

In the Central Administrative Tribunal
Calcutta Bench

OA No.835 of 1997

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

Amal Roy

.... Applicant

Vs.

1. Union of India through the Secretary, M/o Communication, Deptt of Post, New Delhi.
2. Director General of Post, Govt. of India, New Delhi.
3. Chief Post Master General, W.B.Circle, Calcutta.
4. Supdtm. of Post Office, Barasat Divn., Barasat, Dist: 24-Parganas(N).
5. Estate Officer for Calcutta, W.B. Circle, Calcutta-12.

.... Respondents

For the Applicant : Mr. Samir Ghosh, Lt. Advocate

For the Respondents: Mr. B.K. Chatterjee, Lt. Advocate

Heard on : 26.7.1998

Date of Judgement : 2.7.98

ORDER

The applicant Shri Amal Roy, working as Postal Assistant, now under suspension, has challenged the validity of the order dated 23.12.96 (Annexure 'E' to the application) on the ground that the said order of recovery of damage charges for over-staying in the quarters amounting to Rs.95,110.44 p. on his transfer from Michaelnagar to Habra for the period from 13.5.92 to 4.6.96 is violative of principle of natural justice, arbitrary and illegal. According to the applicant, he has been transferred from Michaelnagar Post Office to Habra in the year of 1992 and thereafter, he applied for retention of the quarters. According to him, the said prayer of retention of quarters has been rejected by the authority and subsequently vide letter dated 12.2.96 the authority has cancelled the order of allotment with immediate effect (Annexure 'B' to the application)

Contd..

declaring him as unauthorised occupant of the govt. premises and by that order dated 12.2.96 he was further directed to vacate the quarters by 20.2.96 after handing over the charge of the quarters to the SPM, Michaelnagar failing which eviction proceedings will be started under the provision of Public Premises Act, 1971. According to the applicant, he also obtained 'No Objection' certificate from the officer who was posted in his place at Michaelnagar Post Office for retention of the quarters since he did not require any govt. accommodation and that has been intimated to the respondents vide letter dated 28.3.96 (Annexure 'D' to the application). It is also stated that after cancelling the order of allotment vide order dated 12.2.96 the eviction proceedings was initiated by the Estate Officer of Calcutta Region under the Post Master General of West Bengal Circle and notice of show-cause was issued to the applicant before asking him to vacate the quarters within 10 days from the date of this letter dated 8.3.96 (Annexure 'C'). According to the applicant, he also made representation to the authority addressed to Shri J.C. Saha, Supdt. of Post Office, Barasat Division regarding the alleged action taken by the respondents but he did not get any relief from him and hence he filed this application before the Tribunal for quashing the impugned order dated 23.12.96 (Annexure 'E' to the application) and also direct the respondents not to recover any amount as damage charge w.e.f. 13.5.92 to 4.6.96 on the basis of the letter issued by the authority from his subsistence allowances from the month of December, 1996 as proposed.

2. The case is resisted by the respondents by filing a written statement denying the claim of the applicant stating, inter-alia, that the application is not maintainable for the reason that while he was working as Postal Assistant at Michaelnagar Post Office, he was transferred to Habra Sub-Post Office as Postal Assistant; but on his transfer he did not vacate the quarters as per rules after permissible limit. It is also stated that the applicant occupied the quarters at Michaelnagar Post Office which was rent free post quarters for the

post of SPM, Michaelnagar only. Thereby, he was not entitled to retain the quarters on his transfer from Michaelnagar to Habra. According to the rules, the applicant did not vacate the quarters as per order dated 12.2.96, ~~was issued~~, though he relinquished the charge of SPM, Michaelnagar Post Office. Respondents repeatedly asked the applicant to vacate the quarters, but he did not do so and ultimately the competent authority cancelled the allotment order in respect of the said quarters vide order dated 12.2.96 (Annexure 'B' to the application). Since, applicant did not vacate the quarters after permissible limit on his transfer from Michaelnagar to Habra, the authority was justified to recover the damage charges for the period from 13.5.92 to 4.6.96 as the applicant unauthorisedly occupied the said quarters. ^{He also stated that} ^{prior} ~~He is not entitled to any notice for charging~~ penal rent. After receipt of the eviction order from the said officer the applicant vacated the quarters in June, 1996 and thereby respondents did not act illegally in directing the recovery of damage charges for the unauthorised occupation of the quarters for the relevant periods as mentioned above. Thereby, the application is liable to be dismissed.

