

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1378 of 1992

R.S. Sharma

.... Petitioner

Versus

Union of India and Ors

.... Respondents

CORAM:

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

( By Hon. Mr. Justice R.K. Varma, V.C. )

By this petition filed Under Section 19 of the Administrative Tribunals Act 1985, the petitioner has sought quashing of the order dated 19.7.89 (Annexure A-1 to the petition) passed by the Telecom District Engineer Aligarh, Respondent No.2 directing recovery of penal rent from the petitioner @ Rs.120/- per month w.e.f. 1.5.89, as well as the other order dated 1.9.92 (Annexure A-II to the petition) passed by the Respondent No.2 directing the petitioner to vacate the Govt. quarter and in default thereof penal rent @ Rs.40/- per sq. meter from the petitioner's salary.

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2. The facts giving rise to this petition, briefly stated are as follows:

The petitioner has been working as Telephone Operator w.e.f. 2.8.67 under the control of respondent no.2 and he joined Telephone Exchange as Telephone Operator in August, 1972. The petitioner has been allotted government quarter No.6, type-II, Telephone colony(sld), Caxial compound

Naai Ka Nangla Read, Hathras w.e.f. June 1980 by the Competent Authority on normal licence fee of Rs.60/- per month which the petitioner has been paying. The petitioner was transferred to Etrauli by an order dated 27.2.89(vide Annexure A-V to the petition) passed by the respondent no.2. The petitioner fell ill and was on medical leave. The order of transfer was subsequently modified by an order dated 23.5.90 transferring the petitioner to Sikandra Rao instead of Etrauli. The petitioner continued to be ill till 9.7.90. Medical leave was duly sanctioned to the petitioner for the period of his absence on duty upto 9.7.90. The petitioner joined duty at Sikandra Rao on 10.7.90. There being no government accommodation available at Sikandra Rao for his family, he could not shift his family to Sikandra Rao and he has retained the government quarter at Hathras.

3. In pursuance of the order of respondent no.2 (Annexure A-II to the petition) recovery of penal rent <sup>law made law</sup> @ Rs.120/- per month was ~~severed~~ from the salary of the petitioner from 1.5.89 onwards.

4. It has been contended on behalf of the petitioner that since according to the rules for retention of P & T quarters after resignation, transfer, retirement, etc provided under F.R.-45-A(vide Swamy's Compilation of F.R.S.R, Part-1, General Rules- 10th Edition 1989 at page 224), An officer to whom the residence has been allotted is permitted to retain the same even after his transfer for his ~~benefide~~ use during leave on medical grounds for the full period of leave, the impugned order(Annexure A-1) directing the recovery of penal rent @ Rs.20/- per month w.e.f. 1.5.89 has been rendered ineffective upon the medical leave having been sanctioned for the period after

his transfer, from 1.3.89 till 9.7.90.

5. Learned counsel for the respondents has not been able to refute this contention of the petitioner that the petitioner is liable to pay only the normal licence fee @ Rs.60/- and not the penal rent of Rs.120/- per month as ordered in (Annexure A-I) during the period the petitioner was on leave on medical grounds till 9.7.90. Consequently, it is held that the order (Annexure A-I) has lapsed on account of medical leave having been sanctioned to the petitioner after his transfer from Hathras till 9.7.90 and as such, the amount of rent charged in excess of Rs.60/- per month w.e.f. 1.5.89 till 9.7.90 is liable to be refunded to the petitioner.

6. The other point of controversy in the case is whether the imposition of penal rent @ Rs.40/- per sq.mt from the petitioner by order dated 1.9.92 (Annexure A-II) is valid. It has been submitted by the learned counsel for the petitioner that the order (Annexure A-II) directing that the petitioner shall vacate the Govt. quarter at Hathras within 7 days and that if the petitioner failed to do so, penal rent of Rs.40/- per sq.mt will be recovered from his salary, is illegal and invalid.

7. The respondents in their counter have stated that on 1.9.92 a notice was served on the petitioner, either to vacate the quarter or pay penal rent @ Rs.40/- per sq.mt for covered area which will be charged from him.

8. Learned counsel for the petitioner has submitted that the impugned order (Annexure A-II) dated 1.9.92 is not a notice for eviction as contemplated under

Section 4 of the Public Premises (Eviction etc) Act, 1971 which requires issuance of notice to show cause against order of eviction. It is further submitted that the impugned order of directing payment of penal rent @ Rs.40/- per sq.mt is not a notice to show cause either against eviction or against fixation of penal rent @ Rs.40/- per sq.mt. The learned counsel has submitted that the petitioner should have been given an opportunity to show cause against the proposed recovery of penal rent @ Rs. 40/- per sq.mt before determination of the penal rent and the petitioner having not been given a show cause notice for fixation of penal rent, the impugned order (Annexure A-II) is illegal, arbitrary & against the principles of natural justice, and as such is liable to be quashed.

9. An Office Memorandum dated 27.8.87 (Annexure C.A.-9) filed by the respondents with their Counter, issued by the Govt. of India, Ministry of Urban Development (Directorate of Estates) provides for charging of damages for unauthorised occupation of general pool residential accommodation and recovery of licence fee when general pool accommodation is allotted to ineligible persons/organisations. According to Govt. decision contained in Clause(ii) of Para 2 of the said Office Memorandum <sup>as it is</sup> stated that damages rate of Rs.20/- per sq.mt of living area in respect of types A to D (types I to IV) and Rs. 21/- per sq.mt of living area in respect of Type 'E' and above (Type V and above) for general pool accommodation in Delhi is fixed, and that in addition, garden charges and other charges as

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are applicable will also be covered. But clause(iv) of Para 2 provides that the rate indicated will be valid for a period of two years and revised rates should be prescribed thereafter for a period of 2 years. Apparently, the rate provided in clause (ii) was valid for 2 years from the date of issue of Office Memorandum dated 27.8.87. No document is shown by the respondents to evidence that on the date of the issue of the impugned order (Annexure A-II) dated 1.9.92 the rate of penal rent ~~had~~ been raised to Rs.40/- per sq.mt. In any event if the respondents did not initiate proceedings for eviction under the Public Premises (Eviction etc) Act 1971 by giving a show cause notice under Section 4 thereof and <sup>proposed</sup> ~~law~~ to recover rent @ Rs.40/- per sq.mt, they should have given a show cause notice to the petitioner for recovery of rent at the proposed rate of Rs.40/- per sq.mt before the respondents taking a final <sup>Ar. had</sup> decision in that behalf, so that the petitioner would have an opportunity to show cause. The order(Annexure A-II) imposing penal rent @ Rs.40/- per sq. mt without hearing the petitioner is arbitrary and in violation of principles of natural justice and as such, not sustainable in law.

10. In view of the discussion aforesaid, we <sup>9</sup> allow this petition and hereby quash the impugned orders (Annexure A-I) dated 19.7.89 and (Annexure-A-II) dated 1.9.92. It shall however, be open to the respondents to give a proper show cause notice to the petitioner and hear him before fixing the rate of rent payable by the petitioner for the relevant period till he vacates the quarter. The respondents are also directed to refund to the petitioner, the amount of rent charged in excess of Rs.60/- per month u.e.f. 1.5.89 till 9.7.90.

11. There shall, however, be no order as to costs.

R.K. Vora  
Vice Chairman

Dated: Sept:24, 1993  
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