

13-
8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 280 of 1990

Date of decision : 15.7.1992

Upendra Thakur

Applicant

Versus

Union of India and others

Respondents

For the Applicant

M/s.A.K.Bose,
P.K.Giri,
Advocates

For the Respondents

Mr.P.N.Mohapatra,
Standing Counsel
(Central)

...

C O R A M

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR.M.Y.PRIOLKAR, MEMBER (ADMN)

...

1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *Yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

...

16
9

JUDGMENT

MR. M. Y. PRIOLKAR, MEMBER (ADMINISTRATIVE)

The applicant in this case, while working as Sub-Inspector Telephones at Rourkela was allotted a departmental quarter at Rourkela on 28.3.1984. He was promoted to the post of Line Inspector on 2.4.1988 and transferred to Berhampur and thereafter to Jharsuguda. But he did not vacate the Government quarter. The applicant's grievance is that although he is entitled under the departmental instructions to retain the quarter in his occupation at Rourkela for a period of three years as his children are studying there in School/College, the respondents are deducting 40% of the pay of the applicant from his salary without assigning any reason and without following the procedure required under the law. This case was considered earlier by a single member bench of this Tribunal and the learned single Judge by his order dated 8.8.1991 has referred the following questions for decision by a Division Bench of the Tribunal:

" Whether para (vi) of the Office Memorandum of of the Ministry of Labour Department (Director of Estates) dated 27.7.1987 read with Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rule 1971 bars recovery of damages for not vacating the quarters after the expiry of the prescribed period by deduction by the disbursing officer from the pay of the concerned officer".

2. The applicant ^{has} annexed a copy of the circular dated 20.12.1989 (Annexure-4) which permits officers who are transferred in the middle of an academic session to retain quarters at the old station for their School/College going children upto degree level, limited to a maximum period of three years. The rent to be charged in such cases is fixed

9

as normal rent for first two months, double the standard rent for the next six months or expiry of the academic year, whichever is later and beyond that period, three times the standard rent. However, as stated by the respondents, the circular dated 20.12.1989 has been withdrawn by another circular dated 13.9.1990 (Annexure-R.3) which provides that officials, on their transfer, will take permission for retention of the quarters upto 8 months giving proper reasons and in case permission is granted, normal rent will be charged for the first two months and double the ~~pooled~~ rent for the next six months. It is also provided in this circular that permission may also be granted for retention beyond eight months on payment of damage rent. Both these circulars take effect from the date of ~~these~~^{is} issue, namely 20.12.1989 and 13.9.1990 respectively, and will therefore not cover the case of the applicant who was transferred much earlier, namely on 2.4.1988.

3. According to the respondents, the applicant did not make any application for retention of the quarter beyond the permissible period of two months (2.4.1988 to 2.6.1988) ~~not~~ vacated the quarter, thus rendering him liable to ^{pay} damage rent as unauthorised occupant. It is not in dispute that the Estate Officer has already declared the applicant as unauthorised occupant and served notice on him on 2.5.1990 under Sub-section (i) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 (for short P.P. Act, 1971) to show cause why he should not be evicted from the said quarters. The eviction order passed has since been stayed by the District Judge. The only question that

arises now for our determination is whether the action of the respondents in assessing the damage rent and recovering the damage rent after the expiry of the prescribed permissible retention period from the applicant's salary ~~allegedly~~ without following the procedure laid down in the P.P. Act, 1971 can be considered to be in conformity with law.

4. The respondents have stated that their action of deduction of the damage rent from the applicant's pay and the quantum of the damage rent fixed is based on the general instructions issued by the Government of India, Ministry of ~~Urban Development~~ Directorate of Estates, New Delhi in their O.M. dated 27.8.1987 (Annexure.R-2), Para 2(ii) of this O.M. lays down the damage rates applicable to different types of quarters for the general post accommodation in Delhi which under para 2(v) should be adopted in respect of other departmental pools of accommodation in Delhi/other Stations. Based on these instructions the Telecom District Engineer, Rourkela, communicated on 27.5.1990 (Annexure-R/4) the ~~penal~~ of rent to be recovered from the applicant at the rate of Rs.816 per month from 1.7.1988 onwards.

5. Admittedly, under Rule 8 of Public Premises (Eviction of Unauthorised Occupants) Rules, the damages for unauthorised occupation are to be assessed by the Estate Officer in the manner specified therein. These statutory provisions will override other general executive instructions relating to the realisation of damages or penal rent. This is also recognised in the OM dated 27.8.1987 cited above, para 2(vi) of which is reproduced below :

"(vi) The rate of damages as above would be the rate to be charged from the unauthorised occupant and if he/she

is not agreeable to pay it, the damages to be recovered from him/her will have to be placed before the Estate Officer in terms of Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules."

