

In the Central Administrative Tribunal
Calcutta Bench

OA No.1061 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

S.K. Sarkar

..... Applicant

-VS-

- 1) Union of India, through the General Manager, E.Rly, Calcutta.
- 2) The Divisional Rly. Manager, E.Rly., Asansol.
- 3) The Estate Officer & Divisional Engineer(HQ), E.Rly., Asansol.

.... Respondents

For the Applicant : Mr. B. Chatterjee, Advocate
Mrs. B. Mondal, Advocate

For the Respondents: Mr. R.M. Roychoudhury, Advocate

Heard on : 3-3-1999

Date of Judgement : 3-3-1999

ORDER

The applicant was a MSM under the Signal Inspector(1) at Asansol, Eastern Railway and he retired on superannuation of 31.7.96. While he was in service and prior to his retirement, the railway authority held him unauthorised occupant of the railway quarters from December, 1987 to 24.3.1992 for which damage rate of rent was recovered from his salary. Feeling aggrieved by and dissatisfied with the said order, the applicant along with 9 others approached this Tribunal by filing original application bearing No.365 of 1992 - B.K. Chatterjee and Ors. - Versus - Union of India & Ors. and the said OA was disposed of on 28.2.1995 with the following direction :

"In view of the foregoing discussions, we are of the opinion that Railway Administration should not be allowed to deduct/release damage rent/penal rent without resorting to the

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provisions of Public Premises (Eviction of Unauthorised Occupation) Act, 1971 and as such, the application succeeds and the case is disposed of in the following terms :

- i) Henceforth, the Railway Respondents shall not recover penal/damage rent from the applicant in terms of the impugned order dated 6-8-91 and 25-8-91 (Annexure A-1 collectively) and the order dated 4-12-91 as mentioned in para 8(a) of the application. They are, however, permitted to release normal rent for the quarters, if not already realised.
- ii) Railway Respondents are at liberty to approach the Estate Officer under the provisions of Public Premises (Eviction of Unauthorised Occupation) Act, 1971 for assessment and realisation of damage rent from the applicant.
- iii) The amount of damage rent already recovered, need not be refunded but shall be adjusted against the damage/penal rent assessed by the Estate Officer".

Thereafter, the matter was referred to the Estate Officer and the Estate Officer served notice under Section 7 read with Section 3 of the Public Premises (Eviction of Unauthorised Occupation) Act, 1971. But applicant did not appear before the Estate Officer and the Estate Officer subsequently passed the impugned order (Annexure A) on 1.7.96 by assessing the damage rate of rent to the extent of Rs.22,646/- which should be recovered from the settlement dues.

2. Feeling aggrieved by and dissatisfied with the impugned order dated 1.7.96 (Annexure A) they again approached this Tribunal stating, inter-alia, that the Estate Officer has no jurisdiction to proceed with the assessment of damage rate of rent and recover the same from DCAG money and settlement dues. The main contention of the applicant is that the Estate Officer served purported notice under Section 7 instead of notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupation) Act. Thereby, the notice issued by the Estate Officer is without jurisdiction and is violative of provision of the Public Premises Act.

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3. Respondents denied the claim of the applicant by filing written statement. It is stated in the reply that applicant was served notice under Section 7 of the Public Premises Act, 1971 asking him to appear before the Estate Officer and show cause why order requiring him to pay the said damage rent together with interest should not be made. But in spite of receipt of the notice, the applicant did not appear before the Estate Officer. Thereafter, the Estate Officer passed the order in accordance with the law after assessing the damage rate of rent which is liable to be paid by the applicant for unauthorised occupation of the quarters for the period mentioned above. According to the respondents, they acted in accordance with the direction of the Tribunal and approached the Estate Officer as per direction contained in the order of the Tribunal. So, no irregularity and illegality was committed by the respondents by passing the impugned order (Annexure A to the application) by the Estate Officer.

4. Id. Advocate Mr. Chatterjee on behalf of the applicant firstly submits that he did not receive the notice under Section 7 at any time. Thereby, order of assessment (Annexure A) is violative of Principle of Natural Justice. Secondly, he submits that the Estate Officer has no authority to assess the damage rate of rent under Section 7 of the Public Premises Act, 1971 without taking recourse of Section 4 of the Penal Code Act. Thereby, the impugned order (Annexure A) is liable to be quashed.

5. Id. Advocate Mr. Roychoudhury on behalf of the respondents submits that applicant did not appear before the Estate Officer who initiated the proceeding by invoking the provision of Section 7 read with Section 3 of the Public Premises Act, 1971 for assessment of the damage rate of rent. Since applicant already vacated the quarters, thereby, the Estate Officer started proceedings under Section 7 of the Public Premises Act, 1971. Mr. Roychoudhury further submits that since applicant had vacated the quarters, respondents approached the

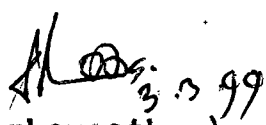
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Estate Officer who, as per direction contained in the judgement dated 28.2.95 in OA 365 of 1992, passed the order. So, no irregularity and illegality has been committed by the Estate Officer in passing the impugned order dated 1.7.96 (Annexure A). So, application is devoid of merit and liable to be dismissed.

6. In view of the controvery, I find that applicant filed original application No.365 of 1992 where the Tribunal adjudicated the application and passed some direction contained in para 5 of the order. In Clause 3 of the direction at page 5 of the order of the Tribunal it is mentioned that the amount of damage rent already recovered, need not be refunded but the same shall be adjusted against the damage/penal rent assessed by the Estate Officer and in Clause 1 of the said direction, it is mentioned that respondents are at liberty to approach the Estate Officer under the Provisions of Public Premises (Eviction of Unauthorised Occupation) Act, 1971 for assessment and realisation of damage rent from the applicant. But it is found that applicant has no grievance about the said direction made by the Tribunal and he did not prefer any appeal against the said order passed by the Tribunal. So, I find that the said direction contained in the original judgement dated 28.2.95 is binding on the party. It is found that as per direction, the matter was referred to the Estate Officer who served notice under Section 7 of Public Premises Act, 1971 upon the applicant and that fact was also admitted by the applicant in para 4,3 of the application. The applicant cannot say now that he did not receive notice from the Estate Officer. The applicant also failed to produce the said notice under Section 7 of the Public Premises Act at the time of hearing. It is seen that applicant did not appear before the Estate Officer though he was given opportunity to state his case by appearing before the Estate Officer. So, applicant cannot say that he was not given reasonable opportunity to state his case. It is found that the Estate Officer assessed the damage rate of rent and requested the authority to recover the same from his settlement dues. ^{Thash} So, I do not find any justification to interfere with the order of Estate Officer. ^{ycl} ~~However,~~ in the interest of justice, I remit the case to the Estate Officer ~~again~~ for fresh adjudication in

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respect of amount of damage rate of rent only in view of the order passed by the Hon'ble Tribunal. I am of the view that notice under Section 7 of the Public-Premises Act was reasonably served upon the applicant since applicant had vacated the quarters 10 years back. Thereby, applicant should appear to state his case before the Estate Officer if he thinks fit and proper and if the applicant does not appear before the Estate Officer to state his case, the Estate Officer shall proceed ex parte in accordance with the law. With this observation, the application is disposed of awarding no costs. Liberty is given to the applicant to approach this Tribunal if he is aggrieved by the decision of the Estate Officer.


(D. Purkayastha)
Member(J)