

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NUMBER 1289 OF 2002

ALLAHABAD THIS THE 7th DAY OF December 2005

HON'BLE MR. S.C. CHAUBE, MEMBER (A)

Kanchan Singh S/o Sri Gajraj Singh
Office Assistant, Postal Store Depot,
Saharanpur.

.....Applicant

(By Advocate: Shri Yashwant Singh)

1. Union of India through Secretary,
M/o Communication, D/o Posts, New Delhi.
2. The Administrative Officer,
Postal Training Centre, Saharanpur.
3. The Superintendent, Postal Store Depot,
Saharanpur.
4. The Director, Postal Services,
Uttaranchal Circle, Dehradun.

Respondents

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(By Advocate: Shri S. Singh)

ORDER

The applicant through this O.A has challenged the impugned order dated 24.09.2002 passed by the Administrative Officer, Postal Training Centre, Saharanpur for recovery of Rs.2,54,112/- from the salary of the applicant by way of damage rent for unauthorized occupation of Govt. accommodation.

2. Briefly the facts are that the applicant, who was office Assistant, Postal Store Depot, Aligarh, was transferred to Postal Depot, Saharanpur where he joined on 29.06.1987. Quarter No. KB- 2, Kendra Vihar Colony Saharanpur was allotted in the name of the applicant on

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19.08.1987 @ Rs. 85/- per month as license fee plus electric and water charges and accordingly he occupied the same on 22.08.1987. The license fee for the aforesaid quarter was Rs. 89 per month from 01.07.96 to 31.07.99, Rs. 104 per month from 01.08.99 to 30.06.2001 and Rs. 120/- after 01.07.2001. On 10.01.1996 the applicant was transferred from Saharanpur to Deoband Post Office but due to his being Heart Patient he could not join at Deoband. While at Saharanpur, the applicant was under the treatment of Sr. Medical Officer, District Government Hospital, Saharanpur. He was compelled to proceed on leave w.e.f 11.01.1996.

3. According to the applicant, he has been regularly depositing the normal rent @ Rs, 120/- per month alongwith water and electric charges (Annexure- 1). Further, the Manager, Postal Store Depot, Saharanpur issued certificates on 17.10.2002 regarding deduction of normal rent of water and electric charges (Annexure- 2). The applicant also consented to Senior Post Master Saharanpur to credit/recover the entire amount due for January 1996 towards license fee of the quarter in advance in the Govt. Account. Accordingly a sum of Rs. 1041/- was recovered from the salary of the applicant for January 1996 towards license fee up to June, 1996 as such no bill was sent to the applicant as the amount already stood deposited and credited to the Govt. Account.

4. The applicant further consented to credit/recover leave salary amount towards license fee of the quarter No. KB- 2, for which bill was for payment was issued to the applicant. Meanwhile wife of the applicant under went

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for operation and her post operation treatment was continuing at District Government Hospital Saharanpur during prolonged ailment of the applicant.

5. As already stated above, the applicant was transferred from Saharanpur to Deoband on 10.01.1996 and the applicant rejoined at Saharanpur on 28.10.2000. During this period, he was on duty from 01.01.1996 to 10.01.1996, on Earned Leave from 11.01.1996 to 22.1.1996, on HPL from 23.01.1996 to 30.06.1996, EL from 01.07.1996 to 15.07.1996 HPL from 16.07.1996 to 10.08.1996, EOL from 11.08.1996 to 27.12.2000 and a total period of leave was on medical certificate (Annexure- 3). The applicant under compelling circumstances never vacated the quarter which remained under his occupation due to serious illness. However, a sum of Rs. 2000/- was recovered from the salary of the applicant towards license fee of the quarter for the period July, 1996 to June, 1998. Besides bills showing recovery of normal license fees were issued every month as the applicant used to deposit the license fee and water and electric charges every month (Annexure 1- and 2).

6. The applicant was served with the registered letter on 30.01.1997 stating that the allotment of accommodation after expiry of 2 months from the date of issue of transfer for Deoband had lapsed. It was further clarified that the damage rent assessable @ Rs. 55/- per Sq. Meter as per rules has become due for the period in question and therefore, the applicant was directed to deposit the amount. Instructions were also issued to the Senior Superintendent of Post Offices for initiating the

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Disciplinary Proceedings against the applicant under Rule 3 of CCS (Conduct) Rules, if the applicant fails to deposit the amount. However, neither the amount was mentioned in the letter nor the letter contained any enclosure.

