

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH,
C U T T A C K .

ORIGINAL APPLICATION NO.489 OF 1995.

Cuttack this the 9th day of September, 1996.

Gopal Panigrahi. Applicant.

Versus.

Union of India and others. Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be circulated to all the Benches
of the Central Administrative Tribunals or
not ? *yes.*

N. Sahu
(N. SAHU)
MEMBER (ADMINISTRATIVE)

7

CENTRAL ADMINISTRATIVE TRIBUNAL : CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No.489 OF 1995.

Cuttack this the 9th day of September, 1996.

C O R A M :

THE HONOURABLE MR. N. SAHU,
MEMBER (ADMINISTRATIVE).

Gopal Panigrahi,
Sub-Postmaster,
Brajarajnagar,
District-Jharsuguda. Applicant.

By the Advocate : Mr. D.P.Dhalasamant.

Versus.

1. Union of India,
represented through its
Chief Postmaster General,
Crissa Circle, Bhubaneswar-751001,
District-Khurda.
2. Senior Superintendent of Post
Offices, Sambalpur Division,
Sambalpur - 768 001. Respondents.

By the Advocate : Mr. Ashok Mishra,
Standing Counsel,
(Senior Panel).

O R D E R.

N. SAHU, MEMBER (ADMN.): In this case the applicant prays for a
direction not to treat his occupation of quarters at
Jharsuguda as unauthorised. He further prays for
fixation of penal licence fee as per rules in force

prior to issue of orders at Annexure-3, if penal licence fee is at all to be recovered. By an order dated 25.8.1995, the recovery of the penal rent was stayed "if the applicant vacated the quarters within 15 days."

2. The facts of the case are that the applicant was allotted Type-II quarters at Jharsuguda Head Office while he ~~was~~ worked there as Postal Assistant. He was transferred as Sub-Postmaster to Brajarajnagar S.O. where he joined on 7.11.1994. He could not occupy the quarters at Brajarajnagar because the accommodation was not, according to him, habitable. Normal rent was recovered till 30.6.1995 from his Jharsuguda quarters. Respondent No.2 issued orders charging damage rent at the rate of Rs.40/- per sq.mt. for living space for the period from 7.1.1995 till vacation of quarters. Accordingly a sum of Rs.1,785/- was deducted from the pay of the applicant for the months of July and August, 1995. His contention is that even assuming that damage rent is chargeable, as no damage rent has been fixed for Jharsuguda, the only course left open is to charge as per rules in force prior to issue of orders at Annexure-3.

3. The background of the charge of penal rent is stated at Annexure-1 by the letter of Superintendent of Post Offices addressed to the applicant dated 17.7.1995 which is as under :

" You remained on leave on medical ground from 30.5.1994 to 26.10.1994 and joined at the new place of posting on 7.11.1994. You have not yet vacated

9

: 3 :

the type II qtrs. at Jharsuguda inspite of repeated request by this office. As per rule the permissible period of retention of quarters on transfer is 2 months plus the period of leave. As such the admissible period extends upto 6.1.1995. Further period of retaining is 6(six) months and that too on payment of double the rate of licence in advance with the permission of the head of the circle vide PMG No.4-33/92 Bldg. dated 21.5.1993.

No such permission has been given to you to retain the type II qtrs. at Jharsuguda. As such the retention of qtrs. is unauthorised and you are in unauthorised occupation of the qtrs. since 7.1.1995.

Hence damage charge @ Rs.40/- per sq.mtr of living area in accordance with G.10.12(ii) FR-45A. will be recovered from your pay for the period from 7.1.1995 to till vacation of the quarters."

