

Date of order: 28.5.99

OA No.383/98

S.D.Shastri, Programme Executive, All India Radio, Jaipur (Formerly posted at AIR, Sawai Madhopur)

.. Applicant

Versus

1. Union of India through the Director General, All India Radio, Akashwani Bhawan, New Delhi- 110 001.
2. The Pay and Accounts Officer (IRLA Group), Ministry of Information and Broadcasting, AGCR Building, Indraprasth Estate, New Delhi.
3. Station Engineer/ Head of Office, All India Radio, Sawai Madhopur.

.. Respondents

Applicant present in person

Mr. M. Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. Ratan Prakash, Judicial Member

Hon'ble Mr. N.P.Nawani, Adm. Member

ORDER

Per Hon'ble Mr. N.P. Nawani, Administrative Member

Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the order dated 18.6.1997 as communicated alongwith the letter dated 14.10.1998 for penal rent recovery and for directing the respondents to refund the penal rent already recovered.

2. The case of the applicant is that he was posted at All India Radio (AIR for short) Station, Sawai Madhopur w.e.f. 20.2.95 as Programme Executive. When he joined at Sawai Madhopur, Shri P.C.Shringi (Respondent No.3) was the Head of the Office. There were two earmarked D type quarters, one occupied by Shri Shringi and the

other, No. D/1 was occupied by Shri Vishwambar Nath, the then Station Director. On the retirement of Shri Vishwambar Nath, who was from the programme side, the applicant was made Head of the Programme till further orders. The quarter No. D/1 was vacated by Shri Vishwambar Nath on 21.4.1995 and although the file for allotment of that quarter was moved, the Head of Office did not pass any order till 24.4.95 when he had to suddenly move on Casual Leave to see his ailing father at Kota. Since no order regarding looking after the work of the Head of Office was issued by Shri Shringi, the applicant himself discussed the matter with the office of the Director General of AIR who issued a telegram dated 12.5.1995 (Ann.A4) stating that the applicant is declared as Head of Office w.e.f. 25.4.95 till the return of the S.E. (Shri Shringi). Since the applicant had to look after the duties of the Programme Head, the applicant issued an order dated 25.4.95 allotting the quarter to himself in the capacity of the existing Head of Office. The regular Head of Office remained on leave up to 21.5.95 i.e. for around 25 days. On return, he did not accept the allotment made by the applicant during the period he was looking after the work of Head of Office and complained to the Director General. In the meantime, Shri Sagar Mal Jain, Assistant Station Director joined at AIR Station on 18.10.95 and, thereafter, Shri Shringi issued an office order dated 20.10.95 stating that in view of the fact that Shri Jain, Assistant Station Director has applied for allotment of earmarked quarter to him by virtue of the senior most Programme Officer, the allotment made by the applicant to himself on 25.4.95 stands cancelled and under Rule T-12 of the AIR (Allotment of Residential Quarters) Rules 1983, the quarter No. D/I should be vacated by the applicant within 10 days of the receipt of this letter. The applicant made a representation dated 20.10.95 to all the respondents that he "would not be in position to vacate the quarter, unless the quarter allotment would be treated as regular and official one and things were normal in other respects". It is the case of the applicant that Shri Shringi, instead of replying to this representation, issued an



