., because ~~use~~ ^{Consequence of my order at para 5} he ~~is~~ ^{has} not to face any action under Public Premises Act. Therefore, in my opinion, during the period he was occupying the accommodation after ~~his~~ ^{for payment} transfer, the claim of the applicant ~~on this point~~ ^{fails. of H.R.A. fails}.

8. So far as the payment of H.R.A. for the period he was not occupying ~~that~~ accommodation during the period from 08.3.1994 to 31.3.1994 ⁹⁴ is concerned, the applicant is legally entitled to receive the H.R.A. and the respondents are bound to pay the H.R.A.

9. The O.A. is disposed of with the direction that the respondents would charge normal rent from the applicant for the accommodation in question for the period from 22.2.1993 till the date of his vacation and refund the excess amount charged from him as market rate, within a period of 4 months, alongwith 12% interest per annum. The respondents are further directed to pay the

:: 7 ::

H.R.A. admissible to the applicant at Kanpur for the period from 08.3.1994 to 31.3.1994, within a period of 4 months with 12% interest till the date of payment. There will be no order as to costs.

Rohit Jaiswal
Member (J)

/M.M./