7. The applicant filed representation before Administrative Officer, Postal Training Centre, Saharanpur on 30.01.1997 stating that the period of 2 months shall be reckoned from the date of joining at Deoband. Since the applicant did not join at Deoband therefore, that rule will not apply in the case of the applicant. Accordingly, he requested to withdraw the notice of vacation of quarter and recovery of damage rent. The copy of representation was also sent to Senior Superintendent of Post Offices, Saharanpur and Post Master General, Deharadun, who according to the applicant, were pleased to defer the action by the Administrative Officer. The representation was rejected on 03.09.2002 (Annexure 4). The applicant filed Appeal against to order dt. 03.09.2002 before the Director, Postal Services, Uttaranchal Circle, Dehradun on 23.09.2002, which according to the applicant, is still pending.

8. According to the applicant, no bill of damage rent was delivered to the applicant being authorized occupant of Quarter No. KB-2, Kendra Vihar Colony, Saharanpur. Nevertheless he was compelled to deposit Rs. 10,000/- with Administrative Officer, Postal Training Centre, Saharanpur. As per receipt dated 02.09.1998, a sum of Rs. 400/- was also deposited with Administrative Officer,

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Postal Training Centre, Saharanpur on 31.10.98. Thereafter the rent and other charges were continued to be deposited, which were accepted by the Administrative Officer, Postal Training Centre, Saharanpur. It is further stated that normal rent is being recovered from the applicant from the date of its occupation till now. After filing appeal to Director, Postal Services, the Administrative Officer, Postal Training Centre, Saharanpur on 24.09.2002 issued rent return from the month of September, 2002 showing balance of Rs. 2,54,112/- against the applicant thereby charging damage rent @ Rs.3720/- per month in place of Rs. 120/- with further request to the Supdt. Postal Supply Depot, Saharanpur to deduct Rs. 2,54,112/- from the salary of the applicant (Annexure- 6).

9. According to the applicant the impugned order is bad in the eyes of law and violative of the provision of sub rule (3) of Rule 1 of DG (Postal and Training) Instruction (Annexure -7). Further the impugned order is illegal in charging the damage rent for the leave period on medical certificate from 11.01.1996 to 27.12.2000 and is violative of Sl. (xii) of Table appended with sub rule 2 of Rule 4 of aforesaid instructions. Again the acceptance of normal rent will operate as estoppel against the impugned order dated 24.09.2002 for the recovery of damage rent from the applicant. It has further been contended by the applicant that the recovery order has been issued during pendency of departmental appeal before the D.P.S., Dehardun. Finally, it has been contended that the damage rent cannot be charged with retrospective effect without cancelling the allotment of

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quarter no KB- 2, Kendra Vihar Colony, Saharanpur. In this context the impugned order is violative of the provisions of sub rule 3 of Rule 1 of D.G(P&T) Instructions. Thus the impugned order dated 24.09.2002 passed by respondent no. 2 is bad in the eyes of law and therefore, deserves to be quashed.

10. According to the respondents, the applicant without exhausting the departmental remedy and without waiting for final orders on his appeal, has filed the present original application thus the O.A is liable to be dismissed on this ground alone. The respondents have admitted the fact of the transfer of the applicant from Saharanpur to Sub Post Office, Deoband as also the applicant not joining his duty at Deoband and remaining on leave. They have further admitted that he was again transferred to the office of the Superintendent of Postal Stores Depot as Postal Assistant where he joined on 29.12.2000 . The residential complex known as Kendra Vihar Colony falls within the administrative control of Director, Post and Telegram Training Centre, Saharanpur. The quarter KB- 2 in Kendra Vihar Colony was allotted to the applicant vide memo dated 19.08.1987. On transfer from Saharanpur to Deoband the applicant was relieved w.e.f. 10.1.1996.

11. According to the respondent, the petitioner did not deposit the rent, electric charges and water charge from July 1995 and after his transfer from 10.01.1996, the applicant neither deposited the rent nor water and Electric charges nor gave any information. According to the respondents, as per S.R 317 (B) 11 (3A), if an

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employee remains on leave without pay he has to deposit rent month to month and in default, his allotment will automatically deemed to have been cancelled after 2 months.

