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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 474 of 1991

Date of Decision : 31.7.1991.

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Mr. D.Dass

Petitioner.

Mr. P.Venkateswarlu

Advocate for the
petitioner (s)

Versus

The Telecom District Engineer, Warangal Respondent.
and 2 others.

Mr. N.R.Devaraj, Addl. CGSC

Advocate for the
Respondent (s)

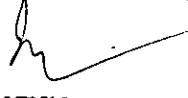
CORAM :

THE HON'BLE MR. J.Narasimha Murthy, Member (Judl.)

THE HON'BLE MR. R.Balasubramanian, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

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HJNM
M(J)


HRBS
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.474 of 1991

DATE OF JUDGMENT: 31.7.1991

BETWEEN:

Mr. D.Dass

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Applicant

AND

1. The Telecom District Engineer,
Warangal-506050.

2. The Divisional (Mtc),
o/o the T.D.M.,
Kurnool-518050.

3. The Chief General Manager,
Telecom, A.P.,
Hyderabad-1. ..

Respondents

COUNSEL FOR THE APPLICANT: Mr. P.Venkateswarlu

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj,
Addl. CGSC

CORAM: Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

Hon'ble Shri R.Balasubramanian, Member (Admn.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This is a petition filed by the petitioner
for a relief to declare -

- a) the recovery of damages from the applicant without getting the rate of damages fixed either by the CPWD or its successor, Civil Wing of the Telecom Department is vitiated ab initio, illegal, null and void;
- b) the recovery is excessive and not covered by rules or orders;
- c) the recovery made in January 1991 was without notice and in lumpsum and hence illegal;
- d) non-payment of House Rent Allowance to the applicant is impermissible and hence illegal;
- e) the recovery of Rs.1,230/- from the bonus payable to the applicant cannot be counter-named -

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and consequently direct the respondents to get the rate of damages per square meter fixed at Kurnool as per the Government orders or rules on the subject and pay the applicant HRA with effect from 1.5.1988 and to refund to the applicant the amount recovered from his bonus. The facts of the case are briefly as follows:-

The applicant was appointed as a Clerk in Telecom Department and subsequently he was promoted as Section Supervisor. While he was working at Kurnool, he was allotted a departmental quarter by the authorities. He was transferred to Warangal on 30.5.1987. Due to some personal difficulties, he sought permission to retain the quarter at Kurnool upto ~~the~~ April 1988 and the same was accepted by the authorities. The applicant again made a representation requesting to permit him to retain the quarter for a period upto financial year 1989 and he was allowed to retain the quarter upto the financial year 1989. The applicant did not receive any communication until May 1989. On 11.5.89 he received a communication asking him to vacate the quarter as the period of one year extension sought by him was expired. The applicant requested the authorities that he got 5 children studying at

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Kurnool and he got old ailing father who requires medical attendance at Kurnool for some more time but the respondents without considering the same asked the applicant to vacate the quarter. Thereafter, the applicant did not receive any communication from the authorities and he was under the impression that his request was considered favourably.

2. While so, the 1st respondent issued a letter No.B-9/89-90/113, dated 2.8.1989 informing the applicant that damages of Rs.623=04 ps. for unauthorised occupation of the quarter will be deducted from his salary in 15 monthly instalments. Immediately, the applicant submitted representations objecting the action of the respondents in levying the damages. No opportunity was given to the applicant before issue of the letter dated 2.8.1989 and the basis on which the damages were worked out was not specified in the said letter. The respondents postponed recovery of damages pursuant to the aforesaid letter dated 2.8.1989. The respondents issued another letter dated 7.7.1990 stating therein that the quantified damages will be recovered from the pay and allowances of the applicant with effect from July 1990. The action of the respondents deducting the amount towards the alleged damages

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without giving particulars of calculations basing on which the said damages were arrived at, inspite of request made by him is arbitrary, capricious and in violation of the principles of natural justice.

