

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.505/2000

Dated this the 12th day of July 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

T.Satyadas,
ELF(II) CarShed BCT,
R/o.Qr.No.104/9,
Western Railway,
Matunga Road,Mumbai.

...Applicant

By Advocate Shri G.S.Walia

vs.

1. Union of India through
The General Manager,
Western Railway,
Mumbai.

2. The Divisional Railway Manager,
Mumbai Division,
Mumbai Central, Mumbai.

...Respondents

By Advocate Shri V.D.Vadhavkar

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act,1985 for a declaration that charging of damage/market/penal rent from the salary of the applicant is bad in law, illegal and unconstitutional and the respondents be permanently restrained by way of a permanent injunction to charge or recover the damage/market/penal rent from the salary of the applicant along with direction to refund Rs.1,549/- to the applicant with 18% interest thereupon till payment.

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2. The applicant who is working as an Electric Fitter Grade II in CarShed, Mumbai Central was allotted a Railway Quarter No.104/9 in Western Railway Colony, Matunga Road and he is in possession of the said quarter. He was served with a chargesheet dated 7.3.2000 on the ground that he has unauthorisedly allowed Smt.Laxmi Murthy and her family to stay in the said quarter. Thus, the applicant has failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant. The applicant replied to the chargesheet claiming that Smt.Laxmi Murthy is his sister. However, without holding any enquiry and waiting for the result of the said chargesheet, an amount of Rs.1,549/- has been deducted as damage/penal/market rent from the salary of the applicant for the month of June, 2000 without observing the principles of natural justice. The applicant represented the matter against the said recovery vide representation dated 5.7.2000 along with a request for a refund of the same. He was also served with a notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The next date for the hearing before the Estate Officer is 21.7.2000. Hence, this OA.

3. The authority under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has passed the order dated 30.1.2001 ordering the applicant and all persons who may be in occupation of the said premises to vacate the premises within 15

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days of the date of publication of this order. In the event of refusal or failure to comply with this order, within the period specified above, the applicant and all other persons concerned are liable to be evicted from the said premises, if need be by use of such force as may be necessary. Against the said order, the applicant has preferred an appeal before the Bombay City Civil Court at Bombay (M.P.Stamp No.24 of 2001) and vide order dated 15.2.2001 Stay pending admission was granted.

4. The learned counsel for the applicant relied on OA.NO.596/99 A.K.N.Panikar vs. Union of India & Ors. decided on 30.11.2000, OA.NO.916/99 Vinod Kumar Mishra vs. Union of India & Ors. decided on 18.10.2000, OA.NO.127/98 Prahalad Varbhuvan vs. Union of India & Ors. decided on 30.4.1998 which lays down the principle that the principle of natural justice deserves to be followed even in such cases.

5. In OA.NO.140/99 P.K.Roy vs. Union of India & Ors. decided on 13.6.2000 and OA.NO.537/2000 Sudhindra Sharma vs. Union of India & Ors. decided on 11.1.2001, it has been held that after the issue of notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 the Tribunal has no jurisdiction to deal with the matter of eviction.

6. The learned counsel for the respondents relied on JT 2000 (10) SC 503, Union of India vs. Sh.Rasila Ram & Ors. decided on 6.9.2000 which lays down the proposition that the word "service matters" as defined under Administrative Tribunals Act, 1985 does

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not include eviction of unauthorised occupant of Government flat under the Public Premises Act, 1971. Hence, Administrative Tribunal has no jurisdiction to go into the legality of the order passed by a competent authority under the Public Premises Act, 1971.

7. In conclusion the proceedings under Section 4 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are subjudice in the Appellate Court and Stay pending admission is operative, even the disciplinary proceedings have not been concluded and as the liability of the applicant to pay damage/market/penal rent arises only when it is held that he is in unauthorised occupation of the accommodation, said to have allotted, i.e. Railway Quarter No.104/9, therefore till the proceedings under Section 4 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is not finalised, the action of the respondents to recover damage/market/penal rent from the salary of the applicant cannot be upheld.

8. The applicant has been deprived of an amount of Rs.1,549/- by deduction from his salary in respect of damage/market/penal rent due to wrongful action of the respondents. Hence, he is entitled for the same along with interest at the rate of 12% p.a. from the date of deduction to the date of actual payment.

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9. In the result, it is declared that charging of damage/market/penal rent from the salary of the applicant till the proceedings under Section 4 of the Public Premises Act is not finalised, is bad in law. The applicant is not entitled to any permanent injunction as sought. After conclusion of the proceedings under Public Premises Act, 1971, the respondents may take a decision to recover the damage/market/penal rent from the salary of the applicant or not. To be very specific, if the applicant is found in unauthorised occupation then the liability of the applicant would arise to pay damage/market/penal rent and in case the proceedings terminates otherwise, his liability to pay the same, damage/market/penal rent would ceased to exists.

10. In the result, OA. is partly allowed. The respondents are ordered to refund the applicant Rs.1,549/- along with interest at the rate of 12% p.a. from the date of deduction till payment and it is declared that till the proceedings under Section 4 of the Public premises Act, 1971 are finalised, the charging of damage/market/penal rent from the salary of the applicant is bad in law. No order as to costs.

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(S.L.JAIN)

MEMBER (J)

mrj.