

In the Central Administrative Tribunal
Calcutta Bench

OA No. 313 of 1996
OA No. 340 of 1996

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

Manglu Nayak

.... Applicant

-Vs-

- 1) Union of India through the Secretary, Department of Supply, New Delhi-1.
- 2) The Director of Quality Assurance Nizam Palace, Calcutta-20.
- 3) The Assistant Director of Administration for Director of Quality Assurance, Nizam Palace, Calcutta-20.
- 4) The Estate Manager, Office of Estate Manager, Explanace East, Calcutta-69.

.... Respondents

For the Applicant : Mr. K. Sarkar, Advocate

For the Respondents: Ms. K. Banerjee, Advocate
Ms. B. Ray, Advocate

Heard on : 22-02-1999

Date of Judgement : 22-02-1999

ORDER

*Two applications bearing No. OA 313 of 1996 and OA 340 of 1996 have been filed by the applicant before this Tribunal. Application No. 313 of 1996 relates to damage charge for the occupation of the quarters unauthorisedly at Salt Lake and OA 340 of 1996 relates to occupation of the quarters at Tollygunge.

2. Id. Advocate Mr. Sarkar on behalf of the applicant submits that he does not press the OA 340 of 1996; but he would press the OA 313 of 1996 only.

3. I have heard Ld. Advocate Mrs. Ray appearing on behalf of the respondents in OA 340 of 1996. Mrs. Ray submits that the respondents may be permitted to proceed further in accordance with the law in respect of Tollygunge quarters. Considered, since the applicant does not press the application bearing No.340 of 1996. Thereby, liberty is given to the respondents to proceed in accordance with the law in respect of quarters at Tollygunge in OA No.340 of 1996.

4. According to the applicant, he got allotment of the quarters bearing No.242, Type-I, Block-KB, Salt Lake (in the year of 1986 and he took possession of the said quarters at Salt Lake on 24.10.86. At the time of occupation of the quarters applicant's pay scale was Rs.940-1500/-. Accordingly, applicant was subsequently allotted Type-II quarters at Tollygunge bearing No.A-34 by order dated 14.2.1992 (Annexure A-2 to the application) and he accepted the said allotment of the quarters at Tollygunge and took possession of the said quarters on 4.3.92. While he was in possession of the quarters at Tollygunge, the applicant received a letter dated 20.10.93 (Annexure A-3 to the application) from the respondents where it is alleged that applicant has been occupying the aforesaid two quarters simultaneously and it is alleged that since the applicant did not vacate the quarters at Salt Lake after taking possession of the quarters at Tollygunge, his earlier allotment in respect of the quarters at Salt Lake is deemed to have been cancelled w.e.f. 4.3.92 and simultaneously the applicant was asked to show cause as to why, as per allotment rules, allotment of Flat No.A-34, Type-II at Tollygunge should not be cancelled for breach of allotment rules. According to the applicant, he has paid the electricity bill in respect of quarters at Salt Lake as per letter dated 22.3.94 (Annexure A-4 to the application). It is stated by the applicant that he had surrendered the former of the quarters at Salt Lake w.e.f. 17.5.94. The grievance of the applicant arose from the letter dated 20.10.93 and from subsequent letter dated 22.7.94 when the Estate Manager served a notice upon the applicant stating that applicant has not been residing in the quarters No.242, Type-I, Block-KB, Salt Lake and has completely/

partially sublet the same to some unauthorised person in contravention of the provisions contained in the Allotment Rules. And he was asked to appear before the authority on 2-8-94. Thereafter, he also received a letter dated 13.2.96 (Annexure A-12) from the Estate Manager regarding charge of damage rent etc. where the respondents charged the damage rent of Rs.28,223/- for the period from 11.10.86 to 7.5.95 for occupation of the quarters. The applicant went on retirement on superannuation w.e.f. 31.10.98. So, feeling aggrieved by and dissatisfied with the letter dated 13.2.96 (Annexure A-12) and other letters as mentioned above, the applicant approached this Tribunal for direction upon the respondents to cancel the impugned order dated 13.2.96 (Annexure A-12) and issue direction upon the respondents not to deduct any amount from the salary as stated above.

