

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated 24th day of October 1997

Original Application No. 628 of 1994

District : Muzaffarnagar

CORAM :-

Hon'ble Mr. D.S. Bawejia, A.M.

M. R. Garg,  
S/o Late Sri Jagdish Prasad  
R/o 64, Ganga Rampura,  
Muzaffarnagar U.P.

(By Sri K.P. Srivastava, Advocate)

..... Applicant

Versus

1. Union of India through  
The Secretary (Postal),  
Ministry of Communication,  
Government of India, New Delhi.
2. The P.M.G., Region Dehradun,
3. The Sr. Supdt. of Post Offices,  
Muzaffarnagar.
4. The Sr. Post Master,  
Muzaffarnagar.

(By Sri N.B. Singh, Advocate)

..... Respondents

ORDER

By Hon'ble Mr. D.S. Bawejia, A.M.

Through this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has made prayer for the following reliefs:-

(i) to quash the orders dated 4-3-1992 and 27-6-1992 of the SSPoS, Muzaffarnagar imposing recovery of Rs.830/- per month from the salary of the applicant as damage rent.

(ii) to quash the orders the orders dated 16-11-1992 of the appellate authority and 13-1-1994 of the revisionary authority.

(iii) to direct the respondents to refund the amounts recovered from the salary upto March 1994 and also stop further recovery.

(iv) to direct the respondents to pay interest at 20% on the amount <sup>to be</sup> ~~to~~ refunded.

2. The applicant while working as Assistant Post Master in Head Post Office Muzaffar Nagar was transferred by order dated 6-10-1989 as Sub Post Master Muzaffar Nagar City Post Office in place of Shri M.S. Babra, who was transfer as Post Master Shamli Head Post Office. The applicant joined at Muzaffarnagar City Post Office on 23-10-1990. There was a quarter attached with the post office which was lying vacant as earlier incumbent Shri M.S. Babra had not occupied the same and he was staying in his own house. However, by the order dated 8-11-1989, the applicant was transferred back to Muzaffarnagar Head Post Office and Shri M.S. Babra was posted back. The applicant handed over charge to Shri M.S. Babra on 23-11-1989. Since the applicant could not arrange residential accommodation and also due to the fact that transfer was in the middle of the academic year, he made a request to the S.S.PoS Muzaffarnagar to permit the applicant to retain the house which he had occupied at Muzaffarnagar City Post Office upto 30-6-1990. The S.S.PoS Muzaffarnagar permitted the

applicant to retain occupation of quarter upto 30-4-1990 on normal conditions as the quarter was not occupied by Shri M.S. Babra. Thereafter, the applicant again approached the Senior Superintendent of Post Offices, Muzaffarnagar with a request to permit him upto 30-3-1990 as requested earlier. Although the concerned authority assured him about the permission upto 30-6-1990 but no formal order was issued. However, the applicant vacated the said quarter on 01-7-1990. The applicant intimated about the vacation of the quarter to the Senior Post Master City Post office. Senior Post Master Shri M.S. Babra, who was serving at City Post Office had also informed the Senior Post Master Muzaffarnagar, about the vacation of the quarter as his letter dated 8-10-1990. After verification of the facts with regard to vacation, the applicant was paid HRA for the month of July, to September 1990 as per their Supplementary Bill on 13-10-1990. Thereafter, the applicant got regular payment of HRA. However, after a period of two years, as per the letter dated 4-3-1993 issued by the Senior Superintendent of Post Offices, Meerut, who was also holding joint charge of Muzaffarnagar, order was passed for recovery of the penal rent for unauthorised occupation of the quarter under reference. The applicant made an appeal to the Post Master General against the order dated 4-3-1993. By the order dated 16-11-1992 the appeal was rejected by the Appellate Authority, which was conveyed through letter dated 20-1-1993 of the Senior Superintendent of Post Offices, Muzaffarnagar. Thereafter, the applicant filed a revision petition to the Secretary (Communication)

(Postal) as per representation dated 3-2-1993. However, the said application was decided by Assistant Director General (xxxx), New Delhi vide order dated 13-1-1994 rejecting the representation. Being aggrieved as above, this application has been filed on 11-4-1994 with reliefs as detailed above.