Office Memorandum dated 15/16.11.95 intimating the applicant that since after 10 days notice period for vacating the earmarked quarter No. D/1 meant for senior most Programme Officer, has not been vacated so far, the continuation of applicant in that quarter after expiry of notice period on 29.10.95 was, therefore, totally unauthorised and action as per AIR (Quarter Allotment) Rules was likely to be initiated against him for this unauthorised occupation. The applicant contended that thereafter till filing of the OA, the respondents Nos. 1 and 3 have communicated nothing to the applicant inspite of his making several representations and he subsequently came to know that respondent No.1 had written to respondent No.2 in April,1996 and August,1996 asking him to make normal house rent recovery and the same was made from the salary of August,1996 and since this recovery was made after 1½ years from the allotment, the notice of vacation dated 20.10.95 was invalidated. The applicant has also stated that one type C quarter occupied by the Programme Officer in General Pool was vacated during November, 1995 but instead of being allotted to him, it was shifted to Shift Pool and allotted to a non-eligible engineering official. If he would have ^{been able to} allotted the said C type quarter, he would have vacated the quarter No.D/1. It is also alleged by the applicant that the responden No.1 i.e. Director General "succeeded in getting the applicant transferred from Sawai Madhopur to Jaipur and the order was issued in the month of March, 97. Since the applicant has settled himself at Jaipur, he accepted his transfer the respondent No.1 further created controversy regarding his relieving and he was forcibly asked to be relieved on 15.5.97 when he already informed respondent No.1 that he would relinquish his charge on 14th July, 97". The applicant was relieved on 25.6.97 while Shri Shringi was to retire on 30.6.97. The applicant had submitted vacation report of the said quarter on 25.6.97 which was accepted alongwith his joining report and from Jaipur he had despatched the vacation report to respondent No.2 (Shri Shringi). It appears to have been corrected by the applicant from respondent No.3 to 2 and he

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probably means respondent No.3 (the Head of Office, Sawai Madhopur) as respondent No.2 the Pay and Accounts Officer would not have been concerned, ^{not} being the Head of Office. It is further stated that during the month of July, 98, he came to know unofficially that the penal rent recovery was likely to be made by respondent No.2 (the Pay and Accounts Officer, New Delhi) and so he immediately made a communication dated 3.8.98 (Ann.A7) to respondent No.2 under copy to respondent No.3 requesting not to make penal recovery before hearing the applicant. From the reply of respondent No.2 and its enclosures, the applicant came to know that vide letter dated 18.6.97, the Head of Office had asked him to deduct the penal rent from the applicant for the entire period of his unauthorised overstay in the said earmarked quarter No. D/I as per the directions of the Directorate General at the rate of Rs. 3245 per month w.e.f. 31.10.95 (the applicant has mentioned this as Rs. 3000/- per month w.e.f. September, 98) after expiry of 10 days notice. The applicant contended that such penal action could not be taken without ^{adhering to} ~~affording~~ the principles of nature justice and the procedural requirements essential to be complied with. The applicant, thereafter, submitted a detailed letter to respondents on 17.9.98 (Ann.A9) requesting them to supply a copy of the operative order alongwith all enclosures and in the meantime to stop the penal rent recovery. It will be pertinent to add here that the applicant has also mentioned that there was a conspiracy against him and the attitude of the Head of Office was vindictive. In this letter he had also mentioned that unless his requests are conceded, he would be compelled to knock the doors of Court of law and the National Human Rights Commission (NHRC). The applicant also wrote some other letters and respondent No.2 issued him necessary documents alongwith his letter dated 14.10.98.

3. A copy of the OA was given to the respondents, who have filed a reply. The respondents have opposed all the contentions of the applicant. The said quarter was earlier occupied by Shri Vishawambar Nath, the Station Director, who vacated it on 21.4.95. It was a

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quarter earmarked for a senior most Programme Officer who would be only either the Station Director or the Assistant Station Director. The applicant was apparently not entitled for allotment of such a quarter. In any case, after being vacated, the quarter was under petty repair, white-wash etc. Shri Shringi, the Head of Office, had to suddenly proceed on Casual Leave. Shri Shringi proceeding on leave suddenly was communicated to the higher authorities. It was quite amazing that the applicant did not even wait for the Directorate's formal order for declaring him as Head of Office for the period of absence of Shri Shringi. On the contrary, the first thing done by him was the allotment of the earmarked quarter No. D/1 to himself, the very next day of proceeding of Shri Shringi on leave. The action of the applicant in allotting the quarter in his own favour was in contravention of all established norms and procedure. The same was finally accepted on the advise of the Directorate and, therefore, the contention of the applicant that Shri Shringi did not accept the Directorate's instructions was totally wrong. The respondents also did not accept the contention of the applicant regarding sending of the occupation ^{dm} report, as it was not submitted to the office at any time. The applicant was himself the Head of Office for the brief period of 25.4.95 to 21.5.95 and, therefore, it was his duty to see whether or not the allotment made by him was in order and the occupation report was sent to the PAO, New Delhi. However, when on joining from leave, the Head of Office noticed that the normal licence fee~~s~~ from the applicant has not been deducted, a letter dated 1.8.96 was sent to the PAO. The pretext of the applicant that the earmarked quarter was not vacated, for Shri Sagar Mal Jain who had joined subsequently as Assistant Station Director and was much senior to him, due to the fact that the allotment made by him was treated as regular is also, therefore, wrong. The applicant was asked to vacate the quarter but the applicant despite his own undertaking of vacating the earmarked quarter on 10 days notice (Ann.R2), engaged himself in adopting delaying tactics ^{dm}, thereby defeating the very purpose of