5. Respondents filed reply to the OA.313/96 stating, inter-alia, that applicant vacated the Flat No.242, Type-I, Block-KB, Salt Lake on 17.5.94 and he got the Flat No.A-34, Type-II at Tollygunge on 14.2.92. So, applicant was in occupation of both the flats simultaneously from 14.2.92 to 17.5.94. As a result he was unauthorised occupant in respect of the former Flat at Salt Lake w.e.f. 14.2.92 to 17.5.94. It is also stated by the respondents that at the time of inspection of the said flat at Tollygunge on 29.6.94, one Smt. A. Dutta was found in the Flat (A-34, Type-II, Tollygunge). So, according to the respondents, applicant is liable to pay the damage rent at the market rate as applicable as per extant rules on the subject. So, application is devoid of merit and liable to be dismissed.

6. This OA bearing No.313/96 relates to flat at Salt Lake. Lt. Advocate Ms. Banerjee appears on behalf of the respondents. But Lt. Advocate Mr. Sarkar on behalf of the applicant submits that no opportunity of being heard was given to the applicant in respect of charge of damage rent for the period from 11.10.86 to 7/95 as stated in the letter (Annexure A-12). Lt. Advocate Mr. Sarkar submits that as per statement made in the written reply, respondents cannot charge damage rent beyond the period i.e. 4.3.92 to 17.5.94 since it remains admitted

fact that the quarters at Tollygunge has been allotted in favour of the applicant in the year of 1992 and vacated the quarters of Salt Lake on 17.5.94. Thereby, they cannot charge any damage rent for the quarters from the applicant for the period from 1986 to 7/95 as stated in the letter (Annexure A-12). And he submits that applicant paid all dues in respect of the quarters at Salt Lake. Thereby, respondents cannot claim any damage rent against the applicant in view of the letter dated 22.3.94 (Annexure A-4 to the application). Mr. Sarkar also submits that in view of the aforesaid circumstances, the impugned order dated 13.2.96 (Annexure A-12) is found not based on correct facts. Thereby, the said order is liable to be quashed.

7. ~~Id. Advocate Ms. Banerjee, appearing on behalf of the respondents, submits that the damage rent of Rs.28,223/- has been charged for the occupation of both the quarters at Salt Lake and Tollygunge which have been occupied by the applicant simultaneously in violation of the Allotment Rules. It is also submitted by the Id. Advocate of the respondents that the applicant made a sublet of the quarters of Tollygunge to the unauthorised person named Ms. A. Dutta. However, it is mentioned that since applicant does not press the application bearing No.340/96 in respect of grievance made in the said application, therefore, I am confined to the case and grievances made in OA No.313 of 1996 only. In view of the aforesaid circumstances, it is to be seen whether respondents were right in charging the damage rent of Rs.28,223/- from the period from 11.10.86 to 7/95 as stated in the letter (Annexure A-12). It is admitted fact in this case that applicant got the possession of the quarters at Tollygunge on 4.3.92. So, he was bound to surrender the quarters of Salt Lake before occupation of the quarters at Tollygunge. But applicant failed to produce any record to show that even after taking possession of the quarters at Tollygunge, he surrendered the quarters at Salt Lake before 17.5.94. It is seen that applicant retained the quarters of Salt Lake from 4.2.92 to 17.5.94 in his possession unauthorisedly. According to the Allotment Rules, applicant has no right to retain the first quarters at Salt Lake after occupying the second quarters at Tollygunge. Thereby, it is clear that he was unauthorised~~

occupant of the quarters from 4.3.92 to 17.5.94 and he is liable to pay damage rent/penal rent as per rules. It is admitted by the Lt. Advocate Ms. Banerjee that rent in respect of possession of the quarters at Tollygunge was included in the amount of Rs.28,223/- as stated in the letter dated 13.2.96 (Annexure A-12). So, the impugned order dated 13.2.96 (Annexure A-12) which created some confusion regarding charge of damage rent against the applicant is not sustainable. In view of the aforesaid circumstances, the impugned order dated 13.2.96 is hereby quashed and respondents would be in liberty to charge the damage rent from the applicant for the period from 4.3.92 to 17.5.94 in respect of Salt Lake quarters. Since the applicant has already retired from the service, thereby respondents are given liberty to deduct the rent which would be fixed by the respondents for unauthorised occupation of the quarters at Salt Lake from 4.3.92 to 17.5.94 from the DCRG money. So, with this observation, both the applications are dismissed awarding no costs.

H. S. and
(D. Purkayastha)
Member (J)