12. The applicant joined as Postal Assistant in the office of Superintendent, Postal Stores Depot and thereafter alongwith other employees the monthly rent recovery statement was received from the Director, Training Centre in this office but the recovery of the amount due to him, could not be given effect to. The applicant, according to his own admission, continued to deposit the license fee in the Misc. account. However, as per annual audit the Postal Depot, Saharanpur w.e.f. 20.06.2001 to 25.06.2001 dated 27.11.2001 an order of penal rent was passed. The applicant prayed that his representation is pending before higher authority, therefore, recovery may not be made. The representation of the applicant was rejected vide order dt.03.09.2002 and realization of penal rent was found in order. The service of the order regarding recovery of Rs. 1800/- p.m from the October, 2002 could not be made and hence the amount could not be recovered. On the other hand, only usual penal rent has been realized from the applicant as fixed by the office of Postal Training Centre Saharanpur. The respondents have further stated that as per the extant rules, allotment of the applicant will be deemed to have been cancelled w.e.f. 11.03.1996 and his possession of the Govt. Quarter in question was treated as unauthorized. Since the applicant was on leave without pay hence the said recovery could not be made nor the applicant himself made the payment of water and electric

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charges. On 20.01.1997, the applicant was informed that his allotment has already been deemed cancelled and he should vacate the quarter No. KB- 2 at once. Alongwith the aforesaid letter, a bill of Rs.29,579/- was also sent , which included the normal rent up to 10.01.1996 @ Rs. 85/- per month and thereafter damage rent @ 2728/- p.m @ Rs. 55/- per Square Meter. Vide his application dated 30.01.1997, the applicant informed that his leave is likely to be sanctioned very soon and requested that the period of 2 months may be counted after expiry of leave and the damage rent may not be claimed. However, he did not deposit the rent, electric charge and water charges in the Govt. Account. When the electric connection of the quarter was disconnected w.e.f.01.09.1998, the applicant himself deposited Rs. 10,000/- on 02.09.1998. Thereafter the electric connection was restored. The applicant, according to the respondents, was also directed to deposit the balance amount in installment of Rs. 3000/- p.m. However, on 07.09.1998 the applicant informed that the rent of the said premises became due at the general rate of rent and further, if the penal rent is not taken away, he will go to the court. The applicant thereafter filed Civil Suit in the Court of Civil Judge Saharanpur and prayed permanent decree restraining the respondent not to disconnect the water and electric connection of the applicant and the respondent should not demand more than the general rent. The prayer of the applicant for temporary injunction was rejected. Meanwhile the applicant was transferred to the post of Postal Assistant in the office of Postal Store Depot where he joined on 29.12.2000. Thereafter the Senior Superintendent of Post Offices, Saharanpur informed the Postal Stores Depot

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vide letter dated. 20.11.1998 that the applicant has been sanctioned leave from 11.01.1996 to 31.10.98. Further, vide memo dated 16.03.2001 the applicant has been sanctioned leave from 1.11.1998 to 27.12.2000 on medical grounds and Special leave etc. On 29.12.2001 the applicant requested that since his leave has been sanctioned, therefore, house rent for the said period may be regularized . The application of the applicant was not consider due to pendency of the Civil Suit . However, the suit of the applicant was dismissed on 10.05.2001.

13. Vide his representation date 10.05.2001 the applicant informed that he was depositing license fee of KB- 2. However, according to the respondents, he did not send any documentary evidence regarding the said deposit. Later, it was admitted by the respondents that vide his application dated 21.05.2002, the applicant submitted a list and 33 ACG 67 receipts regarding deposit of Rs. 45,989/- during 31.10.1998 to 08.05.2001. Besides receipts of the above deposit, deduction of Rs. 1041/- arrears of January, 1996 and Rs. 2000/- from his pay have also been mentioned in the said list.

14. The respondents have cited the instruction memo dated 06.08.1965 where by an employee after his transfer can retain the accommodation for two months on normal rent and thereafter his allotment will automatically cancelled . Further according to S.R 317 B-11 3-A), if an employee to whom the allotment of quarter was made, went on leave without pay and allowances, he has to deposit the normal rent and other charges failing which the allotment will be cancelled automatically. According to