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having the quarter earmarked. The applicant in his pleas has accepted that the provision of earmarked quarter has been made keeping in view the presence of senior most Programme Officer close to the office for better coordination etc. but the applicant has shown least respect for such a provision. After the applicant was issued a notice of vacation of the quarter on 20.10.95 and subsequent reminder clearly indicating that his occupation of D/1 quarter after expiry of notice period was totally unauthorised and action would be initiated as per the AIR Quarter Allotment Rules and, therefore, the penal rent was totally in conformity with the existing rules and procedures. The respondents have also stated that the contention of the applicant that one C type quarter vacated subsequently was converted from General Pool to Shift Pool in order to avoid allotting it to the applicant was totally baseless because as per the approved ratio of 70:30 between Shift and General pool, of all the 6 type C quarters available in the AIR colony, 4 were in Shift and 2 in General Pool. It was again reiterated that the earmarked quarter was meant for the senior most Programme Officer, ^{On date} ~~on~~ joining of Shri Jain, the Assistant Station Director, the applicant could have vacated the earmarked quarter. As regards acceptance of the vacation report of the quarter on 25.6.97, the respondents have stated that it was just an official formality and it did not mean that the applicant was acquitted from the charge of illegal and unauthorised occupation of the said quarter. The applicant was given ample time i.e. 10 days for vacation of the quarter but he kept aside the notice which eventually denied the legal, rightful and entitled senior most Programme Officer, senior to the applicant, the occupation of the earmarked quarter. The applicant inspite of knowing the procedures and rules very well, vacated the said quarter only on his transfer on 25.6.97. This illegal and unauthorised occupation of the earmarked quarter by the applicant from 30.10.95 to 25.6.97 gave tremendous mental agony and tension to the rightful claimant Shri Jain (Assistant Station Director). It is also stated by the respondents that the

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representation made to the PAO, New Delhi by the applicant for stoppage of penal rent was not proper as the PAO only acts on the advice of the Directorate General of AIR and the station concerned; that the recovery was made only after the PAO was advised by the Directorate General, AIR vide their letter dated 7.1.1997 (Ann.R3); that since the applicant had not vacated the quarter after the notice period, he was liable to pay penal rent; that there was no need to consult the UPSC as it deals only to service matters; that the penal rent recovery was started after giving opportunity to the applicant; that inspite of giving an undertaking to vacate the quarter on 10 days notice as and when the Programme Officer, senior to him, joins but he failed to vacate the quarter. It is well established that the applicant has made a mockery of the Rules and vacated the quarter at his will keeping aside all the rules, regulations and procedures and that deduction of penal rent for the period from 30.10.95 to 25.6.97 is strictly in accordance with the prescribed rules. The notice dated 20.10.95 and subsequent memorandum dated 16.11.95 clearly falsify the contention of the applicant that the orders or recovery were made behind his back.