In the counter affidavit, it is submitted that the applicant was relieved from Jharsuguda Head Post Office on 30.5.1994. Thereafter he remained on leave on medical grounds and joined at Brajarajnagar on 7.11.1994. The applicant is liable to occupy the quarters attached to the office as per Rule 37 of the Postal Manual Vol.6. He did not occupy the said quarters either on the date of joining or on subsequent dates. It is stated that only a portion of the quarters is in a state of disrepair. It cannot be said that the entire quarter is uninhabitable. It is stated that vide Annexure-R/3 the applicant's request for retention of Jharsuguda quarter was not acceded to.

From the point of view of security of the cash and valuables kept in the Post office, the applicant should have resided in the quarters attached to the Post office. It is stated that the recovery of penal rent was ordered in view of Rule-86 of the P. & T. Financial Hand-book Volume-I. It is not correct to say that simply because the allotment of quarters was not cancelled, it still stood in the name of the applicant. Once the applicant was relieved from Jharsuguda, the allotment stood automatically cancelled. It is stated that it is not the duty of the respondents to provide accommodation as a pre-condition. The quarter is available at Brajarajnagar. He was not permitted by the competent authority to retain his Jharsuguda quarter. Therefore, it is submitted that the levy of penal/damage rent is justified.

5. Shri D.P. Dhalasamant, learned counsel for the applicant, states that the recovery of damage rent by the respondents is illegal. He cites the decision (1994) 28 ATC 622 (P.K. KUTTY VS. UNION OF INDIA & OTHERS). In that case it was held that recovery of damage rent cannot be made without taking resort to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, Sec. 7(2), 2(g) and 7(3) thereof. It is held that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Where a statutory power is conferred for the first time upon a Court and the mode of exercising it is prescribed, it means

that no other mode is to be adopted. Administrative instruction issued prior to the enactment cannot be enforced for realising the amount due either as rent or damage rent and the procedure laid down in the provisions of P.P.Act has to be pursued.

The next decision cited by Shri Dhalasamant is (1994)27 ATC 366 (U.N. SWAMY VS. UNION OF INDIA & OTHERS). This is a single member decision of C.A.T.Calcutta Bench. Here also it is held that recovery of penal rent from salary is not permissible.

Government can take from salary only normal licence fee.

Excess amount can be recovered only by adopting appropriate legal procedure, viz., P.P.Act 1971. The C.A.T. Calcutta Bench in the above case relied on a Supreme Court decision in Shiv Charan's case (1992) 19 ATC 129. Shri Dhalasamant relied on a third decision (1993)25 ATC 268. The same view was adopted.

The word "Public Premises" has been defined in Sec.2(c) of the 1971 Act. Railway quarters belonging to the Central Government fall under this definition. The Act of 1971 is a complete Code in itself. The Act provides for realisation of rent and evicting unauthorised occupants. Under Sec.7(2), the Estate Officer has the right to assess damages for unauthorised occupation of any public premises and this assessment has to be made after notice to the person and after recording and considering his objections. Under Sec.8 provision for appeal against an order passed under Sec.7(2) has been made. Under the Act of 1971, the person concerned has a right to have an opportunity to object to the assessment of damages and this valuable right has been conferred by an

Act of Parliament. The applicant can't be deprived of this right by an executive order of Government.

6. We have also judgments supporting the contrary view. The C.A.T. Allahabad Bench in the case of DINESH CH. SRIVASTAVA VS. UNION OF INDIA & OTHERS (SWAMY CASE LAW DIGEST) (1995) 527 held that after transfer and posting elsewhere if no extension of allotment was sought, the retention of Government quarter becomes unauthorised and no cancellation of allotment is necessary to charge damage rent. The Allahabad Bench followed the decision of Calcutta Bench of the Tribunal in SANKAR VS. UNION OF INDIA & OTHERS (1994) 26 ATC 278. In a recent decision, in the case of BINAY KUMAR RARHI (O.A.35/95) a Division Bench of the C.A.T. Calcutta Bench has upheld the recovery of penal rent without recourse to the P.P.(Eviction)Act. In Sankar's case(1994)26 ATC 278 decided on 16.9.1993 the Calcutta Bench held that so far as the Government employees are concerned, excess rent, whether it is called penal rent or damage rent or damages, can be recovered either by following procedures of P.P.Act or by following the procedures prescribed under the statutory service rules / instructions. According to the Division Bench C.A.T. Calcutta, recourse to P.P.Act is one of the alternative procedures. Penal rent can also be levied under the instructions issued from time to time under F.R.45A referred to at page 197 of Swamy's Compilation of F.R.S.R. Volume-I 1991 Edn. The Principal Bench of the Tribunal had also supported the