On receipt of the letter dated 7.7.1990, the applicant submitted a representation on 24.7.1990 requesting to stop the recovery from July 1990 as his request for supply of particulars of calculation adopted by the authorities was not complied with. Without supplying him the calculation particulars, the respondents commenced deductions from his salary with effect from August 1990. However, a letter dated 3.9.1990 was served upon the applicant by T.D.E., Warangal enclosing a copy of the letter dated 29.8.1990 received from the TDE, Kurnool showing particulars of calculation as per the circular dated 20.6.1989 by multiplying long area of quarter at the rate of Rs.20/- per square meter. The applicant also received another letter dated 10.9.1990 incorporating the contents of the aforesaid letter. The applicant states that the action of the respondents calculating the damages w.e.f. 1.5.1988 even though the applicant occupied the quarter authorisedly upto April 1989, is arbitrary and violative of Articles 14 of the Constitution of India. The Circular dated 20.6.1989 enables the authorities to collect the damages at the rate of Rs.20/- per square

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meter, only at Delhi and as far as other places are concerned, the CPWD has to work out the rate of damages that are to be collected in case of unauthorised occupation by the employees. The applicant made a number of representations requesting the authorities to reconsider the matter but in vain. The calculations made are not in accordance with the contents of the circular dated 20.6.1989. The respondents also deducted 50% of the bonus towards the erroneous damages without giving any prior intimation to the applicant. Vide proceedings dated 3.1.1991 he was informed that the damages were ~~was~~ recovered from August 1990 to December 1990 and outstanding arrears to the tune of Rs.12,363/- would be recovered from the salary of the applicant towards the outstanding arrears. Thereafter, deductions were effected from the salary of the applicant at the rate of Rs.636/- per month in addition to the damages of Rs.623/- towards arrears. The applicant was not paid the HRA from August 1987 till today and Rs.120/- towards the double the rate of licence fee every month was also deducted from August 1987 to July 1990 pay and allowances. Once retention of the quarter by the applicant from ^{to be} 1.5.1988 is said/unauthorised, he should have been paid the HRA from the said date. Deducting the damages and arrears of damages, without paying the



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HRA to the applicant from his pay and allowances, resulting the applicant receiving nominal amount of Rs.250/- per month towards his salary is arbitrary, capricious and in violation of Articles 14 and 16 and 21 of the Constitution of India. Hence, the applicant filed this application for the above said relief.

3. No counter affidavit has been filed by the respondents, in this matter.

4. Heard the learned counsel for the applicant, Shri P. Venkateswarlu and the learned Additional Standing Counsel for the Respondents/Department, Shri N.R. Devaraj.. The learned counsel for the respondents filed written arguments stating that the applicant was permitted to retain the quarters upto 31.7.1987 on payment of normal licence fee. He was further permitted to stay upto 30.4.1988 at his request on payment of penal rent. He was issued notices on 12.5.1988 and on 5.5.1989 for vacating the quarters. As such, his contention that he was permitted to retain the quarters by the Department is false. The penal rent at the rate of Rs.623=04 per month from the pay and allowances of the applicant for his unauthorised occupation of the quarters was proposed to be recovered and the same was informed vide letter dated 2.8.1989 by the 2nd respondent to the applicant. However,

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the orders of above recovery were kept under abeyance on the representation made by the applicant. It was decided to recover the penal rent from the pay and allowances of the applicant with effect from July 1990.

5. The applicant was on Extraordinary leave/ Leave Not Due. Hence, his take home salary was very less. As such, arrears of penal rent could not be recovered from his pay and allowances. The arrears of damage rent to the tune of several thousands were outstanding against the applicant. Hence, 50% of the bonus of the applicant for the year 1989-90 was adjusted towards arrears of damage rent. The bonus is a part and parcel of pay and allowances and as such there is no prohibition in adjusting the same towards amounts owed to the Department by the applicant. The applicant is not entitled to HRA since he did not vacate the Departmental quarters. The rent was calculated by the Estate Officer, TDE, Kurnool according to the rules of the Department. It is stated that the applicant is liable to pay the rent as he did not vacate the quarters inspite of repeated directions.

6. It is an admitted fact the the applicant was occupying the quarters at Kurnool while he was working there and after his transfer to Warangal on 30.5.1987,

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on personal difficulties he made a representation to the authorities for permission to retain the quarters at Kurnool upto April 1988 and the authorities accepted the request and accordingly he was allowed to retain the quarters. The applicant again made representation to the authorities requesting to permit him to retain the quarters for a period upto the financial year 1989, and he was allowed to retain the quarters. Hence, till the financial year ending 1989, he is entitled to retain the quarters. Thereafter, he has to vacate the quarters. So, the respondents gave a notice on 11.5.1989 asking the applicant to vacate the quarters. Even then, the applicant did not vacate and the respondents are bent upon to collect the penal rent and they also collected the damages at the rate of Rs.623=04 ps. The respondents also made deductions of 50% from his bonus without informing him and also they failed to pay the HRA to the applicant. Generally, whenever, an employee who is provided with quarters is not entitled to get the HRA. But here in this case, the applicant did not vacate the quarters and he is continuing in the quarters though the time extended to continue in the quarters expired by March 1989. The Department is at liberty to collect the penal rent. Besides the penal rent, the respondents are also collecting the damages and also they stopped paying the HRA. When the respondents are

