

(7)
RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

DATED: THIS THE 27^{May} DAY OF APRIL 1996

O.A.NO. 16/94

Single Member Bench

Hon'ble Mr. T. L. Verma JM

Jaydeep Tewari s/o Tara Chand Tewari,
r/o Pandey Bank, Mall Road, Ranikhet,
Almora. - - - - - Applicant

C/A Sri M. C. Kandpal

VERSUS

1. Union of India through Cabinet Secretary,
Government of India, South Block,
New Delhi.

2. Divisional Organiser, Special Service Bureau,
(SSB), Director General of Security, U.P. Divn.,
(Government of India), Rose Mount, Ranikhet.

3. Area Organiser(Staff) S.S.B.,
Rose Mount, Ranikhet-26

- - - - - Respondents

C/R Sri C. S. Singh

ORDER

By Hon'ble Mr. T. L. Verma J.M.

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed for quashin the order dated 10.11.1993 and order dated 6.12.1993 and for issuing a direction to the respondents not to deduct Rs.7,917/- from the salary of the applicant .

2. The applicant was appointed as L. D. C. in the Divisional Headquarter, Director General of Security U.P.Division, Rouse Mount, Ranikhet on 10.6.1988. By the impugned order dated 10.11.1993, the Divisional Organiser SSB, U.P.Division allotted annexee of premises known as "Pearl Lodge" in favour of the applicant with effect from 10.6.1988. By order dated 6.12.1993, a sum of Rs.7,917/- has been ordered to be recovered from the pay of the applicant in installments @ Rs.250/- per month being arrear of rent.

3. The grievance of the applicant is that he never applied for allotment of the said premises, but authorities have arbitrarily and with malafide intention passed order of allotment dated 10.11.1993 and order dated 6.12.1993 for making recovery of Rs.7,917/- from the salary of the applicant. Hence this application for the relief mentioned above.

4. The respondents have contested the claim of the applicant. In the C.A. filed on behalf of the respondents, it has been stated that the premises known as "PEARL LODGE" was taken on rent from the Rent Controller with effect from 14.3.1980 with its Out-houses and surrounding lands. In September, 1990 it was detected

that one Sri Tewari of Postal department was in un-authorised occupation of a portion of the aforesaid building. The applicant was called upon to explain as to why he was residing in the annexee vide letter date 13.9.1990. Sri Jaideep Tewari (applicant) vide letter dated 17.9.1990 replied that he had been residing in the said premises since his childhood. It has also ^{been} stated that it became clear to the respondents from the reply of the applicant that Srimati Pushpa Tewari, mother of the applicant was in un-authorised occupation of the said portion of the building and accordingly notices for vacation of the same was issued on 13.9.1990. The said portion of the premises, thereafter was allotted to the applicant, who is an employee of the respondents and is living in the said portion ever since he was empcoyed on 10.6.1988 by order dated 10.11.1993, with a view to regularising his possession with retrospective effect. The further case of the respondents is that though the applicant did not pay any rent, ^{he} drew house rent allowance. As he lived and is living in a portion of the building hired by the respondent he was not entitled to draw house rent allowance. He has, it is alleged, misled the department and fraudulently drawn house rent from the date of appointment. Hence order to recover Rs.7,917/- worked out as HRA/CCA drawn by the applicant was passed.

5. We have heard the learned counsels for the parties and perused the records. From the averments made in the counter affidavit, it self; it is more than clear that the premises in question is in possession of Smt. Pushpa Tewari mother of the applicant from before the date of allotment of

building known as "PEARL LODGE" to the respondent in 1980.

6. In the Supplementary affidavit filed on behalf of the applicant, it has been stated that Smt. Pushpa Tewari mother of the applicant was the tenant of Land lord Alok Kumar and that the department admitted this fact in rent control case no.5 of 1992 and that possession of the said portion was not delivered to the department.

7. ^{premises by} In addition to the above, possession of ^{the} ~~also~~ Smt. Pushpa Tewari and her husband is prima facie established by the entry in the voter list, pertaining to the year 1971, extract whereof has been annexed as annexure-4. ^{the} Smt. Pushpa Tewari, ^{mother} of the applicant, was staying in the "PEARL LODGE" in the year 1971. She continued to stay in the said building, ^{as} is apparent from para 8 of the Counter Affidavit, upto September, 1990, when the matter was brought to the notice of the authorities by Shri A.K.Puri D.I.G. in the S.S.B. Directorate that Smt. Pushpa Tewari was in unauthorised occupation of the out house of the said "PEARL LODGE". It is thus clear from the averments made in the C.A. itself that ^{the} ^A mother of the applicant was in occupation of the portion of the building in question from before the date of appointment of the applicant as L.D.C. in SSB Directorate.

8. Inview of the above, action of the respondents, ⁱⁿ allotting the annexee of the said "PEARL LODGE", which was in unauthorised occupation of Smt. Pushpa Tewari, by order dated 10.11.1993 to the applicant with retrospective effect, was highly arbitrary

and as such cannot be sustained. Proper course open to the respondents was to have proceeded against Smt. Pushpa Tewari and others who are in un-authorised occupation of the said annexee under provision of the Public Premises and Eviction Act. The respondents have adopted short cut method by allotting the said premises to the applicant, who is their employee and have thus made colourable use of their power. Therefore, the order dated 10.11.1993, allotting the premises in question to the applicant cannot be sustained.

9; Inview of the foregoing conclusion, the next question that arises for consideration is whether the respondents were justified in passing order dated 6.1.1993 for the recovery of rupees 7,917/- being the amount drawn by the applicant as H.R.A. and C.C.A. Right of the Employer to recover any amount that has been drawn by its employee by adopting deceitful means cannot be disputed. Before, however passing order for the recovery, principle of natural justice demands that ^{the} person, who is likely to be affected by such order, ~~XXXXXX~~ be given an opportunity to explain his position by showing as to why the recovery should not be made. Not only that, if the amount of H.R.A. and C.C.A. has been drawn by the applicant by making false declaration or by adopting deceitful means, the same would amount to misconduct. The Employer, therefore, is not only entitled to recover the amount so drawn by its employee, ^{but} also to proceed against him for suitable disciplinary action after initiating departmental proceedings. In the instant case as is apparent from the materials on records, respondents have not given any show notice cause ~~to~~ to the applicant to explain as to why the amount of House rent allowance and City Compensatory allowance drawn by him should not be recovered from him. Settled law or

the point is that an executive order, having civil consequences should abide by the principle of natural justice. In the instant case, the aforesaid principle of law has not been complied with. In that view of the matter, order dated 6.12.1993, whereby direction for making recovery of Rs.7,917/- has been ordered from the salary of the applicant, also cannot be sustained.

10. For the reasons stated above, this application is allowed and orders dated 10.11.1993 and 6.12.1993 are hereby quashed. This, however, will not preclude the respondents from initiating proceedings of eviction against Smt. Pushpa Tewari and others who are in un-authorised occupation of the annexe of the building known as " PEARL LODGE " and also to initiate appropriate proceedings against the applicant for ^{allegedly} having drawn Rs.7,917/- as H.R.A. and C.C.A. by making false declaration.

11. Parties will bear their own costs


J.M.

SOI