The contention of the respondents is that the applicant had applied on 22.1.1990 for permission for retention of the quarter at Rourkela upto June, 1990 in which he had agreed to the realisation of house rent as recovered earlier, and therefore, resort to Rule 8 of the P.P. Rules as required under the O.M. dated 27.8.1987 was not necessary. On reading the letter dated 22.1.1990, however, we agree with the learned single Judge who has held in his order dated 8.8.1991 that the applicant has not specified in that letter as to what was the rent and what he meant by saying "as per recovered house rent earlier" and, it cannot therefore be construed as an admission of the applicant that he was liable to pay damages at the rate fixed.

6. The learned counsel for the respondents also contends that the Divisional Telephone Engineer is *notified* as Estate Officer and authorised to exercise the powers ~~conferred~~ by the P.P. Act, 1971, and therefore the communication from him of the quantum of damage rent to be deducted from the applicant's salary should be treated as a decision taken ^{by} him in his capacity as Estate Officer. We are unable to agree with this contention. There is no indication at all in the letter dated 27.5.1989 (Annexure-R/4) from the Telecom District Engineer that this functionary is also the Estate Officer or that the letter which looks like a routine administrative communication, is issued in exercise of the powers vested under the P.P. Act, 1971.

✓

Further, sub-section(3) of Section 7 of the P.P. Act, 1971 mandates the grant of an opportunity to the occupant to object to the direction for payment of arrears of rent. Admittedly, in this case no such opportunity was given. We have, therefore, no difficulty in holding that the communication dated 27.5.1989 from the Telecom District Engineer directing recovery of penal rent from the applicant at the rate of Rs.816/- per month from 1.7.1988 onwards cannot be sustained. The question posed before the Division Bench by the learned Single Judge by his order dated 8.8.1991 is thus answered in the affirmative.

7. The respondents are, accordingly, directed not to deduct any amount towards penal or damage rent from the applicant without taking recourse to the statutory procedure. Any excess deductions made from his pay towards house rent shall be refunded. The application is disposed of accordingly with no order as to costs.


15/7/92
VICE-CHAIRMAN


15-7-92
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack
B.K. Sahoo



21

14

Date of decision: August 8, 1991.

• • •

Applicant.

Respondents.

P.K.Giri, Advocates.

Addl. Standing Counsel (Central)

QUESTIONS

C O R A M:

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

100 100

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters of not ? No
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.280 of 1990.

Date of decision : August 8, 1991.

Upendra Thakur ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.A.K.Bose,
P.K.Giri, Advocates.

For the respondents ... Mr.P.N.Mohapatra,
Addl. Standing Counsel (Central)

C O R A M:

THE HONOURABLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

J U D G M E N T

N.SENGUPTA, MEMBER (J) The applicant, in this application, as originally it stood, prayed for the reliefs of quashing the order of transfer at Annexure-2, to allow him to draw full pay and for refund of certain deductions said to have been made illegally, and injunction not to deduct any amount from the pay of the applicant or to evict him without taking recourse to the procedure prescribed under the statute and the residuary relief of any other direction deemed just and proper.

2. At the time of admission some arguments of the learned counsel for the applicant were heard and the application was heard only with respect to the prayers (b) and (c), ofcourse prayer (b), the residuary relief included therein.

3. The material facts are that the applicant was

*Ex 280
1991.*

working as S.I.Telephone at Rourkela and he got promotion to the rank of Line Inspector(L.I.) and was transferred on promotion to Berhampur with effect from 2.4.1988. It is alleged by the applicant that the transfer order^{was} in the middle of the academic session, so, he made a representation to the Chief General Manager, Telecommunications, Orissa Circle, Bhubaneswar, Respondent No.1 for cancellation of his transfer on two grounds namely the chronic illness of his wife and for proper education of his children in the middle of the year. After that representation on 28.8.1989 the Telecom District Engineer passed an order retransferring the applicant. The applicant has averred that he was not allowed to join by Respondent No.3 and he was transferred by order dated 11.9.1989 to Jharsuguda. The other allegations regarding the transfer as made in the application need not be set out as the application has not been admitted with regard to the relief concerning the transfer. While the applicant was posted at Rourkela he was allotted with quarters No.PT/31. The applicant claims that as his sons were studying in the College and School, and as his daughter was a student of 2nd year B.A.Class he was entitled to retain the quarters at Rourkela on payment of licence fee. However, since June, 1988, deductions of 40 per cent of the applicant's pay was being made and his representations in that regard yielded no result, and on the contrary respondent No.3 threatened to cause eviction of the applicant from the quarters illegally without adopting the procedure prescribed under the law. The applicant has annexed a copy of the letter No.4-48/87 NB /T dated

See Encl
8.8.91.

