

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

O.A. NO. 375/92

Between:

G.Ch.Sanyasi Rao

Date of Order: 31.1.95.

...Applicant.

And

1. The Senior Superintendent of Post Offices,
Visakhapatnam Division,
Visakhapatnam. 530 001.
2. The Director of Postal Services,
Cum Estate Officer,
Visakhapatnam Region,
Visakhapatnam - 530 003.
3. The Senior Member, (Personnel)
Postal Directorate,
New Delhi.

...Respondents.

Counsel for the Applicant : Mr. M.P.Chandramouli

Counsel for the Respondents : Mr. N.R.Devraj, Sr.CGSC.

CORAM:

THE HON'BLE SHRI A.V.HARIDASAN : MEMBER (J)

THE HON'BLE SHRI A.B.DORTHI : MEMBER (A)

contd...

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X As per Hon'ble Shri A.B.Gorthi, Member (Admn.) X

The grievance of the applicant is two fold.

Firstly he seeks setting aside the respondents order dated 5.12.90 imposing the penalty of stoppage of next increment for a period of 2 years without cumulative effect. Secondly he requests that the respondents orders dated 12.8.91 and ^{of} 11.9.91 by imposing recovery/rent plus damages for the period from 24.5.90 to 30.6.91 in respect of his occupation of quarters attached to the post office at Visakhapatnam Zinc Smelter be set aside.

2. The applicant was posted as Sub Post Master, Visakhapatnam, Zinc Smelter on 26.4.86 and was provided with residential accomodation which was a part of the Post Office. It was given to him on the normal licence fee of Rs.25/- p.m. On his transfer to Visakhapatnam Naval Dockyard Post Office he was relieved of his charge on 23.5.90. On account of several personal and domestic compulsions he could not vacate the quarters on his transfer to Naval Dockyard. The respondents initiated disciplinary action against the applicant and it had resulted in the imposition of the penalty of withholding of increment. Further the respondents proceeded to recover penal rate of rent (damaged rent) to the tune of Rs.6,694.20 vide order dated 12.8.91 upto the period of 30.6.91 and Rs.674.10 upto 25.7.91.

3. The respondents in their counter affidavit have not refuted the facts as stated above but contended that as the applicant disobeyed the orders to vacate the quarters disciplinary proceedings were initiated against

him for his misconduct. After hearing the applicant's defence he was awarded the penalty. ^{as} Further, the applicant continued to be in unauthorised occupation of the quarters, the respondents acted in accordance with the rules and directed recovery of penal rate of rent.

4. Mr. MP. Chandra Mbuli, learned counsel for the applicant assailed the legal validity of both the aforesated orders. As regards the disciplinary proceedings initiated against the applicant, he stated that non-vacation of government quarters allotted to an employee cannot come within the scope of "mis conduct" and as such the respondents were not justified in initiating disciplinary action. In support of his contention he has drawn our attention to the judgement of the Tribunal in Siraz Ahmed Vs. Union of India and others 1989 (11) ATC 816 and Nawal Singh Vs. Union of India and others ATR 1988 (1) CAT 264.

5. It is well settled that mere non-vacation of government quarters allotted to an employee cannot be construed as misconduct which could become the subject of charge against a government employee. In view of the settled position of law we have no hesitation in setting aside the order dated 5.12.90 by which the penalty of withholding of increment for a period of 2 years was imposed. We also set aside the order of the appellate authority dated 10.4.91 by which the applicant's appeal was rejected.

6. As regards the legality of the recovery of the penal rate of rent, the applicant's counsel first stated that the respondents did not act fairly in this regard because the said quarters were not required for any other employee. This aspect has been strongly refuted by the respondents

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counsel and he has shown us a letter written by the next incumbent requesting that the applicant be directed to vacate the quarters. The said letter would show that the next incumbent has been put lot of inconvenience ever since June 1990. It would thus be apparent that the applicant's contention that the quarter in the premises of the Zinc Smelter Post Office were not required by the next incumbent cannot be sustained.

7. The next contention raised on behalf of the applicant is that the applicant is denied grant of HRA at his new place of working, i.e. Visakhapatnam Naval Dockyard Post Office. The question of his eligibility or otherwise for HRA at his new place of working is not a matter which requires consideration in this OA. It is however clear that the rules relating to recovery of penal rate of rent indicate that such rent would be liable to be charged when an employee is in unauthorised occupation of government accomodation. In the instant case it is seen that soon after the transfer of the applicant, on the very next date (24.5.90) the allotment of accomodation of the applicant was formally cancelled. Consequently there can be no dispute that the applicant remained in unauthorised occupation of the said quarters from 24.5.90 till he finally vacated the same on 25.7.91.