4. The applicant has filed a rejoinder in which he has quoted a portion of the petition he has filed before the National Human Rights Commission on 9.4.99 stating that he would not press the point of conspiracy to be examined by the Hon'ble Tribunal. He has reiterated most of his contentions. He has extended a few points like the orders regarding allotment of quarter No. D/1, after its vacation on 21.4.95 could have issued before the Head of Office proceeded on leave but for the fact that for the then DDO felt the matter was beyond his power and should be put up before the regular Head of Office (Shri Shringi, S.E.) after his return from leave whereas it should have been put up before him, the existing Head of Office. As regards the contention of the respondents that on the Head of Office proceeding on leave, the applicant should have waited for an order from the Directorate which was issued on 12.5.95, the applicant contended that

the office would not have remained without the Head of Office for a long time and, therefore, he had to perform the official duties as Head of Office also on 25.4.95 and thereafter till return of the S.E. (the regular Head of Office) on 25.5.95. As regards the undertaking given by him, the applicant stated that it would have been valid only if the allotment made by the applicant himself would have been treated as official allotment. He has also contended that the notice dated 20.10.95 could not be legally acted upon until and unless the representation was replied to. The question of possibility of allotment of type C quarter to the applicant has also been elaborated.

5. We have heard the applicant arguing his case at great length and also the learned counsel for the respondents. We have also carefully perused the records of the case and also given our serious consideration to the arguments adduced by the opposite party. During his arguments the applicant has relied upon the following in support of his case:

- i) Sukhdev V. Bhagatram, AIR 1975 SC 1331 and State Bank of India V. D.C. Aggarwal, 1992 AIR SCW 3353.
- ii) M.P. Sugar Mills V. State of U.P., AIR 1979 SC 621 as quoted in ATR 1989 (1) CAT 257.
- iii) Purshotam Lal Dhingra V. Union of India, AIR 1958 SC 36.
- iv) Govt. of India's Instruction No.3 under Rule 11 CCS (CCA) Rules, 1965.
- v) R.L. Sharma V. Managing Committee, 1993 AIR SCW 2400
- vi) ATR 1990 (2) SC 269 Management of M/s Nenally Bharat Engg. Co. Ltd. V. State of Bihar and Ors.
- vii) ATR 1990 (2) CAT 639, Tirath Singh V. Union of India and Ors.
- viii) Regarding Duties and Responsibilities of Head of Office including allotment of quarters.

6. We have examined all the cases as also Instruction No.3 under Rule 11 cited by the applicant. We find that all these are distinguishable ^{from the} ~~for~~ the present case and none of the cases can

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provide any support to the applicant's case. The codified rules regarding distribution of quarters in an AIR station and in respect of overstay in a quarter after cancellation of allotment are very precise and clear and the respondents have used these without any malice or unfairness. Principles of estoppel and the natural justice are also not applicable in this case. The applicant had no right, whatsoever, over the quarter, which was earmarked for the senior most programme officer, Station Director/Assistant Station Director and the least the applicant could have done was to vacate the quarter after joining of such senior officer. In fact, by his action of staying on in that quarter for around 20 months after joining of the superior programme officer (ASD) the applicant inflicted mental and physical torture on his senior officer, denying to him the earmarked quarter which, without any doubt, should have been his.

7. We have observed from Rule No.2 of SR 318-XXVI-T-4 titled Distribution of accommodation in the All India Radio (Allotment of Residential Quarters) Rules, 1983 that:

"(2) At each All India Radio Station other than a High Power Transmitter, irrespective of the priority date of the officer, a quarter of the entitled type, where available, and where that is not available, a quarter of a higher/lower type available shall be earmarked for allotment-

(a) to the Controlling Authority;

(b) where the Controlling Authority is a station director or assistant station director, to the seniormost engineering officer.

(c) where the Controlling Authority is an engineering officer, to the seniormost programme officer;

Provided that if a quarter so earmarked is likely to remain vacant for a minimum period of three months, it may be allotted to any officer in terms of S.R. 318-XXVI-T-12"

It is not disputed that quarter No. D/1 and D/2 were earmarked for the senior most engineering and programme officers at the AIR

