

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 10.09.2001

OA No. 184/2000

Jagdish s/o Shri Chotu, Helper Khallasi, Ticket No.398, Senior Divisional Electricl Engineer (Workshop) r/o Railway Q.No.2002A, Raja Cycle, Frazer Road, Ajmer.

..Applicant

Versus

1. Union of India through the General Managr, Western Railway, Churchgate, Mumbai.
2. Chief Workshop Manager (P), Wesern Railway, Ajmer.
3. Dy. Chief Electrical Engineer (Workshop) Western Railway, Ajmer.
4. Chief Permanent Way Inspector (North) Western Railway, Ajmer.

.. Respondents

Mr. P.D.Khanna, counsel for the applicant

Mr. T.P.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. S.A.T.Rizvi, Administrative Member

ORDER

Per Hon'ble Mr. S.K.AGARWAL, Judicial Member

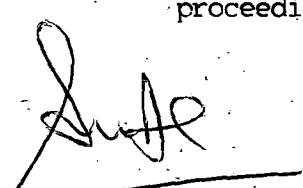
In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the prayer of the applicant is:

- i) to quash and set aside the impugned order dated 16.4.99 (Ann.A1) and letter dated 17.12.97 (Ann.A2) and to direct the respondents not to start eviction proceedings against the applicant under Public Premises (Eviction of Unauthorised Occupants) Act, 1971.



ii) not to recover penal rent from the salary of the applicant at the rate of Rs. 1052/- p.m. and to refund Rs. 14,140 with interest which has been recovered from the applicant.

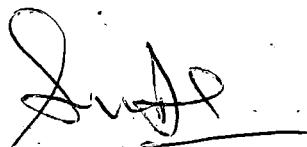
2. The facts of the case, as stated by the applicant, are that on the application filed by the applicant the Chief Permanent Way Inspector (North) Ajmer allotted Quarter No. 2002-A to the applicant in July, 1991 and possession was handed over to the applicant. Thereafter the respondent Department started deduction of house rent from the salary of the applicant at the rate of Rs. 30 per month which was subsequently increased to Rs. 40 and Rs. 42 per month. It is stated that thereafter electric meter and ceiling fan was also installed in that quarter at the request of the applicant. It is stated that Deputy Chief Electrical Engineer (Workshop), Ajmer vide impugned letter dated 17.12.97 made a query from the applicant which was replied by the applicant on 5.1.1998, but the Deputy Chief Electrical Engineer (Workshop) Ajmer started deducting penal rent of Rs. 1052 p.m. from the salary of the applicant w.e.f. February, 1999. Thereafter applicant served a legal notice through his counsel Shri P.D.Khanna, Advocate with the request to stop illegal recovery and deduction of Rs. 1052/- p.m. from the salary of the applicant, but with no avail. It is stated that no show-cause notice/opportunity was given to the applicant before effecting such recovery from the applicant. It is also stated that the said quarter was allotted to one Shri Vijay Kumar, therefore, vide letter dated 16.4.99 the applicant was asked to vacate the same within 15 days. The applicant filed an appeal to District judge, Ajmer under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on 29.4.1999, but the same was disposed of as not maintainable on the ground that no proceedings under Public Premises (Eviction of Unauthorised Occupants)



Act has yet been initiated against the applicant. It is further stated that quarter No. 2002-A was allotted to the applicant and after taking over possession by the applicant monthly rent is deducted from the salary of the applicant and applicant has not been transferred to another station. Therefore, it is stated that applicant is not the unauthorised occupant of the said quarter and recovery of penal rent from the applicant in such a situation is illegal, arbitrary and contrary to rules. Hence, this OA.

