

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 110/1998
P.A. No.

199

DATE OF DECISION : 25.02.2000.

V.S. Gehlot

Petitioner

Mr. J.K. Kaushik,

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent(s)

Mr. S.S. Vyas.

Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *ND*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *ND*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *NO*

Gopal Singh
(Gopal Singh)
Adm. Member

A.K. Misra
(A.K. Misra)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. No. : 110/1998

Date of Order : 25-2-200

V.S. Gehlot S/o Shri B.S. Gehlot, aged about 48 years resident of Railway Quarter No. 407/F, Abu Road, at present employed on the post of Telecom Inspector Grade I at Abu Road, Western Railway.

Applicant.

Versus

1. Union of India through General Manager, Churchgate, Mumbai, Western Railway.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
3. Senior Divisional Personnel Officer, Western Railway, Ajmer Division, Ajmer.

Respondents.

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

Mr. S.S. Vyas, counsel for the respondents.

COURT :

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

Hon'ble Mr. Gopal Singh, Administrative Member.

PER HON'BLE MR. A.K. MISRA :

The applicant has challenged the order of the respondent No. 3 dated 15.5.1997 Annexure A/1 by which it has been ordered that a sum of Rs. 1 lakh 10 thousand and 42 (Rs. 1,10,042/-) is required to be recovered from the applicant for having occupied the Railway Quarter No. 407 at Abu Road unauthorisedly from July, 1994 to April, 1997. The applicant has prayed that the impugned

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order dt. 15.5.97 be declared illegal and consequently be quashed and the respondents be directed to refund the amount of damage rent which they have recovered from the applicant in pursuance of the impugned order at Annexure A/1.

2. Notice of the application was given to the respondents who have filed their reply in which it is stated that the applicant was working as TCI at Abu Road. He was promoted and transferred to Gandhidham vide respondents' order dated 5th May, 1994 vide Annexure A/2. The applicant was relieved on 20.6.1994 to join at Gandhidham. It is further alleged that the applicant was in occupation of an earmarked quarter at Abu Road which he did not vacate inspite of his posting at Gandhidham. Since the quarter was earmarked for TCI at Abu Road, therefore, applicant's continued occupation of that accommodation was all through unauthorised. The applicant was transferred to Abu Road at his own request and joined at Abu Road on 20.3.1997 from which date his occupation of the Railway Accommodation Quarter No. 407 has been regularised by the respondents vide its order dated 23rd July, 1997 Annexure A/7. It is also stated by the respondents that the applicant is liable to pay damage rent for the period of unauthorised occupation as per rules and the amount of damage rent has been worked out as per Schedule (A) annexed to the reply. It is also stated by the respondents that recovery of damage rent from the pay of the applicant was started from December, 1995 and is continuing month to month up till now. The cause of action to challenge the action of the respondents for recovery of such damage

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rent arose to the applicant in the month of December whereas he has moved this application in April, 1998. Therefore, the application is highly belated and is time barred. The applicant is not entitled to any relief. The O.A. deserved to be dismissed.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. First of all we would like to decide the objections relating to limitation raised by the learned counsel for the respondents. From the facts of the case it appears that the recovery of damage rent was initiated from the pay of the applicant from December, 1995 and since then the recovery continued till the applicant filed this OA in April, 1998. By that time a sum of Rs. 62,870/- was recovered from him towards the damage rent. For challenging the action of the respondents of initiating the recovery of damage rent from the pay of the applicant, the cause of action arose to the applicant in December, 1995 and he should have filed the OA challenging that action within one year. However, he did not do so for a much longer period than the law prescribes for such action. Since the recovery is continuing every month, therefore, it can be said that continuous cause of action is available to the applicant for challenging the order of the respondents. In view of this, it can not be concluded that the OA of the applicant is time barred. All that can be said is that whatever amount which was recovered earlier than one year from the date of moving the OA that can not be claimed by way of refund from the respondents by the applicant. In the next paras we would be debating on the action of the respondents initiating the recovery of the damage rent. Therefore, it is not of

much importance to discuss and debate the point of limitation any further. The objection of the learned counsel for the respondents is, therefore, decided accordingly.

5. The applicant has challenged the action of the respondents in recovering the damage rent from him on the ground that the respondents have not followed the provisions of public premises (Eviction of Unauthorised Occupants) Act, 1971 in imposing and recovering the damage rent from the applicant. The respondents have not given any notice to the applicant before the action of recovering the damage rent was initiated by them. No action has been taken by the Estate Officer in declaring the occupation of the applicant as unauthorised and consequently the exercise of imposing damage rent on the applicant is arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution of India.

6. Learned counsel for both the parties developed their arguments on the line of their pleadings which we have considered vis-a-vis their pleadings. The applicant has not challenged the correctness of the amount of damage rent which is sought to be recovered from him as per the calculation shown in ~~Annexure A~~ Schedule 'A'. Therefore, the point of quantum of amount which was ordered to be recovered from the applicant and which has been recovered from ~~him~~ is not required to be discussed in detail. As has been noted earlier by the time the applicant moved this OA, a sum of Rs. 62,870/- was already recovered from

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him and in absence of any stay, the balance amount must also have been recovered from him during the pendency of this Q.A. Therefore, the only thing which we have now to decide is whether the action of the respondents in ordering recovery of such damage rent is totally illegal and unsupported by provisions for such recovery.

7. In a full Bench case of Central Administrative Tribunal, Allahabad Bench, reported in (1996) 34, ATC, 434, Ram Pujan Vs. Union Of India and Others, it was held that :-

"(a) in the event of a railway employee in occupation of a railway accommodation, no specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied;

(b) retention of accommodation beyond the permissible period would be deemed to be unauthorised occupation and there would be automatic cancellation of allotment and penal rent/damages can be levied according to the rates prescribed from time to time in the Railway Board's circular.

It would be open to the Railway authorities to recover penal/damage rent by deducting the same from the salary of the railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Resort to proceedings under the said Act is only an alternative procedure which does not debar recovery as per Railway Board's circulars."

8. In another case reported in (1996), 34 ATC, 592, S.A. Husain Vs. Union of India, it was held by Allahabad Bench of Central Administrative Tribunal that :-

"it is permissible to recover the amount of the penal rent from the salary for unauthorised occupation and resort only to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was not necessary."

9. In yet another case, Mumbai Bench of Central Administrative Tribunal reported in (1997) 35, ATC, 49 Laxmi Narain Reghunath Vs. Union of India & Ors., it was held that :-

"that the damage/penal rent for unauthorised occupation is permissible without taking recourse to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971."

10. In view of the above, it is clear that position as it stands today as per the law propounded by various Tribunals, it was not necessary for the respondents to pass an order of declaring the occupation of the Railway quarter by the applicant as unauthorised before further action regarding imposition and recovery of damage rent was initiated. The respondents have independent rules and regulations for regulating ^{and} initiation of actions in such cases of unauthorised occupation and in view of specific provisions in this regard, the provisions of general law were not required to be followed by the respondents as has been held in the above cited rulings. In our opinion, no notice was also required for imposition and recovery of damage rent from the applicant for such unauthorised occupation of Railway quarter, therefore arguments of learned counsel for the applicant in this regard are difficult to accept.

11. In view of the above discussion, we come to the conclusion that the application of the applicant is devoid of merits and deserves to be dismissed.

h/n

12. The application of the applicant is, therefore, dismissed and parties are left to bear their own costs.



Gopal Singh

(G. OPAL SINGH)
MEMBER (A)

Man
(A. K. MISRA)
MEMBER (J)

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under the supervision of
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Section Officer (Record)

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