3. Mr. Advocate Mr. Ghosh on behalf of the applicant, strenuously argued before me after drawing my attention to the order dated 12.2.96 (Annexure 'B' to the application) where it is stated that allotment of the said quarter in his favour ^{had been} ~~is~~ cancelled with immediate effect ^{and} he was declared unauthorised occupant of the govt. premises. According to the Mr. Ghosh, the applicant was also declared as unauthorised occupant of the said quarters w.e.f. 12.2.96 (Annexure 'B' to the application) not from 13.5.92, and thereby, the authority has no jurisdiction to realise damage rent for period prior to 12.2.96. He also submitted that since the applicant applied for retention of the said quarters, he cannot be deemed to be an unauthorised occupant. Mr. Ghosh further submits that there is difference between the damage charge and damage rent and authority has no jurisdiction to realise the said amount of Rs.95,110.44 paise as damage rent. So, ~~entire~~ entire actions of the respondents are highly arbitrary and illegal and liable to be quashed.

4. Ld. Advocate Mr. Chatterjee, appearing on behalf of the respondents, wanted to refute the argument advanced by the Ld. Advocate Mr. Ghosh submitting that the applicant was asked by the Department to vacate the quarters after expiry of permissible limit on his transfer from Michaelnagar to Habra and so, applicant has no legal and statutory right to retain the quarters on his transfer from Michaelnagar to Habra after permissible limit. So, notice is required for realizing damage rent/or penal rent from the applicant as per rules. So, actions of the respondents are in accordance with rules and valid.

5. I have considered the submissions of Ld. Advocates of both the parties and perused the documents and relevant records produced before me at the time of hearing. It remains undisputed in this case that the applicant was transferred from Michaelnagar to Habra Post Office and he retained the said quarters on his transfer from Michaelnagar to Habra w.e.f. 13.5.92 to 4.6.96. The applicant could not produce any scrap of papers to show that he was permitted to retain the quarters on his transfer. It is found from the records that applicant was repeatedly asked to vacate the quarters as soon as he has been transferred from Michaelnagar to Habra, but he did not vacate the quarters. It is now settled law by catena decisions of Hon'ble Apex Court that a Govt. servant has no right to retain the quarters beyond the permissible limit as per rules. Accordingly, I have gone through the circular dated 28.7.93 regarding retention of govt. quarters on transfer produced by the Ld. Advocate Mr. Chatterjee at the time of hearing. On perusal of the said circular it is found that the govt. employees has no right to retain the quarters beyond the permissible limit of 6 (six months) ^{on transfer} ~~only~~ except in an exceptional circumstances with a permission from competent authority. The question whether the applicant was entitled to get notice for the purpose of realising ^{another occupation} penal rent or damage charge in respect of the quarters was considered by the Hon'ble Apex Court in a case of Union of India & Ors. Vs.

R.R. Hingerani where it is held that the govt. is competent to recover damage rent on account of retention of the quarters after permissible limit and it is not necessary to serve prior notice on the allottee. In a recent judgement reported in 1997 (I&S) 698 Amitabh Kumar and Anr. Vs. Director of Estates and Another where the Lordship held that the govt. servant who is in unauthorised occupant is required to pay the penal rentals. So, in view of the settled decision of the Hon'ble Apex Court I find that the applicant was not entitled to any notice before passing of the order of recovery of damage/penal rent. So, the applicant admittedly over-stayed in the quarters without having any permission obtained from the competent authority and thereby I find no justification to hold that the action/or order of the respondents regarding recovery of the damage rent as proposed by the authority is wrong or illegal. It is also found that the authority has jurisdiction to charge damage rent for the unauthorised occupation of the quarters. In view of the abovesaid circumstances and discussions made above I find no justification to interfere with the order as alleged by the respondent in this case.

6. Regarding disputed period of charging damage rent, as submitted by the Lt. Advocate for the applicant, I hold that the argument of Shri Ghosh is not sustainable. I have gone through the letter dated 12.2.96 (Annexure 'B') which shows he was treated to be unauthorised occupant from 13.3.92, since no notice is required for holding the govt. servant as unauthorised occupant on the expiry of the permissible period of retention of quarters granted by the authorities. Hence, respondents are directed to recover damage rent/penal rent. In view of the reason and under the circumstances, the application is dismissed as it is devoid of merit, awarding no cost.

7. After conclusion dictation of the judgement in the Open Court Mr. Ghosh raised another point stating that applicant did not receive any house rent allowance for the said period from the respondents as admissible to him. So, he may be permitted to make representation to the authority for getting appropriate relief in this

case. In view of the circumstances, the right of making representation by the applicant is guaranteed by the law and Constitution. So, if the applicant is aggrieved with the action of the department, he may make representation to the authority for appropriate order for which no order is required from the Court.

AKG 27/7/96
(Dr. Purkayastha)
Member (J)