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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Original Application No. 1047 of 1987

Man Mohan Rai Applicant

Versus

Union of India through the Director, Post
and Telegraph, Allahabad.

2. Senior Superintendent of Post Office,
Eastern Division, Varanasi.

3. Superintendent Post Offices, Ghazipur.

4. Sri Shyam Sudhakar, J.E. P&T Colony, Varanasi.

. Respondents.

Hon'ble Mr. S.N. Prasad, Member (J)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act 1985 with the prayer for declaration to the effect that the impugned order dated 24.5.1986 passed by the respondent No.2 directing recovery of a sum of Rs. 40/- per month from the pay of the applicant towards rent of quarter No. 94 in Pond T Colony Varanasi subsequent to the period 30.4.1985 is illegal, without jurisdiction and not enforceable under the law; and for restraining the respondents from making any deductions from the pay of the applicant towards the rent of the afore-said quarter No. 94 subsequent to the period 30.4.1985 enhancing the recovery at the rate of 40/- per month from the pay of the applicant and for refunding the amount which has already been recovered from the pay of the applicant alongwith the interest at the rate of Rs. 15% .

2. Briefly stated the facts of the case, inter-alia, are that the applicant was working as a Postman at the Head Post Office Varanasi in the year 1985 and prior to that and in his capacity as a Postman he was allotted quarter No.94 in the post and Telegraph Colony Varanasi by the respondent

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No.2 vide order dated 31.8.1979, and since then he was residing in the aforesaid quarter till the afternoon of 30.4.1985 because of the fact that in compliance of the transfer order dated 29.4.1985 whereby he was transferred from Varanasi to Ghazipur; he vacated the aforesaid quarter in the afternoon of the 30.4.1985 and handed over the Key of the said quarter to the respondent No. 4 Shri Shyam Sudhakar, Junior Engineer incharge P & T Colony, Varanasi at about 4.00 P.M. in presence of the persons namely S/Sri Mahadeo Ram, Parshu Ram and Surya Narain Singh. It has further been stated that after handing over the charge of the post of Postman at Varanasi in the after-noon of 30.4.1985, the applicant ceased to be incumbent of the post against which the quarter No. 94 was allotted to him and after vacation of the aforesaid quarter in the afternoon of the 30.4.1985, the applicant is not in any way responsible for payment of any rent in regard to the aforesaid quarter; but after about a year all of sudden on 24.5.1986, the respondent No.2 wrote a letter to the respondent No. 3 to deduct Rs. 40/- per month from the pay of the applicant towards rent of the aforesaid quarter for the period from November, 85 and onwards; and in pursuance of that letter the respondent No. 3 has started deducting Rs. 40/- per month from the pay of the applicant; despite representations made by the applicant on 24.5.86 and 17.6.86 (vide annexure A-7 and A-8). It has further been stated that recovery of rent from the applicant for the period subsequent to 30.4.85 is quite arbitrary, illegal and invalid, as the applicant was neither given any notice nor any opportunity of being heard in this

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regard and as such the aforesaid illegal recovery is also against the principle of natural justice.

3. In the counter-affidavit filed on behalf of the respondents it has been, inter-alia, contended that the applicant was transferred and posted as Mail overseer Sakal-Deeha Bazar district Varanasi vide letter dated 31.4.1984 and on his transfer to Sakal-Deeha the applicant reported to his duties and he gave an application to the effect that he shall be vacating the aforesaid residence on 1.5.1984 and accordingly Junior Engineer(civil) was directed to take over the charge of the said quarter from the applicant. On 28.5.1984 the applicant sent a letter vide(annexure C.A.-1) stating therein that he has allowed one Shri Barhoo Ram the ^{Ex-2} employee of the Post & Telegraph civil division to occupy the said quarter for few months and even of transfer to Sakal-Deeha he did not hand over the charge of the said quarter to the Junior Engineer concerned. The 28.4.85 applicant neither made available the proper charge of the said quarter to the Junior Engineer(C) (respondent No.4) nor the said Barhoo Ram vacated the said premises which shows that the applicant had illegally sublet the aforesaid quarter to the Barhoo Ram and as such penal rent was recovered from the applicant as per rules (vide annexure C.A.-2 & 3); as it is the applicant who is responsible for giving vacation possession of the aforesaid quarter to the respondent No. 4. Thus, in view of the above circumstances the application of the applicant is liable to be dismissed and the applicant is not entitled to get any relief.