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the respondents as per the aforesaid provision the allotment of the house in question deemed to have been cancelled w.e.f. 11.03.1996 and he was levied a damage rent @ Rs. 55/- per Sq. Meter and the applicant was informed vide letter dt. 20.01.1997. Further the arrear bills from July 1995 to December, 1996 were also sent to the applicant who was also asked to vacate the quarter. Thereafter the applicant did not deposit the rent till August, 1998 nor vacated the quarter, which remained under his unauthorized occupation. From 2.9.98 the applicant started paying the normal rent whereas by that time his allotment had already been cancelled automatically and he was levied the damage rent. The respondents have refuted the contents of para 4(7) of the O.A and stated that penal rent has been fixed on the applicant by Postal Training Centre, Saharanpur, but on the request of the applicant normal rent was deducted. The respondents had further stated that from 11.03.96 after the cancellation of allotment the applicant was always sent the bills of damage rent. Besides the applicant was also informed about his illegal occupation of the quarter till now. After the Electricity connection was disconnected, the applicant came and received the bill of Rs. 94,096/- and on his own deposited Rs. 10,000/- out of Rs. 94,096/- on 02.09.1998 and Rs. 400/- on 31.10.1998 in Misc. Account,. The respondents have emphatically submitted that the bills were always sent but the applicant himself deposited some amount in other Post Offices in Misc. Account without any information to this office. Finally, the respondents have stated that the bills had been correctly sent to the concerned authority for realization of the amount of Rs. 2,54,112/-

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in installments. The applicant, according to the respondent, was duly informed about the cancellation and about deduction of damage rent. The recovery order has been passed in accordance with rules and there is no illegality.

15. The applicant in his RA has by a large reiterated the contentions as in the O.A. He has further submitted that as soon as the salary of the applicant is paid, usual charge of damage rent will be deducted from the applicant. Further, the allotment of the quarter cannot be deemed to be cancelled and the damage rent cannot be charged. Again the applicant continued to deposit the license fee in Misc. Account in the Post Office. Since the period of absence of the applicant from the date of relief on transfer to Deoband has been regularized, raising of damage rent was irregular and untenable. According to the applicant, his case is covered by DG (Post) Instructing No 5 (now 4) Below Rule FR 45 A by which permissible period 2 months on transfer out side station is to be counted from the date of joining at the out side station. Since the applicant never joined at the place of his transfer therefore, the permissible period of 2 months could not start. Further according to S.R 317-B as referred by the respondents in the CA, is not applicable to his case, as the same is applicable to the allotment of Quarter in General Pool in Delhi. As such, the entire action of charging damage rent is irregular and not covered by the departmental rules.

16. I have heard the rival contentions of the counsel for the parties and perused the pleadings. I have also

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gone through the Written Arguments submitted by the learned counsel for the applicant.

17. Without going in to the merits of the case, it must be noted that the Central Administrative Tribunal has been held not to have jurisdiction to go into the legality of the order passed by the competent authority. The expression "any other matter" under section 3(q) (V) of Administrative Tribunals Act cannot confer such jurisdiction on the Tribunal as held in UOI Vs Rasila Ram & ors. JT 200 (10) SC 503. It must be noted that while in service a Govt. Servant is entitled to be allotted official quarter for his residence as per the relevant rules. His continued occupation and cancellation of allotment are also subject to the conditions prescribed by the rules. If the servant is unauthorized occupant say after his transfer or retirement or otherwise even beyond the period of two months he will be liable to pay penal /damage rent for retention of the Govt. accommodation after the expiry of the same. According to section 15 of Public Premises (Eviction of Unauthorized occupants) Act, 1971, the jurisdiction of Ordinary Civil Courts or any other court has been barred to entertain any suit or proceedings in respect of an unauthorized occupation of any public premises or for the recovery of arrears of rent or damages etc.

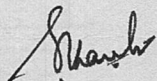
18. In the peculiar facts and circumstances of the case it is admitted that the applicant was allotted Govt. Quarter No. KB- 2 at Saharanpur. After his transfer, as per the relevant rules, it was permissible for him to retain the accommodation for a period of two months on

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normal rent. In the absence of any specific authorization by competent authority to retain the quarter under rules beyond two months the applicant is liable to pay the penal rent as is laid down by Govt. India D/o Post letter dated 31.08.1992. Learned counsel for the applicant has not been able to bring out if any such permission was granted to the applicant by the competent authority to occupy the House No. KB- 2, Kendra Vihar at Saharanpur. In para 2 of the aforesaid order it is also clearly stated that retention beyond the period permissible should not be allowed on any grounds and the circle office/PMG should ensure that damage rent beyond the above admissible /permissible period are in variably charged.

19. Besides, according to the respondents , the applicant who is in unauthorized occupation of the house in question is required to pay penal rent. This contention of the respondents is adequately covered by the judgment of the Apex Court in Amitabh Kumar Vs. Director of Estates & Anr. (1997(3) SCC 88) And Wazir Chand Vs. U.O.I & Ors. (2001 SCC(L&S) 1038.

20. For aforesaid reasons and case law cited above the O.A is dismissed with no order as to costs.


MEMBER- A.

/ANAND/