3. Reply was filed. It is stated in the reply that the quarter in question was never allotted to the applicant although he was transferred to the office of Deputy Chief Engineer (Workshop), Ajmer. Hence respondent No.3 made a query but applicant failed to furnish any legal document regarding allotment of the quarter in question. It is stated that the applicant was not allotted the quarter No. 2002-A as per rules, hence he is unauthorised occupant of the said quarter as per letter dated 7.8.2000 issued by the Chief Permanent Way Inspector (North), Ajmer. The penal rent was deducted from the salary of the applicant w.e.f. February, 99 as per rules at the rate of 1052/- per month. It is stated that vide letter dated 17.12.97, the applicant was asked to submit the letter of allotment pertaining to the said quarter within 15 days failing which penal rent will be recovered from the applicant at the rate of Rs. 1052/- p.m. and applicant failed to furnish any order of allotment within the time, hence penal rent at the rate of Rs. 1052 p.m. was determined and it was deducted from the salary of the applicant w.e.f. February, 99. It is stated that quarter No. 2002-A was allotted to one Shri Vijay Kumar on 24.9.92 and the applicant is only unauthorised occupant in the said quarter. Therefore, applicant has no case.

4. Rejoinder has been filed reiterating the facts stated in



the OA and stated that Permanent Way Inspector (North), Western Railway, Ajmer has allotted the railway quarter No. 2002-A to the applicant on 21.6.1991 vide his letter No.E/59/2 dated 21.6.2001 and an advise to this effect was sent to the Dy. CME (Loco) Ajmer, copy of which is enclosed at Ann.A16).

5. Heard the learned counsel for the parties and also perused the whole record.

6. A person becomes unauthorised occupant only when he retains the premises beyond the permissible period. In the instant case it is stated by the applicant that he was allotted the said premises in the year 1991 by the Permanent Way Inspector (North) Ajmer and possession was also handed over to the applicant and since then the applicant is residing in that quarter. In support of his contention he has also enclosed Ann.A16 dated 21.6.1991 by which it appears that Permanent Way Inspector (North) Western Railway, Ajmer allotted railway quarter No. 2002-A to the applicant on 21.6.2001 and an advise to this effect was sent to the Deputy CME (Loco), Ajmer. The allotment of the said quarter was never cancelled. The applicant was not transferred from Ajmer station to other station and he still remained the railway employee as he was at the time of allotment of railway quarter. On the other hand, the contention of respondents is only this that quarter No. 2002-A situated in the Railway Colony, Ajmer was never allotted to the applicant and if allotted was not allotted by the competent authority. It is also the case of the respondent Department that the quarter in question was allotted to one Shri Vijay Kumar vide letter dated 24.9.92. From the averments made by the parties it is abundantly clear that proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has not been started. It is not made clear why action against the applicant was not initiated immediately when he was in unauthorised occupation of the said quarter w.e.f. July, 1991 and why the penal rent was started to recover from the applicant w.e.f. February, 1999. No proper

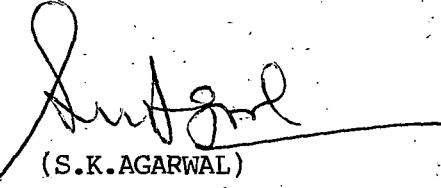


explanation has been given by the respondent Department for this as to why proceeding under Public Premises (Eviction of Unauthorised Occupants) Act have not been initiated against the applicant. The allotment so alleged by the applicant was never cancelled by the competent authority. No show-cause notice appears to have been given by the respondents Department before recovering the penal rent at the rate of Rs. 1052/- p.m. from the salary of the applicant but it appears that straightaway after issuance of letter dated 17.12.1997 the respondent Department started deduction of penal rent at the rate of Rs. 1052/- p.m. which is not only contrary to rules but is also definitely in violation of the principles of natural justice and, therefore, the order of recovery of penal rent at the rate of Rs. 1052/- p.m. from the salary of the applicant is not sustainable in law.

7. We, therefore, allow this OA and quash the impugned order dated 16.4.99 (Ann.A1) issued by the Chief Workshop Manager (Estt.), Ajmer and dated 17.12.1997 (Ann.A2) and respondents are directed not to recover Rs. 1052/- p.m. as penal rent from the salary of the applicant and the penal rent so recovered from the applicant be refunded to the applicant within three months from the date of receipt of copy of this order with interest at the rate of 12% per annum. The Department will be at liberty to pass an appropriate order in this connection after following proper procedure and after affording an opportunity of hearing/show-cause to the applicant. No order as to costs.


(S.A.T.RIZVI)

Adm. Member


(S.K.AGARWAL)

Judl. Member