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4. The respondent No. 4 Shri Shyam Sudhakar has filed his counter-affidavit dated 14.9.91 stating therein, inter-alia, that the applicant did not vacate the aforesaid quarter and did not give the charge of that quarter to him and has ^{further} stated that two rooms of the said quarter were ^{found} locked and in a room of outer portion of the aforesaid quarter one Shri Badhau Ram was residing.
5. The applicant has filed rejoinder-affidavit dt. 24.9.88. The applicant has filed rejoinder-affidavit dated 26.9.91 also wherein he has, inter-alia, stated that he handed over the key of the aforesaid quarter to the respondent No.4 Shri Shyam Sudhakar on 30.4.1985, but the respondent No.4 did not issue any receipt to that effect, and has reiterated almost all those facts as mentioned in his application and has denied subletting of the aforesaid quarter to the said Barhoo Ram.
6. I have heard the learned counsel for the parties and have thoroughly and carefully gone through the records of the case.
7. The learned counsel for the applicant while drawing my attention to the contents of the application, counter-affidavit, rejoinder-affidavit and papers annexed thereto has argued that in the counter-affidavit filed by the respondents No.4 there is no clear denial about handing over key of the aforesaid quarter by the applicant to him and as such the version of the applicant should be deemed to be correct; and has further argued that the respondents No.4 should have reported to the authorities concerned immediately, and the applicant should have been given show-cause notice before recovering penal rent from him (applicant), in case the applicant had not given vacant possession and key of the aforesaid quarter to him, but the respod.No.4

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remained silent and should not have waited upto 24.5.86 and this fact also shows that the applicant had delivered vacant possession alongwith the key to the respondent No. 4 and as such the application of the applicant should be allowed and relief sought for should be granted.

8. The learned counsel for the respondents while drawing my attention to the contents of the application, counter-affidavit, Rejoinder-affidavit and the papers annexed thereto has argued that according to his own letter of the applicant dated 28.5.1984 (Photostat copy whereof is annexure (A-1)), the applicant had not vacated the aforesaid quarter but had kept one person namely Barhoo Ram in the outer portion of the aforesaid quarter for one month on humanitarian ground, ^{and} ~~but~~ the aforesaid Barhoo Ram was not vacating the portion ^{which} was in his possession and as such it is apparent that the applicant had sublet the aforesaid quarter to one Barhoo Ram, and has further argued that the affidavit of S/s Mahadeo Ram, Parshuram and Surya Narain Singh should not be believed as their version is diametrically opposed to the version of the applicant in as much as the aforesaid deponents have not stated at all about the possession of the aforesaid Barhoo Ram ^{any} portion of the aforesaid quarter, and has further argued that it was obligatory on the part of the applicant to obtain the receipt from the respondent No. 4 regarding the delivery of vacant possession and regarding delivery of key of the aforesaid quarter to the respondent No. 4.

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but no any receipt to this effect has been filed by the applicant and has further argued that the penal rent was recovered from the pay of the applicant as per rules and as per circular letter No. BDG/Q-1/94/O/QR3/CH11/8/Lucknow dated 20.3.85 of DPA IFA to post master General U.P. circle Lucknow to all SSPOS/SPO/SSRM and others and there is no illegality in the impugned order and in ^{impugned} recovery of penal rent and as such the application of the applicant should be dismissed.

9. This is noteworthy that in para 6(5) of his application, the applicant has stated, inter-alia, that he had put the lock in the quarter for the sake of safety in the aforesaid departmental quarter alleged to be vacated by him on 30.4.1985 at about 4.00 P.M. In this context, it is also noteworthy that as per transfer order dated 29.4.85 (vide annexure A-1) the applicant was clearly directed to hand over the key of the aforesaid quarter to J.E. incharge of P&T colony. In para 4 of his rejoinder-affidavit the applicant has clearly admitted that he was allotted quarter No. 94 type-I P & T colony Varanasi as per order dated 31.8.79, and in para 5 of his counter-affidavit he has further admitted that he was posted as Mail ~~overseer~~ ^{overseer} SakalDiha Bazar in the month of April 84 for about 5-6 months, and has further stated that since his transfer to Sakal-Diha Bazar as Mail Overseer was on adhoc basis for a short period, he did not vacate the aforesaid quarter at that time. This is also significant to point out that a perusal of para 6(5) of the application of the applicant

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coupled with the letter of the applicant dated 28.5.84 (photostat copy whereof is annexure C.A.-1) shows that upto 28.5.84 the applicant had not vacated the aforesaid quarter and according^{to} his own admission he had ^{Kept} one shri Barhoo Ram in the outer room of the aforesaid quarter for one month on humanitarian ground, but he was not vacating the same despite repeated request of the applicant, and it also becomes clear that even on 30.4.1985 the applicant had put the lock in the aforesaid quarter, though according to him for the sake of safety he had put the lock in the said quarter. Thus, this being so and from the scrutiny of the entire material of the records and keeping in view of the circumstances of the case the logic and plea of the applicant for putting the lock in the said quarter ^{when} according to him he had vacated the same, and had handed over the key of aforesaid quarter to the respondent No. 4, does not stand to reason and ~~insanity~~ ^{sanity} rather ^{of} the circumstances, go to show that, infact, the applicant neither vacated the aforesaid quarter nor handed over the key of the aforesaid quarter to the respondent No. 4 ^{and the} affidavit of the aforesaid S/s Mahadeo Ram, Parshu Ram and Surya Narain Singh, which are annexure A-3, A-4 and A-5, do not inspire confidence as they are not found to be ⁱⁿ conformity ~~that~~ ^{with} the facts ~~stated~~ ^{stated} by the applicant in as much as they are quite silent about the factum of possession of the aforesaid Barhoo Ram in outer room of the aforesaid quarter.