20.12.1989 to contend that permission to retain the departmental residential quarters by the Officers who are transferred in the middle of an academic session, at his old station for his school/college going children upto degree level was to be allowed on payment of normal rent for two months, double the standard rent for next six months, and beyond the period of 8 months, three times the standard rent.~~xxxx~~

4. The respondents in their reply have stated that the applicant was promoted from S.I.Telephone to the post of Line Inspector, and was transferred to Berhampur. He did not vacate the government quarters. The applicant did not apply for permission to retain the quarters, as such he cannot be granted the reliefs that he has prayed for. They have also averred that the circular dated 20.12.1989 which has been relied upon by the applicant was withdrawn by another circular vide Annexure-R/3 dated 13.9.1990. According to the circular dated 27.8.1987 vide Annexure-R/2 damages at the rate of Rs.20/- per sq. metre of living area in respect of types A to D (Type I to IV) and Rs.21/- per sq. metre of living area in respect of types E and above (Type V and above) was to be paid and on that ^{basis} ~~date~~ deductions were made from the pay of the applicant.

5. For what is going to be stated below it is unnecessary to state the other facts pleaded by the respondents. Mr. Mohapatra, learned Additional Standing Counsel (Central) for the respondents, has contended that the applicant moved on 22.1.1990 for permitting him to retain the quarters at Rourkela upto June, 1990 and he agreed to the realisation of house rent as recovered earlier. Mr. Mohapatra

See Encl
8891.

21-

has urged that this agreement estopped the applicant to claim the reliefs (b) and (c). On reading the letter dated 22.1.1990 it would be seen that the applicant did not specify as to what was the rent and what he meant by saying "as per recovered house rent earlier". Therefore, without further materials it is difficult to construe that letter as an admission of the applicant that he was liable to pay damages at the rate of Rs.20/- per square metre of the living area. Mr. Bose, learned counsel for the applicant on the other hand, has contended that as it is admitted that proceedings have been initiated under the Public Premises (Eviction of unauthorised occupants) Act, 1971, no deduction could be made by the present respondents in disbursing the salary and the realisation is to be made in accordance with section 7 of that Act.

6. Mr. Bose, learned counsel for the applicant has urged that there was no formal order cancelling the order of allotment of the quarters, therefore, penal rent or damages could not be realised but he has further urged that assuming that there was a formal order of cancellation of the allotment made in favour of the applicant of the quarters that he was in occupation of at Rourkela, yet the only mode in which the Department could realise the damages was by taking recourse to the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, the 1971 Act). Mr. Bose's contention is ^{practically} particularly based on Annexure-R/2, particularly paragraph (vi) at page 2 of the said Annexure, which may, for the sake of convenience, be quoted.

Sanjay
8.8.91

" vi. The rate of damages as above would be the rate to be charged from the unauthorised occupant and if he/she is not agreeable to pay it, the damages to be recovered from him/her will have to be placed, before the Estate Officer in terms of Rule 8 of Public Premises (Eviction of Unauthorised Occupants) Rules."

Mr. Bose has further contended that as the 1971 Act is a special law, it will override other general provisions relating to the realisation of damages or penal rent. Under Section 7 of the 1971 Act it has been provided that when any person is in arrears of rent, payable in respect of any public premises, the Estate Officer may, require that person to pay the same within a time and no such order shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice why such order should not be made and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the Estate Officer. Mr. Bose's contention is that Sub-section (3) of Section 7 of the 1971 Act mandates the grant of an opportunity to the occupant to object to the direction for payment of arrears of rent. Admittedly, in this case no such opportunity was given. Therefore, the impugned order for deducting amounts as damages for his occupation from the pay of the applicant cannot be sustained. On the other hand, Mr. Mohapatra, learned Additional Standing Counsel (Central) for the respondents, has drawn my attention to F.R. 45 A and instructions of the Government of India relating to the Postal Department and has contended that there is no bar for recovery by way of deduction from the pay of the Government servant retaining a quarters beyond the

See Encl
8.8.91

permissible limit. Mr. Bose has referred me to Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 and has contended that damages for unauthorised use and occupation are to be assessed in a particular manner. His contention is that when there has been a procedure prescribed and the same has been accepted by the Estate Officer, it will not be permissible to fall back upon any other provision so as to deduct any amount without following the procedure laid down under the 1971 Act or the Rules framed thereunder. These contentions really require some serious consideration. Therefore, the matter should be placed before a Division Bench. The question to be decided is;

" Whether para (vi) of the Office Memorandum of the Ministry of Urban Development (Director of Estates) dated 28.7.1987 read with Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 bars recovery of damages for not vacating the quarters after the expiry of the prescribed period realisation by deduction by the disbursing officer from the pay of the concerned officer ? "

The matter be put up before the Division Bench.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 8, 1991/Sarang.

Manendra Singh
.....
Member (Judicial)