

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A. No.241/99.

DATE OF ORDER : 02-9-1999.

A. Subhankara Rao,
S/o A.V.Raghavaiah,
aged about 47 years,
Phone Mechanic,
O/o the Sub-Divisional Officer,
Phones-I, Andhra Bank
Building, Vijayawada- 520 001.

.. APPLICANT

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1. The General Manager,
Telecom District,
Vijayawada-520 010.
2. The Chief General Manager,
Telecom Andhra Pradesh
Circle, Hyderabad-500001.
3. The Union of India, rep. by
the Chairman, Telecom Commission,
New Delhi - 110 001. .. RESPONDENTS

Counsel for Applicant : Mr. T.V.V.S. Murthy

Counsel for Respondents : Mr. V. Rajeshwara Rao, CGSC.

CORAM :

THE HONOURABLE MR. JUSTICE D. H. NASIR, VICE-CHAIRMAN.

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O R D E R.

Justice D.H. Nasir, VC:

1. The cancellation of Government quarter allotted to the applicant and recovery of penal rent from him are challenged by the applicant in this O.A. The applicant joined the Telecom department as a Group 'D' employee with effect from 18.3.1974. Type-I quarter No. 41 at Mohiuddin Estate, Vijayawada was allotted to him. Later while working as Phone Mechanic he was permitted to change his quarter to Type-II quarter and he has been staying therein with the members of his family since 18.3.1997. However, Sri R.Kasi Reddy, A.G.M.(Planning) in the office of the General Manager, Telecom District, Vijayawada issued a Memo dated 1.6.1998 (Annexure-A.3 to OA) stating that on his inspection of the applicant's quarters, it was found that the applicant had sublet the whole of his residence to some unauthorised person and that on that ground, the allotment of the said quarter C-8 (Type-II) was cancelled from his name with effect from 1.8.1998 after taking into account 60 days' ^{notice &} allotment period as per rules. It is also mentioned in the said order that failure to vacate the quarter will render the applicant liable to pay penal rent @ Rs.6,392/- per month and that action would be taken for causing the same to be vacated under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1980.

2. According to the respondents, in the month of November, 1997 about 10 Telecom employees staying in the aforesaid quarters made a complaint to the Chief General Manager, Telecom, A.P. Circle, Hyderabad, that some rooms in these quarters were sublet to outsiders causing a lot

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of inconvenience and on instructions from Chief General Manager, the Vigilance Officer at Vijayawada caused an investigation to be made in the matter. During investigation it was found that a written statement was given by the applicant stating that the family members staying with him which included the applicant's wife, his son Veera Raghavendra Rao, Sugunamma, younger grand mother and daughter Sunitha. The applicant also stated that in addition to his family members, one Sri A. Jacob (son of sister-in-law of the applicant) was staying in the front room; but the applicant had not included the name of Sri A. Jacob in the list of his family members. The allotment of quarters was, therefore, sought to be cancelled. Further according to the respondents, a Committee consisting of two Group 'A' officers and two Group 'B' Officers was constituted by the General Manager, Telecom District, Vijayawada vide his letter dated 29.4.1998 to verify whether the use of quarters was bona fide and that basing on the physical verification carried out by the Committee, the impugned order dated 1.6.1998 had been issued cancelling the allotment. The applicant was given 60 days' time to vacate the quarter. He was also told that he was liable for payment of damages @ Rs.6,392/- per month if the applicant failed to vacate the quarter within the stipulated time. The applicant thereafter made a representation dated 23.7.1998 asking for supply of the copies of the documents on which it was found that he had sublet the quarter and in reply to his representation, the applicant was informed vide letter dated 6.8.1998 (Annexure-R.5) attached to the counter affidavit that he himself had declared that his sister-in-law's son was residing in the front room of the quarter . The copy of



declaration given by the applicant was also given to him. However, in spite of the situation being as stated above, the applicant did not vacate the quarter in the stipulated time and therefore, it was directed that penal rent of Rs.2197/- per month be collected from his August, 1998 salary onwards. On a representation received from the applicant, the penal rent was reduced from Rs.2197/- to Rs.1250/- per month. The representation made by the applicant dated 3.10.1998 to the Chief General Manager, Telecom, A.P. Hyderabad allowing him to continue in the quarter was rejected and the same was intimated to the applicant by the impugned letter dated 21.5.1999.