: 7 :

stand that excess rent can be recovered either by following the procedure laid down in the relevant service rules in the following cases.

1. Sushil Chandra Bhatnagar vs. Union of India decided on 26.7.1994 reported in 1994(3) AISLJ (CAT) 67.
2. Inderjit Singh vs. Union of India decided on 13.5.1993 reported in (1993)25 ATC 446.

It has been clearly held in these rulings that for recovery of excess rent for unauthorised occupation of Government quarters, it is not necessary for the authority to follow the P.P. Act in respect of the Government servants. In JAGABANDHU SAHA VS. UNION OF INDIA decided on 19.1.1996 reported in 1996(Vol-I) ATJ 335 the Calcutta Bench has reiterated its stand in Sankar's case. In order to harmonise the procedure laid down in the service rules, it is held that so far as the Government servants are concerned, the official respondents have the option to choose either of the two procedures. If, however, Government accommodation is occupied without any authority by a private citizen, a non-employee, then it would become obligatory for the official respondents to follow only the P.P. Act procedure. Thus there is force in the contention that having stayed without permission beyond the permissible period, the applicant is liable to be declared as unauthorised occupant. The respondents have the option to deduct penal rent or excess licence fee from the salary and there is no need for them to resort to P.P. (Eviction) Act for this purpose.

7. The next question is whether Annexure-3 dated 27.8.1987 is applicable to the applicant's case. The 1987 circular has withdrawn the decision taken in the year 1970 indicating the formula of fixation of market rate of licence fee and instead a damage rent of Rs.20/- per sq.mtr. (Rs.40/- from 1.4.1991) in respect of living accommodation in Type A to D (Type I to IV) and Rs.21 per sq. mtr. of living area in respect of Types E and above (Rs.45/- from 1.4.1991) for general pool accommodation in Delhi is fixed. The rate of Rs.45/- per sq.mtr. charged by the respondents is applicable only to Delhi and not to a small town like Jharsuguda. Under Government of India orders 12, 13 and 14 under F.R.45A, C.P.W.D. has been asked to workout damage rents for small stations.

8. It is true, there are Division Bench decisions to the effect that in spite of the specific mode of recovery prescribed under P.P.(Eviction)Act, the said recovery is possible without recourse to P.P.Act by the competent authority, departmentally, provided it is established that the applicant remained and retained the quarters unauthorisedly. The point to be noticed is that F.R.45A prescribes the method of charging damage rent from unauthorised occupants of general pool residential accommodation and recovery of licence fee when general pool accommodation is allotted to ineligible persons. Annexure-3 which is order No.12 under F.R.45A governs

the mode and method of charging. This very order, however, refers to the Public Premises (Eviction of Unauthorised Occupants) Act. First of all by the order dated 31.7.1976, the following procedure is prescribed.

" It was also indicated in these orders that in the case of occupants whose allotments have been cancelled and necessary eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, have been finalised and the period of 30 days (since reduced to 15 days) allowed for the vacation of the premises has expired, damages at three times the pooled market rate of licence fee per month for the accommodation in Types II to VIII under unauthorised occupation should be recovered till the date of vacation/physical eviction; in respect of Type I accommodation, three times the market rate of licence fee of the accommodation was to be charged."

The revised procedure from 1.9.1987 also states at para(vi) : (In Memorandum No.18011/12/73-Pol.I, dated 31st July, 1976).

