

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 11.12.95

OA 482/93

A.N. VAISH

... Applicant.

Versus

Union of India and others

... Respondents.

CORAM:

HON'BLE MR. O.P. SHAFMA, MEMBER (A)

HON'BLE MR. PATTAN PFAKASH, MEMBER (J)

For the Applicant ... Mr. A.C. Upadhyay

For the Respondents ... Mr. M. Rafiq

O R D E R

PER HON'BLE MR. O.P. SHAFMA, MEMBER (A)

In this application u/s 19 of the Administrative Tribunals Act, 1985, Shri A.N. Vaish has prayed that the order dated 30.9.92 (Annexure A-3), by which in pursuance of a representation submitted by the applicant it was ordered that he should pay more than the normal rent for certain period for the Government accommodation occupied by him, may be quashed and the respondents may be directed not to deduct the penal rent ordered as per Annexure A-3 from the pay of the applicant.

2. The facts of the case, as stated by the applicant, are that while posted as Accounts Officer in the office of IMT Jaipur he was transferred to Satna in Madhya Pradesh vide order dated 26.8.85. The applicant challenged the transfer order in the court of Judicial Magistrate (West), Jaipur, and also filed an interim stay application. The court passed an interim order for maintaining status-quo on 26.8.85. Thereafter, the applicant's suit was transferred to the Central Administrative Tribunal. As per the instructions dated 7.11.85 issued by the Department of Personnel, the interim stay order (status-quo) already granted by a court should not be disturbed. In spite of the above fact, however, respondent No.2 ordered the applicant to vacate the quarter and termed his occupation thereof as unauthorised on the ground that the applicant had neither applied for leave nor had it been sanctioned. Certain penal rent was ordered to be recovered from the applicant. Subsequently, the penal order was modified by Annexure A-3, by which for the period from 27.8.85 to 26.12.85 normal rent was charged, for the period from 27.12.85 to 26.6.86 double the normal rent was charged and from 27.6.86 to 3.12.86 four times the normal rent was charged as per the directions

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contained in Annexure A-3, by which the applicant's representation in this regard was disposed of.

3. The applicant's case is that after he did not join duty at Satna in pursuance of the transfer order dated 26.8.85, he was granted leave for the period from 30.8.85 to 31.1.87 vide order Annexure A-2 dated 28.12.87, which is an order passed by the Director of Telecommunication, Raipur, in pursuance of the directions received from the headquarters at New Delhi. By this order the applicant was also granted joining time from 1.2.87 to 12.2.87 as the applicant had joined duty at Satna on 13.2.87. However, earlier he had vacated the quarter on 3.12.86. The applicant's case in short is that since for the period during which he was alleged to be an unauthorised occupant of the quarter leave had been granted to him, he could not be considered as liable for paying anything more than the normal rent payable for the aforesaid period. Although in Annexure A-3 dated 30.9.91 a reference was made to SR-317 B-11 and B-22 for charging rent higher than the normal rent, these provisions had come into force from 1.7.87, whereas the applicant's case was governed by the provisions applicable prior to that date. Specifically he has drawn our attention to Note (i) below Rule 32(2) of the Allotment of Government Residences Rule, 1966, which provides, inter-alia, that where an officer on transfer etc. is sanctioned leave and avails of it before joining duty at the new office, he may be permitted to retain the residence for the period of leave. Since the period of absence from duty from 30.8.85 to 31.1.87 had been regularised by granting the type of leave available to him and since the applicant had joined duty on 13.2.87 and had further vacated the quarter on 3.12.86, there was no case for charging any rent higher than the normal rent for the period of occupation of the Government quarter at Jaipur before joining duty at Satna on 13.2.87.

4. The respondents in their reply have stated that the Tribunal had dismissed the applicant's application for retention of Government quarter on 28.8.86 and the applicant had vacated it on 3.12.86. Therefore, the applicant was required to pay charges for the quarter at market rate for the unauthorised occupancy from 27.8.85 to 3.12.86. He had to apply in writing for retention of Government accommodation in case of transfer to another station within the period of absence as per Government of India Instructions No.(5)(i)(a) incorporated below FF 45A. The applicant never applied for retention of the accommodation after his transfer. Therefore, the entire period, as aforesaid, was treated as unauthorised. On the request of the applicant, however, the period of absence from 27.8.85 to 12.2.87 was regularised. On reconsideration, normal licence fee has been charged for the first four months from 27.8.85 to 26.12.85, double the normal licence fee for

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the next six months from 27.12.85 to 26.6.86 and four times the normal licence fee from 27.6.86 to 3.12.86. The respondents have maintained that provisions of SR-317 B-22 were effective from 19.1.83 and the amendment, referred to by the applicant, is only for deciding the rate of charging the damage rate. Therefore, according to the respondents, beyond the period of first four months higher licence fee was rightly charged from the applicant.