8. Admittedly the so called government quarters are infact the property of Visakhapatnam Zinc Smelter given to Postal Authorities for providing residence to the Post Master. However, once the quarters have come into the possession of the Postal Authorities the respondents were justified in giving the same to the applicant on a licence fee of Rs.25/-p.m.

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That by itself does not in our considered opinion debar the respondents from proceeding to recover penal rate of rent when the applicant refused to vacate the quarters. F.R.45 -A which governs the assessment of recovery of licence fee makes ~~it~~ very clear that it applies even in case of a residence gifted to government or leased on a normal licence fee or on licensee free basis to government. In view of this we cannot accept the argument advanced by the learned counsel for the applicant that recovery of penal rate of rent for this type of accomodation which was offered by the Zinc Smelter to the Postal authority would not be in order.

9. Another important issue agitated before us by the applicant's counsel is that the respondents proceed to direct the recovery of the penal rate of rent without providing the applicant an opportunity to explain. It was urged that no formal notice was given to the applicant in this regard. Refuting the contention, Mr.N.R.Devraj, learned Standing counsel for the respondents has shown us the record wherein we find a memo dated 29.10.90 addressed to the applicant. The letter is to the effect that the applicant could not retain the quarters beyond the period of joining time after having been relieved from his post, as per Rule 35(2) of the Rules for allotment and allocation of quarters as the applicant did not vacate the quarters. The letter clearly indicates that the period of occupation would be treated as unauthorised occupation. We therefore, find that there has been no violation of the principles of natural justice in this case.

10. Lastly Mr. M.P.Chandra Mouli disputed the correctness of the amount being charged by the respondents

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To

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2. The Director of Postal Services,
Cum Estate Officer, Visakhapatnam Region,
Visakhapatnam - 530 003.
3. The Senior Member (Personnel),
Postal Directorate, New Delhi.
4. One copy to Mr. M.P. Chandramouli, Advocate,
1-7-139/1, S.R.K. Nagar, Hyderabad.
5. One copy to Mr. Venkateswara, ...
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

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as penal rent. From the record we find that the rent was as determined by the appropriate authority, i.e., the C.P.W.D. official. The rate at which the penal rent was calculated was also indicated in the record. It is seen that the respondents charged Rs.20/- per Sq.M and that as the accommodation measured 19.6 Sq.Ms the penal rate of rent at the rate of Rs.392/- was charged for the period from 20.4.90 to 31.3.91. Thereafter, as per extant rules the rate of recovery was enhanced 2 times. Consequently damages at the rate of Rs.784/- per month ~~was recovered~~ ^{was} w.e.f. 1.4.91 to 25.7.91 ordered to be recovered.

11. In view of what is stated above we find that the impugned orders or the respondents in respect of the application to the recovery of the penal rate of rent are sufficiently in order and do not call for our intervention.

12. Mr. M.P.Chandra Mouli pleaded that as the penalty of withholding of increment has been set aside the consequential amount refundable to the applicant could be adjusted towards the penal rent recoverable from the applicant. The respondents may do so.

13. The OA is disposed of with the above observations and directions. No order as to costs.

thiru
(A.B.GORTHI)

Member (Admn.)

Haridasan
(A.V.HARIDASAN)

Member (Judl.)

Dated: 21st January, 1995

(Dictated in Open Court)

sd

AMR
21-1-95
DEPUTY REGISTRAR (J)

contd...

TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.A.V.HARIDASAN : MEMBER (C)

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER (A)

DATED : 31.1.95

ORDER/JUDGEMENT.

M.A/R.P/C.P.No.

in

O.A.NO. 375/92

Admitted and Interim directions
issued

Allowed

Disposed of with Directions ✓

Dismissed

Dismissed as withdrawn

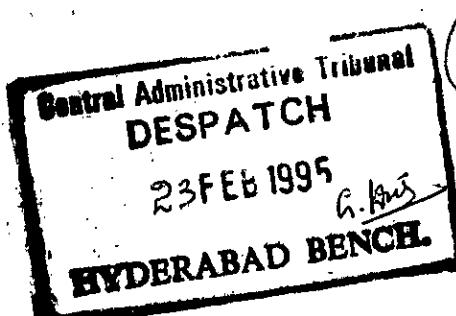
Dismissed for Default.

Rejected/Ordered

No order as to costs.

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