3. The applicant has assailed the impugned orders on the following grounds:-

- (a) No notice was issued at any time to the applicant declaring him as unauthorised occupant of the accommodation. No show cause notice has been given to the applicant to afford him opportunity before passing of the punitive orders.
- (b) The accommodation was vacated on 30-6-1990 and was handed over to Sub Post Master City Post Office and subsequently payment of HRA was made regularly after verification that the quarter had been vacated.
- (c) The action of the respondents is arbitrary, illegal and unfair. All the facts are manipulated and false and a bogus report had been obtained from the SPOs, Muzaffarnagar.
- (d) The appeal and revision have been disposed of by the concerned authorities without considering the facts and circumstances of the case properly.

4. The respondents through a counter reply have contested the averments made in the DA. It is admitted that the permission was granted for retaining the quarter upto 30-4-1990 and thereafter the applicant

was in unauthorised occupation of the accommodation till 22-3-1992. Several reminders were sent to the applicant to vacate the quarter and finally on account of non-vacation, orders were passed by the competent authority on 4-3-1992 for recovery of penal rent. The respondents contend that no direction was given by the office of the answering respondents to release or withhold payment of HRA and the applicant got payment drawn inspite of occupying the accommodation. The respondents have denied that the letter referred to at Annexure-A-2 dated 5-10-1990 has been received as it is neither addressed to the office of the answering respondents nor a copy has been endorsed. The respondents <sup>have</sup> further submitted that the representations made to the higher authorities have been considered carefully and no merit has been found in the claim of the applicant. The respondents submit that the quarter was finally vacated only on 23-2-1990 as per the report of SSPs, Muzaffarnagar dated 13-3-1992/20-4-1992 and accordingly the penal rent recovery has been effected upto 22-3-1990. The respondents <sup>have</sup> submitted that action for recovery of damage rent has been taken as per extant rules and, therefore, the applicant has no case calling for judicial interference and the application deserves to be dismissed.

5. The applicant has filed a rejoinder affidavit controverting the statements of the respondent. He has contended that the payment of HRA was arranged

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by the concerned authority and it was not that the applicant on his own has granted HRA himself including arrears.

6. I have heard Shri K.P. Srivastava and Shri Prashant Mathur, the learned counsel for the applicant and the respondents respectively. Arguments advanced during the hearing have been carefully considered and material on record has also been perused.

7. Vide order dated 25-4-1994, it was provided that any further recovery on account of penal rent shall remain stayed till the next date. This interim stay order was extended from time to time till 9-5-1997 when it was directed that no further recovery shall be made till disposal of the case.

8. The admitted facts which emerge from the rival contentions are that the applicant had occupied the residential accommodation in the premises of Muzaffarnagar City Post Office on being transferred from Muzaffarnagar Head Post Office and he was allowed to continue to occupy this accommodation upto 13-4-1990. The applicant claims that he had vacated the said accommodation on 30-6-1990 while the respondents have maintained that the applicant continued to occupy the residential accommodation from May, 1990 onwards without any permission and vacated the accommodation only on 22-3-1992. In view of these facts, the central issue <sup>consideration</sup> which merits in the case hinges on whether the applicant vacated the quarter on 1-7-1990 or continued to occupy till 22-3-1992. The applicant has supported his version on two grounds; One, is the evidence he has brought on record at Annexure-A-2 to support his contention that he had vacated the