Station, Sawai Madhopur. The quarter No. D/1 fell vacant on 21.4.95 on the retirement of Shri Vishwambar Nath, the senior most programme officer, in the rank of Station Director. It so happened that the Head of Office (Shri P.C. Shringi) who was designated Estates Officer at the Station had to proceed on 3 days Casual Leave w.e.f. 25.4.95 i.e. after 4 days of the vacation of the quarter by the Station Director. During the absence on leave of the regular Head of Office, the Director General declared the applicant, who happened to be the senior most officer available, as Head of Office w.e.f. 25.4.95 till return of S.E. (the regular Head of Office). This was a purely temporary arrangement and during this period, on 25.4.95 itself, the applicant allotted to himself the said quarter No.D/1 which the applicant knew was earmarked quarter for a regularly posted senior most Programme Officer. The applicant also knew that he was not entitled to a D type quarter as is clear from his pleas that when a C type quarter fell vacant, it should have been allotted to him. The applicant has contended that the regular Head of office at that time available from 21st April to 24th April, 95 to allot the quarter to him on the basis of his application, but he did not do so and, therefore, he had to allot the quarter to himself. This plea of the applicant is not acceptable as the quarter was beyond his entitlement and further, it was earmarked for the senior most and regularly posted Head of the Programme in the rank of Station Director/Assistant Station Director. It is, therefore, clear that the applicant usurped ^{all} the powers during the purely temporary arrangement and allotted to himself the quarter for which he was not entitled. As was bound to happen, Shri Sagar Mal Jain, Assistant Station Director was posted and took over charge at the station on 18.10.95 and applied for allotment of the earmarked quarter. Although the regular Head of Office had returned from leave after about 25 days, he allowed the applicant to remain in that quarter till the regular Head of the Programme in the rank of Assistant Station Director (ASD) joined and ^{after that} he had no option but to ~~ask the applicant~~ ~~xxx~~

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allot the said earmarked quarter to the entitled ASD and asking the applicant to vacate the quarter within 10 days. Just because the said office order added that the allotment order issued by the applicant on 25.4.95 in his own favour in respect of the said quarter does not in any manner make this office order invalid. The applicant was supposed to know the rule about distribution of quarters at the Station and he himself has mentioned in his application that in the normal course two earmarked quarters are allotted to the senior most officers on the programming and engineering side and he would be normally required to vacate it on the joining of a more senior officer. Although, we are not giving too much importance to the undertaking given by the applicant (Ann.R2) that he will vacate the quarter whenever the Programme Officer senior to him joins in view of the undertaking having been given prior to self allotment of the quarter to the applicant, it does indicate the willingness expressed by the applicant to vacate the quarter on arrival of a Programme Officer senior to him. Further, it was made absolutely clear in the letter dated 22/23 June, 95 (Ann.A5) issued by the Directorate General of AIR that the quarter may be allotted to him conditionally and when Station Director/Assistant Station Director joins the Station, he has to vacate the quarter within a period of 10 days and the earmarked quarter has to be allotted to the Station Director/Assistant Station Director. Even if this letter was not formally endorsed to him, in a small station he would have come to know of this. Supposing that he did not come to know of that, it makes no difference as the applicant has himself stated in his application that on arrival of a programme officer senior to him, he would, in normal course, vacating the quarter of his senior, who would be the Head of Programming stream. In any case, the letters dated 20.10.95 and 15/16.11.95 addressed to him had informed and cautioned him adequately but he choose to not vacate on a totally unacceptable pretext.

