

IN THE CENTRAL ADMINISTRATIVE TRIUBNAL, LUCKNOW BENCH

Original Application No.435/2003.

this the day of ~~10~~ November 2003.

HON'BLE MR. S.K. ARYA, MEMBER (A).

Avadh Sah aged about 60 years son of Acuzhan Sah, resident of Mahuja, P.O. Daruli, District-Siwan-841234, Bihar.

... Applicant.

By Advocate:- Sri V.P. Singh.

Versus.

Union of India through its Secretary, Indian Council of Agriculture Research Krishi Anusndhan Bhawan, New Delhi.

2. The Director, Notional Bureau of Fish , Genetic Resources, Canal Ring Road, P.O. Dilkusha, Lucknow-226002.

... Respondents.

By Advocate:- Sri K.D. Nag and Sri G.S. Sikarwar.

O R D E R

By Shri S.P. Arya, Member (A).

The applicant was working in the office~~s~~ of respondent no.3 as Superintendent and was inpossession of allotted residential Quarter No.C-1. He retired on 31.12.2001. He <sup>obtained</sup> ~~opted~~ no-dues certificate and got all the retiral benefits except Rs.12000/- of gratuity amount. An order dated 28.12.2002 was issued from respondent no.2 for adjustment/recovery of Rs.18,446/= from the balance gratuity Rs.12,000/= and remaining from dearness relief payable from his pension from December,2002. Feeling aggrieved from this, O.A. has been filed <sup>for</sup> quashing order dated 28.12.2002 and for

stoping the deductions henceforth and also to pay remaining gratuity and deducted dearness relief with interest.

2. The case of the applicant is that he has vacated Quarter on 31.8.1992 and has also shifted house-hold goods to his village in District Siwan, Bihar. He has made a representation to the respondents in this regard and has taken plea that it is only the President who has the right to with-hold the Pension and order ~~for~~ recovery.

3. Respondents have contested the case of the applicant by stating that Quarter No.C-1 was owned and controlled by the respondent no.2 and it was allotted to the applicant on 28.4.1999. The applicant did not handed-over the <sup>physical</sup> possession ~~physical~~ after the retirement and extended the period of his stay in that quarter. The Keys, and other utility fixtures of light, fan, bathroom fixtures etc were not handed-over to the caretaker. The quarter in question was allotted to one Shri Ajai Kumar Singh, vide Office Order dated 19.8.2002 in anticipation of his vacation. Son of the applicant was in the lower pay scale and therefore his <sup>application</sup> ~~representation~~ for allotment of the said quarter was rejected and such rejection was communicated to him on 10.06.2002. The applicant concealed this fact while filing the O.A. They have further stated that Allottee of Government accommodation beyond the permissible limit of time period, after retirement, having no legal right to retain the possession, and pensioner has to hand over peaceful vacant possession ~~of~~ the accommodation to the concerned Geovernment Department. The transfer T.A. Bills has got no relation to vacation of quarter and the applicant's son <sup>is</sup> staying in the accommodation. The T.A. Bills were only for shifting house-hold goods as requested by the applicant.

4. The applicant in the Rejoinder-Affidavit has stated that it is not correct to say that the applicant did not inform the Care-taker on vacation. He also stated that possession is still with his son who is legally occupying the Quarter No.C-1.

5. I have ~~heard~~ <sup>heard</sup> Counsel for the parties and perused the records. Undisputedly, the applicant retired on 31.12.2001. He was intitled to retain the quarter after the retirement for 2 months on normal rent. He after getting the extention from time to time <sup>has to</sup> vacate the quarter on 31.08.2002. However, under the orders of this Tribunal, it <sup>was</sup> further extended for two months and accordingly the quarter ~~shall~~ <sup>should</sup> have been vacated on 31.10.2002. The applicant has not specifically stated any where in his O.A. or his R.A. that he had handed-over the keys, and other utility fixtures of light, fan, Bathroom fixtures to any official responsible for handing-over & taking-over of such quarter. The vacation of Govt. accommodation does not mean ~~not~~ physically <sup>not</sup> living in the quarter but also to hand-over the possesion to competent authoriy or official. The applicant failed to make-out the case ~~as he~~ <sup>that</sup> he actually vacated the government accommodation. Merely certificate of transporting the goods does not certified the formally handing over the possession of the quarter.

6. The respondents have relied upon the case of Shallendra Nath Mishra Vs. Union of India decided on 8.7.2003 by the Hon'ble High Court of Allahabad reported in U.P.L.B.E.C. (2003)2 Page-1681, wherein, it was held that the petitioner who has illgally remained in possession of the accommodation in question and has abused the sympathy shown to him. Accordingly,

I am of the view that the unauthorised possession, in absence of permission of competent authority, of the Government accommodation by the applicant can therefore not debar the authority to make recovery of the same from the remaining gratuity and dearness relief on pension. ~~Adjustment or recovery from the pension~~ ~~and~~ ~~such~~ ~~from~~ ~~the~~ gratuity can be made. However, matter with regard to penal interest ~~or~~ <sup>of</sup> penal rent of licence ~~cannot be made from pension or gratuity.~~ <sup>fees</sup> The obvious dues like House Rent, Electricity charges and Water charges can be recovered from the gratuity and from the dearness relief admissible on pension amount. Since the applicant has not legally handed-over, he is liable to rent therefor. ~~The~~ <sup>to be recovered</sup> ~~if~~ <sup>respect of</sup> The respondents want~~s~~ some penal rent <sup>from the</sup> ~~of applicant in~~ accommodation in possession of the applicant, then they may approach to appropriate forum under appropriate Law.

7. In view of the above discussions, it is found that office order dated 28.12.2002 for adjustment/recovery of rent from the balance gratuity and dearness relief admissible on pension does not suffer from any legal infirmity. However, it is made clear that penal rent and penal licence fee can not be recovered from the dearness relief and ~~gratuity~~.

8. The O.A. is accordingly dismissed. No order as to costs.

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MEMBER (A).