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10. This is also significant to point out that as per transfer order dated 29.4.85 (vide annexure A-1) the applicant was ^{Specifically} ~~subsequently~~ directed to hand over the key of the aforesaid quarter to J.E. incharge of the P & T colony and with a view to tide over ~~all~~ the eventuality in the future, this was obligatory on the part of the applicant to obtain the receipt from the respondent No. 4 to the effect that the respondent No. 4 has received the key of the aforesaid quarter from him, and if the respondent No. 4 avoided or refused to give such receipt regarding receipt of key; then in that case the applicant should have brought this matter to the notice of the higher authority concerned, but, for the reason best known to the applicant, he did not do so and this circumstance also goes a long way in falsifying the version of the applicant regarding vacation of the aforesaid quarter and regarding handing over of key of the said quarter to the respondent No. 4. Similarly this was also obligatory on the part of the respondent No. 4 to bring this fact to the notice of the higher authority concerned, in case the applicant did not vacate the aforesaid quarter and did not hand over key of the said quarter to him and for the reasons best known to him, he also did not do so.

11. This is important to point out that circular letter No. BDG/Q-I/94/O/QR5/CHII/8 dated 20.3.85 issued by D.P.A and IFA to Post Master General U.P. circle Lucknow to all SSPOS/SPOS/SSRM

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and others, regarding recovery of licence fee for residential building and action for evicting the unauthorised occupants, is in detailed manner; and para 4(c)(ii) of this circular letter clearly shows that where the residence has been retained by the licensee beyond the permissible period without the permission of the competent authority, that is, for the unauthorised occupants, the damages recoverable would be 40% of the pay of the licensee; and in para 7 of the circular there is clear mention for initiation of disciplinary proceedings against such defaulters and initiation of proceedings under Public Premises (Eviction of unauthorised occupants) Act, 1971.

12. From the scrutiny of the entire material on the records it is apparent that the applicant was relieved after handing over charge of the post of Post Man at Varanasi in the after noon of the 30.4.85 and ceased to be incumbent of the post against which the aforesaid quarter No.94 was allotted to the applicant, and thereafter the respondents remained quite silent for a long period of about one year and on 24.5.86 without giving any show-cause notice to the applicant and without initiating any disciplinary proceedings against the applicant, passed order for recovery of penal rent from the pay of the applicant as referred to above. In this context it is pertinent to remark that the respondent No. 2 (Senior Superintendent of Post Offices, Eastern Division, Varanasi) through his letter dated 2.6.86, in response to the letters of the applicant dated 2.4.86 and 24.5.1986 as referred to therein

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directed the applicant to produce the receipt issued by the respondent No.4 to the effect that respondent No. 4 has received the key of the aforesaid quarter from him(applicant). Thus, this being so and from the scrutiny of the entire material on the record and keeping in view the representation of the applicant dated 24.5.86 (vide annexure A-7) it becomes crystal clear that the applicant had informed the authorities concerned about the vacation of the aforesaid quarter by him and in his representations he had clearly stated that the aforesaid quarter was not in his possession, and thus in this view of the matter the respondents should have resorted to proceedings for evicting the unauthorised occupants who were found to be in possession of the aforesaid quarter at that time, in accordance with the provisions of the Public Premises (Eviction of unauthorised occupants) Act, 1971, as provided and emphasised in the aforesaid circular dated 20.3.85. But, for the reasons best known to the respondents they did not do so and remained passive spectators despite clear and categorical directions to this effect in the aforesaid circular letter fortaking suitable and appropriate action in such matter without any delay.

13. *Thus,* from the foregoing discussions and after scrutiny of the entire material on record and keeping in view all aspects of the matter and circumstances of the case, I find it expedient that the ends of justice would be met if the applicant is not saddled with the responsibility of paying any rent in regard to the aforesaid quarter from 2.6.86 and onwards as recovery

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of penal rent ^{or any rent} from the applicant from 2.6.86 and onwards would be ^{against} the relevant rules and against the principles of natural justice, and ^{as} such the impugned orders, as referred to above, are liable to be set aside to this extent; but the applicant can not escape from paying the penal rent as already recovered from his pay for the period subsequent to 30.4.85 to 1.6.86 and consequently the application of the applicant is partly allowed and I order accordingly. It is made clear that the respondents are at liberty to initiate the eviction proceedings under the Public Premises (Eviction of unauthorised occupants) Act, 1971 against the person / persons who is / are still found to be in possession of the aforesaid quarter in unauthorised manner. It is also made clear that the penal rent which has been recovered ~~from the applicant~~ for the period from 2.6.86 and onwards from the applicant shall be ^{by the respondents} refunded to the applicant within a period of 3 months from the date of the receipt of the copy of this judgment.

14. The application of the applicant is decided as above without any order as to the costs.

Member (J) 6.3.92

Allahabad dated 6th March, 1992.
(RKA)