3. It is quite evident from the above facts and circumstances that Mr. Jacob who was inducted into the quarter in possession of the applicant was not included as a member of the family in the initial declaration given by the applicant. This fact is not disputed by the applicant. As a matter of fact, the applicant went to the extent of admitting that Mr. Jacob was inducted into the premises and that he vacated the premises after the inspection was carried out as stated above. The only question, therefore, which remains for our consideration is, whether the applicant could be protected by holding that the applicant's sister-in-law's son was included within the meaning of "close relative" and there can be no hesitation in holding, keeping in view the facts and circumstances of the case, that he could not be included within the meaning of the term "close relative". If he had been a close relative, he would have been staying along with the applicant right from the beginning and the applicant would not have excluded his name in the declaration which he gave before entering into the quarter in question and Mr. Jacob would also not have

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vacated the premises after the inspection was carried out if it was true that he was the close relative of the applicant. These two factors give us a strong reason to believe that the allegation against the applicant that he had sublet a part of the premises to Mr. Jacob was correct and in fact, it amounted to making a false representation with full knowledge of the fact that the applicant was making a false representation. In our view, therefore, no lenient view could be taken in this matter.

4. The ground sought to be made out by the learned counsel Mr. T.V.V.S. Murthy for the applicant that the principles of natural justice were not applied to the case of the applicant and that the action taken by the respondents was a highhanded action can also not be upheld keeping in view the fact that the applicant participated with full knowledge of the fact that the allegation of subletting a part of the premises was examined by appointing a Vigilance Officer followed by a Committee of four members and that the applicant also participated in the proceedings for fixing up the final rent which was eventually reduced to Rs.1,250/-. The applicant did not make any statement at any stage that he was participating in the proceedings under protest or without prejudice to the legal rights, if any, to which he could resort at the appropriate time.

5. The learned counsel for the applicant drew my attention to the authorities on the subject matter of the case. The Chandigarh Bench of the CAT in OA No.991-PB of 1994 decided on 2.3.1995 (K.S.Mann v. Union of India and others) held that for imposition of penal rent under subsection(2) of Section 7 of the Act it was mandatory that a show cause notice under sub-section (3) of Section 7 should be served and objections, if any, should be

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heard and that in the case before the Bench, since this was not done, the procedure adopted did not conform to the law and was against the principles of natural justice. In the case before us, however, it would not be legal and proper to apply the ratio of the case before the Chandigarh Bench in view of the fact that the applicant had participated in the proceedings for determining the penal rent and that it was at the instance of the applicant himself that the penal rent was reduced to Rs.1,250/-.

6. Reliance was placed by the counsel Mr. Murthy on the decision of the Ernakulam Bench of the CAT in O.A.No.376 of 1996 decided on 10.6.1996 (P.K.Gangadharan v. Union of India and others) in which the Bench held that a person cannot be deprived of what is normally due to him without even being told for what reason or under what head the recovery is made. However, such is not the case before us and in fact, the Ernakulam Bench unequivocally observed that if the person was in unauthorised occupation, whatever the law permits canbe recovered from him. This ratio does not go to the rescue of the applicant before us and therefore, the same cannotbe applied to the facts of the applicant's case.

7. In a case before the Calcutta Bench of this Tribunal in O.A.No.1064 of 1992 decided on 19.11.1993 the Bench held that the only point for consideration was whether the respondents Railway was entitled to recover the rent at the penal rate and it was more or less admitted: in that case before the Calcutta Bench that the applicant's occupation of the railway quarter became unauthorised after 9.11.1991. It was also admitted that the applicant did not vacate the quarter even after the expiry of two months for which permission was granted

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which meant that on and from 20.11.1991, the applicant's possession of Asansol quarter turned unauthorised. It is further held that the Railway respondents were entitled to get rent in excess of the normal rent for unauthorised occupation of the railway quarter after 20.11.1991 by the applicant, but the question was whether the railway without resorting to legal remedy could realise the penal rent itself.

8. We are of the opinion that the right to recover penal rent or damage rent is a legal right which accrued to the employer immediately on the occupant committing an act of misfeasance which disentitles him to continue in possession of the Government quarter. The act does not impose any liability on the employer to get the amount of penal rent being adjudicated by a court of law. The employer may impose penal rent in accordance with the provisions of the statute in question and it is for the occupant of the quarter to challenge the correctness of the penal rent which is sought to be recovered from him. In the instant case, as stated in the concluding part of paragraph-2 of the counter affidavit filed by the Assistant General Manager(Legal) in the office of the Chief General Manager, Telecom, A.P.Circle, Hyderabad, ^{was @} that the applicant on being directed to pay the penal rent of Rs.2,197/- from August, 1998 onwards and on a representation received from the applicant, the penal rent was reduced from Rs.2,197/- to Rs.1,250/- per month. In the case before us, therefore, the determination of penal rent does not appear to be arbitrary and it has been fixed after considering the representation of the applicant. The rigours, therefore emanating from the above decision of the Calcutta Bench of the CAT cannot be applied with full force to the facts of the case before us.

9. Considering all the above facts and circumstances, we are of the opinion that the decision taken by the respondents cannot be held to be illegal or arbitrary and therefore, no interference need be made with the same.

10. Hence, the O.A. is dismissed. No costs.

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(D. H. NASIR)
VICE-CHAIRMAN.

DATED THE 2nd DAY OF SEPTEMBER, 1999. *Am*
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