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collecting penal rent and also damages, withholding of HRA is not just and proper. If they deduct penal rent and damages and do not pay HRA, what will an employee get from his salary for his sustenance? Moreover, the respondents also deducted 50% of bonus. In any view of the matter, the action taken by the respondents is unreasonable to some extent. How they arrived at the amount by way of damages, the respondents did not inform the applicant and before collecting penal rent also they did not inform the applicant. The respondents only asked the applicant to vacate the quarter. When the applicant did not vacate, the respondents proposed to proceed against him by levying penal rent, collecting damages and also withholding HRA for which the applicant must be given a notice to that extent. The respondents did not do it. Moreover, when they deducted 50% of the amount from the bonus of the applicant ~~when~~ the respondents did not give any notice to the applicant which is not proper on the part of the respondents. The respondents, no doubt, feel that they are paying masters of the employees. What for they are paying? For the services rendered by them to the respondents they are paying salary to them. So, the applicant

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has got a right on his salary to get from the respondents because the respondents extracted work from him. When a worker violated the rules by not vacating quarter, the duty ^{of the} goes on the Department to intimate him that they are going to take action against him or deducting amounts ~~as stated by the respondents~~ giving full details. Without intimating the applicant, the respondents are proceeding to deduct amounts in whichever manner they like, which is highly objectionable. Whenever they recover any amounts from the applicant, they must give him a notice regarding particulars of the recovery and after hearing him only they can proceed to recover but not arbitrarily without giving any notice of recovery to the applicant and moreover, a lumpsum amount of 50% from his bonus was also deducted. How can a poor worker will survive without getting amounts due to him? Even at the time of deducting the amounts ^{due} to the respondents, they must also consider the fate of the applicant and his sustinance and then deduct the amounts in easy instalments from his pay and allowances. Even if he is going to retire at a short span of time, if any amount is due, they can deduct the amounts due from the applicant. But the respondents cannot without giving a notice arbitrarily deduct the amounts from the pay and allowances of the applicant.

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7. In arriving at the damages amounting to Rs. 623/-, the applicant raised objection that as per the rules, the respondents are collecting @ Rs. 20/- per square meter towards damages and according to the applicant, @ Rs. 20/- per square meter is deductible only from the employees working at Delhi but the rate varies from place to place depending upon the importance of the place. Kurnool is a small place and hence recovery towards damages may not be so high as the rates fixed at Delhi. So, before fixing damages, the respondents must ask the Central Public Works Department (CPWD) to work out the rates of damages that are to be collected from the employees for unauthorised occupation in places like Kurnool. But the respondents have not done it. While collecting damages and penal rent, withholding HRA is not proper and the applicant is entitled to HRA when the respondents began collecting damages and penal rent from the applicant's pay and allowances.

8. So, in the light of the above findings, we direct the respondents to get damages calculated by the CPWD and fix damages also after giving a notice to the applicant and refix amounts that are going to be deducted from the pay and allowances of the applicant towards damages, penal rent on quarters occupied by him. After adjusting the amounts so far collected by

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way of damages, penal rent, HRA and from bonus and if any amount is due to be paid by the applicant, the amount may be deducted from the pay and allowances of the applicant in easy instalments at the rate of Rs.200/- per month. After calculations, if the respondents have to pay any amount to the applicant after satisfying their claim as per the rules, the respondents have to refund the remaining amount to the applicant in lumpsum. In the light of the above directions, the respondents shall get the calculations finalised within a period of two months from the date of this order.

9. The application is accordingly ~~allowed.~~ disposed of.
There is no order as to costs.

J. Narasimha Murthy
(J. NARASIMHA MURTHY)
Member (Judl.)

R. Balasubramanian
(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 31-7-91

To

- 1) The Telecom Director Engineer, Warangal - 50
- 2) The Divisional Commr. &/o The T.D.M. Rourkela - 70
- 3) The Chief General Manager, Telecom A&P. Hyd.,
- 4) one copy to Mr. P. Venkateswarlu, Advocate,
1-10-20, Ashoknagar, Hyderabad.
- 5) one copy to Mr. N. R. Devraj, Addl. Commr. C.A.T. Hyderabad.
- 6) one copy to Hon'ble Mr. J. Narasimha Murthy, M.S. (C.A.T. Hyd)
- 7) one Spare Copy

vsn

8/8/91
Recd. No. 1

13/7/91
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