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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,  
JODHPUR

Date of order : 7 .08.2000

O.A.No.343/96

Mohd.Yunush Khan S/o Shri Mohd.Hussain Khan, since deceased,  
represented by Smt.Belkish B W/o Late Shri Mohd.Yunush Khan,  
aged 52 years, R/o C-108 Purana Wagh Colony, Sagwara, Dist.  
Dungarpur.

... Applicant.

versus

1. Union of India through Secretary to Government of India, Ministry of Communication (Department of Post), Dak Bhawan, New Delhi.
2. The Superintendent of Post Offices, Dungarpur Division, Dungarpur.
3. The Director of Postal Services, Rajasthan Eastern Region, Ajmer.

... Respondents.

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CORAM :

Hon'ble Mr.A.K.Misra, Judicial Member

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Mr.J.K.Kaushik, Counsel for the applicant.

Mr.Vineet Mathur, Counsel for the respondents.

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BY THE COURT :

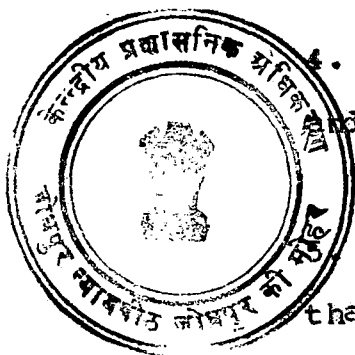
Applicant Mohd.Yunush Khan had filed this O.A.against the respondents challenging the impugned order dated 18.4.95 passed by the respondent No.2. By the impugned order, the respondent No.2 accorded sanction of payment of Rs.12,729/- only towards the gratuity after ordering deduction of Rs. 25,881/- on account of recovery of damage rent from the total sum of gratuity.

2. Notice of the OA was given to the respondents who have

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filed their reply stating therein that the applicant remained in un-authorised occupation of the Government accommodation for more than two years inspite of his transfer from Sagwara to Dungarpur. Hence, recovery of damage rent was initiated from the pay of the applicant and the balance left to be recovered on account of damage rent has been deducted from the amount of Death-cum-retirement-gratuity as per rules. Therefore, the applicant has no case. The OA deserves to be dismissed.

3. During the pendency of the OA, applicant Mohd. Yunush Khan died. On the application of the widow of Mohd. Yunush Khan, (Smt. Balkish B), she was brought on record as applicant in the capacity of legal representative of the deceased. Now, she is claiming the relief as per the OA.



4. I have ~~heard~~ heard the learned counsel for the parties and have gone through the case file.

It was argued by the learned counsel for the applicant that in the instant case, before initiating the recovery of damage rent from the Pay and DCRG of the applicant, no action was taken by the Estate Officer in this regard as envisaged by Sec. 7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short 'the Act'), therefore, the recovery of damage rent from the pay and death-cum-retirement-gratuity, was illegal. Hence, the applicant is entitled to the refund of the entire amount deducted from the pay and death-cum-retirement-gratuity of Late Shri Yunus Khan, with interest.

6. On the other hand, it was argued by the learned counsel for the respondents that the applicant Yunus Khan, who was transferred from Sagwara, was not entitled to retain the

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Government accommodation beyond the permissible period. Since the applicant Shri Yunus Khan did not vacate the Government accommodation inspite of letters and reminders, damage rent as per rules, was ordered to be recovered from his pay. The amount of arrears of damage rent is covered by the definition of Government dues, hence, the amount was deducted from the payable amount of death-cum-retirement-gratuity of Shri Yunus Khan. There is no illegality in this action of the respondents, hence, the applicant is not entitled to any relief as prayed in the OA.

7. I have considered the rival arguments. There is nothing on record to show that action as envisaged by Sec.7 of the Act was taken by the Estate Officer against the applicant Shri Yunus Khan before initiating recovery of damage rent from his pay. In this regard it would be useful to quote Sec.7 of the Act, which reads as follows :-

"7. Power to require payment of rent or damages in respect of public premises.

(1) Where any person, is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

[( 2A) While making an order under sub-section (1) or sub section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978].

(3) No order under sub-section (1) or sub-s.(2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to



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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."

8. From the provisions of Sec.7 of the Act, it is clear that after notice to show cause to the un-authorised person and after considering his objections, damage rent is to be assessed and such person may be ordered to pay the same within a stipulated time and in instalments. But in the instant case, it appears, that action to recover damage rent has been taken without observing the legal formalities as provided in Sec. 7 of the Act and the Rules made thereunder. Therefore, the action of the respondents in this regard is unsustainable in law.

9. From the facts of the case, it appears that during the life-time of ~~xxx~~ Shri Yunus, normal and damage rent was recovered from the pay of Shri Yunus from August 1993 to March 1995 and balance amount remaining out-standing, has been ordered to be deducted from the death-cum-retirement-gratuity. The applicant Shri Yunus, challenged the deduction of damage rent by the respondents only in the month of Sept'1996 by this O.A. i.e. three years after the respondents started recovering the damage rent from the salary of the Government servant and more than one year after the retirement of the applicant, Mohd.Yunus Khan. Thus, in my opinion, the case of the applicant suffers from laches and acquiescence on the part of Shri Yunus and the present applicant cannot get the relief of refund of already recovered amount of damage rent from out of the pay of Shri Yunus up to his retirement.

10. Deduction of balance amount of damage rent from the death-cum-retirement-gratuity of Shri Yunus Khan, is not legal. After the retirement of S hri Yunus Khan, notice to

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pay the balance ~~am~~ should have been given to him and on his failure to comply the order, recourse to the provisions of Sec.14 of the Act should have been taken by the Estate Officer. But, no such action was taken by the competent officer in this regard, therefore, the applicant is entitled to the payment of Rs.25,881/- retained by the respondent out of death-cum-retirement-gratuity amount, as damage rent as per letter dated 18.4.95 (Annex.A-1) with simple interest @ 12% per annum from 1.4.1995 till payment.

11. The O.A., therefore, deserves to be accepted in part.

12. The O.A. is, therefore, partly accepted. The order dated 18.4.95 (Annex.A/1), is hereby quashed. The respondents are directed to refund/pay to the applicant a sum of Rs.25881/- deducted/retained from the amount of death-cum-retirement-gratuity of Shri Mohd.Yunush Khan, on account of damage rent as per Annex.A/1, with simple interest at the rate of 12% per annum from 1.4.1995 till payment, within a period of three months from the date of receipt of a copy of this order.

13. The prayer of the applicant regarding refund of damage rent recovered by the respondents from the pay of Shri Yunus up to his retirement i.e. up to 31.3.1995, is rejected.

14. Parties are left to bear their own costs.

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*7/8/2020*  
( A.K.MISRA )  
Judicial Member

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Wm.  
10/18

R/copy  
on 10/18  
R. Ad.

Part II and IM destroyed  
in my presence on 8-1-07  
under the supervision of  
section officer (j) as per  
order dated 10-1-07 D. L.

NGD 9/1/07  
Section officer (Records)