8. In view of this, it was highly improper for the applicant to



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have not vacated the earmarked quarter of higher category within 10 days of joining of the entitled officer viz. the Assistant Station Director at the AIR Station, Sawai Madhopur. Having not vacated the said quarter inspite of notice, the applicant has necessarily to face the consequences of his impropriety. In fact, the applicant continued to remain in that quarter on a peculiar unacceptable pretext, stating that he would not be in a position to vacate the quarter unless the quarter allotment would be treated as regular and official one and things were normal in other respects. We are not in a position to appreciate such a plea raised by the applicant without any legal backing and the very fact that the applicant did not vacate the quarter till he was transferred to Jaipur on 25.6.97 i.e. for a period of more than 2 years, lead us to believe that this was a ploy to continue the unauthorised occupation of the earmarked and non-entitled quarter. Although it has also been alleged by the applicant that the Head of Office (respondent No.3) had been vindictive towards him and there was a conspiracy against him, it appears that the Head of Office was, on the contrary, reluctant to take punitive action against the applicant for non-vacation of the quarter as is apparent from the letter dated 7.1.97 (Ann.A5) from the Directorate General, AIR which advised the Head of Office that since the applicant was supposed to vacate the quarter within 10 days of the notice for vacation, he was liable to pay penal rent. The letter also adds that the decision was conveyed vide Directorate's letter of even No. dated 23.6.96 and again vide letter dated 19.8.96. Another letter of the Directorate General dated 18.8.96 (Ann.A4) had advised the S.E. (Head of Office) that he, as Estates Officer, has to take all the actions relating to staff quarters and can pass orders for charging penal rent and take action for eviction proceedings. It is in this background that the Head of Office issued the impugned order dated 18.6.97 under which he asked the Pay and Accounts Officer, IRLA, Ministry of I&B to deduct penal rent at the rate of Rs. 3245/- per month from the applicant w.e.f. 31.10.95 and till he vacates the

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quarter and hands over its possession. At this stage, we will like to advert to Rule T-10 of the AIR (Allotment of Residential Quarters) Rules, 1983 which provides as under:

"Where, after an allotment has been cancelled or is to be cancelled under any provisions contained in these rules and the quarter remain or has remained in occupation of the officer to whom it was allotted or of any person claiming through him such officer shall be liable to pay licence fee at penal rate as may be determined from time to time. To obtain vacant possession of the quarter, the Controlling Authority may, besides levy of penal rent, also undertake eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971"

9. It is clear from the above Rule that the authorities have two options available. They may levy penal rent and they could undertake eviction proceedings. Separately, the disciplinary authority could also start disciplinary proceedings in such a case for the misconduct of the Govt. official in not vacating the quarter which is under unauthorised occupation. Since this course was not adopted, there is no question of show-cause notice etc. being given to the applicant and denial of natural justice to him. The decision of the Estates Officer (Head of Office) adopting the first course of action and levying the penal rent was, therefore, well within the powers given by Rule T-10 of the allotment rules. The contention of the applicant that the order regarding penal deduction was passed behind his back is not maintainable, since he was warned that if he does not vacate the quarter, he will be liable to pay penal rent under the reminder letter issued by the Head of Office on 15/16.11.1995. Employees are allotted quarters under certain rules and no employee can claim a right on a particular quarter, especially if the employee is not entitled to it. In any case as a responsible officer of the organisation he was supposed to know the rules which could have been invoked by the authorities in case he does not vacate an earmarked quarter to which he was not even entitled. The applicant has also

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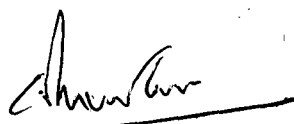
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stated that he had filed a number of representations to the respondents, including immediately after the vacation order allegedly on 21.10.1995 but we are surprised that the applicant choose not to annex a copy of that representation in the OA, if it actually existed. The first representation he has filed is dated 3.8.1998 (Ann.A7) and that too addressed to the Deputy Controller of Accounts (IRLA) and not to the Director General, AIR to whom he should have made the representation. This was much after the issue of the order for recovery of penal rent dated 18.6.97 and was replied to vide letter datd 14.10.1998 by that authority. The subsequent representation do not materially change the position.

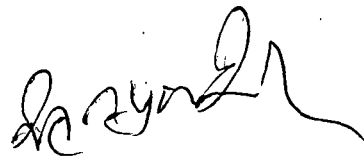
10. As regards the question of a C type quarter, we are not going to comment on that since it was an entirely different matter and unconnected with the present case regarding an earmarked D type quarter.

11. In view of above, we do not find any reason to interfere with the impugned order dated 18.6.97 and the impugned follow up letter dated 14th October, 98 issued by the Pay and Accounts Officer, IRLA. The question of directing the respondents to refund any penal rent already deducted does not, therefore, arise. The application is, accordingly dismissed.

12. No order as to costs.


(N.P. NAWANI)

Adm. Member


(RATAN PRAKASH)

Judicial Member