"(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 pleaded before the Estate Officer in terms of Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (Extract enclosed)."

The order has extracted and enclosed Rule 8 of the P.P. Rules, 1971 :

"8. Assessment of damages :
In assessing damages for unauthorised use and occupation of any Public premises, the estate officer shall take into consideration the following matters, namely :-

- (a) the purpose and the period for which the public premises were in unauthorised occupation;
- (b) the nature, size and standard of the accommodation available in such premises;
- (c) the rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person;
- (d) any damage done to the premises during the period of unauthorised occupation;
- (e) any other matter relevant for the purpose of assessing the damages."

9. In sub-para 3 of the above order dated 27.8.1987 it is stated that damage rent may be worked out by the C.P.W.D. for other stations where general pool accommodation is available and the rates so assessed may be adopted for recovery of damages in such stations. Even for accommodation, which is not general pool accommodation, what the C.P.W.D. has assessed has to be applied. Under para-6 of the said instructions, it is stated that if the unauthorised occupant(s) is not agreeable to pay the damages, the damages have to be recovered in terms of Rule 8 of the P.P.(Eviction) Act, 1971. Under F.R.45A there are rules for retention of P. & T. quarters after resignation/transfer and retirement. Rule 5 (2) prescribes over stay in residence after cancellation of allotment. These rules prescribe damage to be recovered at double the standard licence fee under F.R.45B or double the standard licence fee under F.R.45A. Even the instructions of the Department

of Posts. G.I. Department of Posts letter No.4-33/92 Bldg.
dated 31.8.1992 at para-4 stated as under :

" It is, therefore, enjoined that the Heads of the Circles/Regions should ensure that official(s) who retired or transferred or the members of family of a deceased Government servant are not allowed to reside in the Government quarters allotted to them without proper permission and that unauthorised occupation of quarters should be strictly dealt with under the provision of Eviction of Public Unauthorised Occupants Act, 1971." (Emphasis supplied)

10. The above discussion, therefore, compels me to draw two irresistible conclusions :

- i) The departmental instructions also enjoin a reference to Public Premises Eviction Act for recovery of damage rent ; and
- ii) Delhi rates cannot be applied to Jharsuguda.

It is quite possible that the Jharsuguda market rate could be less than even the penal licence fee viz., twice the licence fee of a normal accommodation. The order of recovery, therefore, has to be cancelled on the ground that the assessment of damage rent at Rs.40/- per sq.mtr. of living area is not applicable to Jharsuguda. While a mode of recovery is possible by way of deduction from salary, a reference to the Estate Officer is mandated in the Government instructions themselves extracted above and these instructions are binding on the respondents. The recovery of damages by reference to Public Premises (Eviction) Act 1971 in the instructions dated 27.8.1987

: 12 :

have not been withdrawn. Thus while recovery from salary is not per se illegal, yet, what has been directed to be recovered is not in accordance with the prescribed procedure. The departmental instructions enjoin on the respondents to make a reference to the Estate Officer and this is evident from Annexure-4 G.I. Directorate of Estates OM No.18001/8/89 Pol.III dated 1.4.1994. It states that except the revised rates charged for unauthorised occupation, all other clauses of OM dated 27.8.1987 have remained unchanged. Thus reference to the Estate Officer has become mandatory under the instructions issued by the Department. As the levy has been made on the basis of an audit objection without complying with the procedure laid down for the purpose of recovery, the direction to recover under Annexure-1 at the rate of Rs.40/- per sq.metr. is bad in law and is, therefore, quashed. While allowing the application, the respondents are free to reassess the damage rent for the period of over stay after consulting C.P.W.D. and following the procedure laid down in Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971. The application is allowed. No costs.

Narain Kumar
(N. SAHU) 9/9/96
MEMBER (ADMINISTRATIVE).

C.A.T., Cuttack Bench,
Cuttack, Jena/PS.