

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 12-9-2001

OA 146/96

Gulsher Khan, Telephone Supervisor Operative, E-10-B
Telephone Exchange, Indraprastha Industrial Area, Road No.2,
Kota.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Communication, Deptt. of Telecommunications, New Delhi.
2. Chief General Manager, Deptt. of Telecommunications, Sardar Patel Marg, Rajasthan Circle, Jaipur.
3. Telecom District Manager, Deptt. of Telecommunications, Kherli Phatak, Kota.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.S.A.T.RIZVI, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.M.S.Gupta

For the -Respondents ... Mr.Vijay Singh, proxy counsel
for Mr.Bhanwar Bagri

O R D E R

PER HON'BLE MR.S.A.T.RIZVI, ADMINISTRATIVE MEMBER

Aggrieved by the respondent authorities' letter dated 13.9.95 (Ann.A/1), by which the applicant has been directed to vacate Quarter No.17, Type-III, situated in Dadawari Colony in Kota District, within seven days, and to make over the charge of the quarter to SDOP-II, Kota, the applicant has filed the present OA praying for the quashment and setting aside of the aforesaid order and seeking a direction to the respondents to refund to him the amount of deduction made from his salary on account of penal rent etc.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. Record shows that the applicant was allotted Quarter No.17, Type-III in Dadawari Colony, on 10.8.92, whereafter he sought a change on account of his transfer to a different location, though in Kota itself. The change sought by the applicant was allowed and he was allotted Quarter No.4, Type-III, in Vigyan Nagar Colony, by respondent authorities' order dated 21.8.95. The applicant shifted to the new quarter on that very date i.e. on 21.8.95 itself. He did so after quitting the previous Quarter No.17 in Dadawari Colony. It appears that another employee of the respondent authority, namely, Shri A.K.Pathan, occupied the said quarter No.17 in Dadawari Colony, vacated by the applicant, without any authorisation in his favour. The aforesaid Shri A.M.Pathan had already been in occupation of another quarter, which had been duly allotted to him.

4. Applicant's case is that he had duly informed the respondent authority that the previous Quarter No.17 in Dadawari Colony had been vacated by him and also that the same had been illegally and unauthorisedly occupied by the said Shri Pathan. On their own also, the respondent authorities had, after due inquiry, ascertained the fact regarding unauthorised occupation of the aforesaid quarter by Shri Pathan and were satisfied that the applicant had actually vacated the said quarter on 21.8.95. Despite this, the respondent authority has proceeded to deal with the matter as if the said quarter was still in the occupation of the applicant, and have accordingly proceeded to recover penal rent from him from the month of November, 1995 onwards. The aforesaid quarter has ultimately been vacated by the said Shri Pathan on 1.10.97. *Dr*

5. We have considered the matter and find considerable merit in the submissions made on behalf of the applicant.

6. We are somewhat distressed to find that notwithstanding the respondent authorities' satisfaction about the occupation of the said quarter by the said Shri Pathan unauthorisedly and illegally, they have proceeded to act not only against the said Shri Pathan but also simultaneously against the applicant as well. Considering that the said Shri Pathan is also an employee under the same respondent authority, we find it extremely difficult to accept the validity of the two-pronged action initiated by the respondent authority by proceeding against the applicant as well as Shri Pathan. The respondent authority has made recoveries from Shri Pathan also ^{presumably} by way of penal rent and in respect of the same period. Simultaneously, recoveries of penal rent have been made from the salary of the applicant also and in respect of the same period. While the recovery of penal rent has proceeded against both, the respondents have found it advisable, for reasons not disclosed in the record, to refund to Shri Pathan 40% of the deductions made from his salary by way of penal rent leaving the balance of 60% to be refunded in the light of the decision to be rendered by this Tribunal in the present OA. No such gesture was shown to the applicant although he had admittedly vacated the aforesaid quarter on 21.8.95. No rules have been placed before us by either counsel to show to us that in circumstances such as those obtained in the present OA, penal rent recoveries could be made from the unauthorised occupier as well as the previous unauthorised occupier. Thus, the action taken in this case cannot be supported in terms of the existing rules either.

7. Needless to point out that the action taken by the respondents, in the circumstances mentioned above, appears

to be the result of exercise of authority by the respondents in the most arbitrary fashion and a fair deal, which the applicant deserved, has not been given to him without any justification whatsoever. Thus, the OA succeeds and is allowed. The impugned letter dated 13.9.95 (Ann.A/1) is quashed and set aside and the respondents are directed to refund to the applicant all the recoveries made from his salary etc. by way of penal rent in respect of the period from 21.8.95 onwards. The amount in question will be refunded to the applicant within a period maximum of two months from the date of receipt of a copy of this order. There shall be no order as to costs.



(S.A.T. RIZVI)

AMEMBER (A)



(S.K. AGARWAL)

MEMBER (J)