

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.554/2000

Dated this the 20th day of July 2001.

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

S.B.Sarode,
Auditor,
Office of Director of Audit,
Post & Telegraph,
Nagpur.

...Applicant

By Advocate Ms.N.Gohad
for Shri S.P.Saxena

vs.

1. Union of India
through the Secretary,
Ministry of Communication,
Deptt. of Telecommunication,
New Delhi.
2. The Divisional Engineer
(Building), Pune Telecom,
Office of Divisional Engineer
(Building), Telecom Bhavan,
Pune.
3. Director of Audit,
P&T Civil Lines,
Nagpur.

...Respondents

By Advocate Shri V.S.Masurkar

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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 seeking a declaration that the respondents can only recover the normal rent for the quarter occupied by the applicant and not the damage rent, direction to the respondents to recover the arrears of normal rent and any excess recovery of rent from the applicant's retirement benefits be refunded.

2. The applicant while working at Pune was allotted Government quarter Type-I in 1986. He was promoted to the post of Clerk w.e.f. 31.12.1992 and transferred to Nagpur. The applicant resumed the duties at Nagpur on 1.1.1993. No quarter at Nagpur was allotted to him. Thereafter, the applicant was retransferred to Pune on 1.9.1994. The applicant filed OA.No.479/96 which was decided on 1.8.1996. The order passed in the said OA. is as under:-

"Since the respondents did not comply with the procedure laid down under Section 7 of the Public Premises Act and the amount to be recovered is in dispute, the respondents are directed to give an opportunity to the applicant for a personal hearing before the Estate Manager in terms of rules laid down under the Public Premises Act, 1971. Since the recovery has been stayed by the tribunal, in the facts and circumstances of the case, the respondents are directed to take up this matter with the Estate Manager who may decide the same after hearing both the parties."

Sd/- 3/-

3. The grievance of the applicant is that the said transfer order was in the middle of the academic year, he requested for retention of the above said quarter for his family and children. The said application dated 1.1.1993 was not forwarded by Nagpur Office to the concerned office at Pune. The applicant was awaiting approval of the concerned authority for retention of the quarter. The applicant sent another letter dated 19.5.1993 (Exhibit 'A-4') to the respondents on the same subject for permission to retain quarter for further period. The applicant continued to occupy the quarter at Pune. On 15.2.1994 he received a letter from the Office of A.G.M.(A-II), Pune to vacate the quarter immediately failing which eviction action would be taken. The applicant did not receive any House Rent Allowance from the Office at Nagpur and Rs.55/p.m. was also being deducted from the applicant towards the occupancy of his quarter at Pune. As there was a lapse on the part of the respondents in not sending any reply to the applicant at Nagpur regarding non-grant/rejection of his request for continuing to retain the quarter, the respondents are not entitled to recover the damage/penal rent vide Exhibit-'A-7' dated 10.5.1996. The respondents forwarded the case of the applicant to C.G.M., Telecom Mumbai for sympathetic consideration. The provisions of P.P.Act were not followed by the respondents and no hearing or opportunity was given to the applicant before ordering recovery of damage/penal rent. Then the applicant filed OA.No.479/96

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which was decided as stated above. Thereafter, the applicant was heard and the Estate Manager vide its order dated 24.1.2000 decided to recover the damage rent amounting to rs.31,275/-. The applicant represented against the same vide representation dated 21.2.2000 to A.G.M. and Divisional Engineer, Pune Telecom stating the fact that he is willing to pay Rs.17,000/- as agreed by him before the Estate officer for the period 1.3.1993 to 4.12.1995. However, the said representation was not duly considered and rejected vide order dated 27.4.2000. Thereafter, an amount at the rate of Rs.2,000/- p.m. was recovered from May, 2000 onwards and whole amount has been recovered. Hence this OA. for the above said reliefs.

4. The claim of the applicant is resisted by the respondents on the ground that the application is barred by principles analogous to resjudicata. The applicant is challenging the recovery order issued on compliance of the P.P.Act and hence this Tribunal has no jurisdiction to adjudicate the present application. In application dated 1.1.1993 addressed to the Director of Audit, P&T Nagpur, there was no request by the applicant about the retention of the quarter. For the first time the applicant requested for retention of quarter only on 18.5.1993 which was forwarded on 8.3.1994. In the meantime, as the applicant was transferred back to Pune vide letter dated 15.2.1994, the applicant was asked to vacate the quarter immediately failing which eviction action will be taken as the applicant was unauthorised occupant. Hence, prayed for dismissal of the OA. along with cost.

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5. On perusal of Exhibit-'A-3' OA. page 15, I am of the considered view that the applicant has not requested for retention of the quarter at Pune but by this letter he has requested for allotment of quarter at Nagpur. For the first time vide letter Exhibit-'A-4' dated 18.5.1993 the applicant requested for extension for retention of quarter till 31.10.1993. Even in the said letter he has mentioned the fact that the quarter at Nagpur has not been allotted to him. The ground as stated above is non-allotment of quarter at Nagpur. In-action of the respondents does not entitle the applicant to retain the quarter for which no permission is granted to him.

6. On perusal of Exhibit-'A-2', I am of the considered opinion that the recovery is being effected as per decision of the Estate officer which is as under :-

" As per decision of Estate Officer, Pune Telecom Rs.31,275/- (Thirty one thousand, two hundred seventy five only) may be recovered from Shri S.B.Sarode, Auditor as a damage rent for quarter No. A8/4 Gultekdi Pune for the period 1.3.1993 to 4.12.1996.

Please inform up-to-date recovery details to this office to settle the case."

7. The learned counsel for the respondents argued that as the recovery is in pursuance of the decision under the P.P.Act, this Tribunal has no jurisdiction to consider the matter. He has relied on a decision of the Apex Court reported in 2000 (2) SC SLJ 429, Union of India vs. Rasila Ram & Ors. which lays down the

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proposition that order passed by the competent authority under the P.P.Act, 1971 for eviction of unauthorised occupant of the Government Quarter/Flat, Administrative Tribunal has no jurisdiction as it is not a service matter. The question of unauthorised occupant and payment of damage rent stands on the same footing. In view of the above proposition of law laid down by the Apex Court, this tribunal has no jurisdiction to decide the matter.

8. I have taken the view that the Tribunal has no jurisdiction. The applicant was allowed two month's permission at normal rent vide Annexure-'A-1' dated 27.2.2000. Thereafter, the applicant's occupation in respect of the said quarter was unauthorised one. The learned counsel for the respondents relied on AIR 1997 SC 1308 Amitabh Kumar & Anr. vs. Director of Estates & Anr., AIR 1987 SC 808, Union of India & Anr. vs. Wing Commander R.R.Hingorani (Retd.) which lays down the proposition that a person remaining in unauthorised occupation after expiry of period of ad hoc allotment is liable to pay penal rent. The said proposition applies with equal force to the present case. As the applicant was in unauthorised occupation since 1.3.1993 is liable to pay damage/penal rent.

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9. 1996 (3) SLR 609, Shiv Sagar Tiwari vs. Union of India & Ors. decided by the Apex Court is not relevant for the reason that it is not a case of out of turn allotment made from the discretionary quota. Similarly, 1999 SCC (L&S) 781, Union of India vs. Sisir Kumar Deb also not relevant to the issue.

10. In the result, I do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

[Signature]

(S.L.JAIN)

MEMBER (J)

mrj.