5. During the arguments, the learned counsel for the applicant drew our attention to Instruction No.5 below FP 45A in Swamy's Compilation of Fundamental Rules and Supplementary Rules Part-I General Rules, 12th Edition 1994, which contains rules for retention of P&T Quarters after resignation, transfer, retirement etc. The table provided in the said instructions lays down that on temporary transfer an employee would be entitled to retain the quarter for a period of four months at the original place of posting. Explanation, immediately below the table, however, reads as under :-

"EXPLANATION - The period permissible on transfer mentioned against items (iv) to (vii) shall count from the date of relinquishing charge plus the period of leave, if any, sanctioned to and availed of by the officer before joining duty at the new office of his posting. Temporary transfer means a transfer which involves an absence for a period not exceeding four months."

According to the learned counsel for the applicant, period during which the applicant had not joined duty at Satna had been regularised by granting the type of leave that was due to the applicant and, therefore, since the applicant had availed of the leave sanctioned to him before joining duty at Satna, his case squarely fell within the explanation referred to above and accordingly the entire period during which he occupied the quarter at Jaipur, upto 3.12.86, had to be treated as the permissible period. Therefore, according to him, there was no case for charging higher than the normal licence fee from the applicant.

6. The learned counsel for the respondents stated during the arguments that as per the explanation, referred to above, the period of retention of the quarter permissible on transfer would count from the date of relinquishing charge plus the period of leave, if any, sanctioned to and availed of by the officer before joining duty at the new place of his posting. In this case, the applicant had been sanctioned leave by order Annexure A-2 dated 28.12.87. The leave was sanctioned to the applicant after he had joined duty at Satna and, therefore, the case of the applicant would not be covered by the provisions of the aforesaid explanation. Due

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importance, therefore, has to be attached to the provision that if the applicant wanted to avail himself of the benefit of this explanation, leave should have been sanctioned to him before his joining duty at the new place of posting on transfer. Further, according to him, leave had been sanctioned to the applicant for the period prior to his joining duty at Satna with a view to ensure that there was no break etc. in his service. Therefore, according to him, the applicant's case did not fall within the provisions of the explanation referred to above.

7. We have heard the learned counsel for the parties and have perused the records. There is no dispute that the case has actually to be dealt with in accordance with Instruction No.5 below FR 45A, as aforesaid, and the explanation appended thereto. The applicant joined duty at Satna on 13.2.87 and before that he had vacated the Government quarter at Jaipur on 3.12.86. By order dated 28.12.87 the period of absence from 30.8.85 to 31.1.87 had been regularised by granting the type of leave that was admissible to the applicant in consultation with the headquarters at New Delhi. Question now is whether the applicant was entitled to have the benefit of the period of leave sanctioned to him by order Annexure A-3 for the purpose of determining whether there was any period in excess of a period of four months for which he was required to pay higher than the normal licence fee. There is no doubt that leave has been sanctioned to the applicant for the entire period during which he occupied the quarter at Jaipur after his transfer to Satna by order dated 26.8.85. This leave was availed of by him before his joining duty at Satna on 3.12.86. Limited question now is whether if he wants to have the benefit of aforesaid explanation, the leave should also have been sanctioned to him before his joining duty at Satna. We are afraid that the interpretation placed on the expression "sanctioned to" by the learned counsel for the respondents is not quite in order. The expression "sanctioned to" appears to have been used in the context that the leave availed of by the applicant should have been duly sanctioned to him. The leave had been availed of by the applicant before joining duty at Satna. There could be cases where leave has been sanctioned after joining duty at the new place of posting and in our view it would be such cases which would not be covered by the explanation referred to above. Since the respondents have themselves sanctioned leave to the applicant by passing a formal order in consultation with the New Delhi Headquarters without any qualifications attached thereto, it is not now open to them to argue that such regularisation of absence was done with the specific or a limited purpose to ensure that the applicant did not suffer any break in service etc. In these circumstances, since the respondents have themselves regularised the period of absence prior to the applicant's joining duty at Satna, we hold, in the facts and circumstances of

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the present case, that this applicant's case falls within the provisions of the explanation referred to above. Therefore, order Annexure A-3 dated 30.9.92 is quashed. The applicant would be liable to pay only the normal licence fee for the entire period of retention of quarter at Jaipur upto 3.12.86.

8. The OA is disposed of accordingly with no order as to costs.


(PATTAN PPAKASH)

MEMBER (J)


(O.P. SHAMA)

MEMBER (A)

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