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accommodation on 1-7-1990 and the intimation had been sent by Sri M.S. Babra, Sub Post Master, Muzaffarnagar City Post Office through his letter dated 6-10-1990 addressed to Senior Post Master, Muzaffarnagar. This letter carries the stamp showing acknowledgement on 8-10-1990 in the Office of Senior Post Master. The second ground is that on vacation of the quarter, the applicant had been paid HRA from 1-7-1990 onwards after verification of the position regarding vacation. He has indicated that the arrears of HRA for three months from July, 1990 to September, 1990 were paid during October, 1990 and thereafter HRA had been paid regularly. The applicant through the rejoinder reply has also brought on record certain documents showing that he had vacated the house and engaged transport for shifting his luggage. He had also given his residential address of the private house occupied by him when the office had made inquiry with regard to the residential address required for payment of the LTC Bill. The respondents have countered this by disputing that the letter at Annexure-A-2 had not been received in the office of the respondents as the letter is neither addressed to the Senior Superintendent of Post Offices, Muzaffarnagar nor any copy was endorsed. As regards payment of HRA, the respondents contend that no orders for payment of HRA were issued and the applicant drew HRA from the Senior Post Master, Muzaffarnagar on his own accord. The respondents have not brought on record any documentary evidence to show that the applicant was continuing to occupy the accommodation unauthorisedly after 30-4-1990. The respondents have made averment that number of reminders were sent to the applicant to

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vacate the quarter and when this was not done, the impugned order dated 4-3-1992 to recover the penal rent was passed.

The respondents, however, have not brought on record any of the notices sent to the applicant to vacate the quarter. Further, none of the copies and the references of the letters made in the counter reply have been brought on record. The applicant had filed a Misc. Application with the prayer to summon some documents from the respondents to confirm the averments made in the counter reply. The respondents were directed to keep these documents ready during the hearing and the same will be perused by the Bench if necessary. During the hearing, the respondents produced the documents, namely, the letter dated 24-9-1992 from Shri MS Babra, Sub Post Master City Post Office, Muzaffarnagar stating vacation of quarter on 22-3-1992, the report of the inquiry conducted by the Asst. Supdt. of Post Offices, Muzaffarnagar during December, 1991 and the vouchers showing the payment of arrears of HRA. On going through these documents, it is noted that some inquiry was conducted during December, 1991 when three statements, one of the Chowkidars, one of the applicant and the third of Shri MS Babra, Sub Post Master, City Post Office, Muzaffarnagar, were recorded. Based on the report of the Chowkidar, it was concluded that the applicant continued to stay in the quarter after 30-4-1992. On perusal of the report it is noted that it does not bring out as to how the HRA was paid to the applicant from July, 1990, onwards if the quarter had not been vacated and whether the intimation of the vacation of the quarter had been <sup>Given</sup> earlier by Shri M.S. Babra as per his letter as claimed by the applicant at Annexure-A-2. Though the statement of the applicant has been recorded but no cross-examination of

the Chowkidar appears to have been allowed to the applicant and the statement of the Chowkidar has been believed on its face value. Mr. M.S. Babra had also not been confronted with his letter at Annexure-A-2. The Inquiry Officer should have gone into these issues. Keeping these facts in view, I hold the view that while conducting inquiry, reasonable opportunity had not been given to the applicant to prove his case before the Inquiry Officer specifically so when the office had started paying HRA for which is a precondition that the employee is not occupying any Government accommodation. Keeping in focus this situation brought out above,, it is considered expedient that the respondents should be directed to conduct a fresh inquiry to establish or otherwise about the unauthorised occupation of the quarter by the applicant by allowing the applicant to produce documentary evidence in support of his case before the Inquiry Officer and also providing opportunity of cross-examination of the witnesses produced by the Administration. This inquiry shall be completed within a period of three months from the date of receipt of the judgement. If the claim of the applicant is established, the applicant shall be refunded the recovery already made and no further recovery shall be made. In case the claim of the applicant is not established, then the applicant shall be replied through a speaking order within the same period of three months.

10. In the result of the above, the application is allowed with the directions as detailed in para 9 above. The stay order dated 25-4-1990 as referred to above shall remain operative till the completion of the inquiry as stipulated. No order as to costs.

*Sh. B. Dube*  
Member (A)

Dube/