

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision:

19/05/04

OA 284/2003

Ramhet Lal Meena, Chowkidar, MES, Alwar.

... Applicant

Versus

1. Union of India through Chief Engineer, MES, Jaipur.
2. Garrison Engineer, MES, Itarana, Alwar.

... Respondents

CORAM:

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant

... Mr.Rajendra Soni

For the Respondents

... Mr.S.S.Hasan

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985, is directed against orders dated 10.7.2002 (Ann.A/1) and 5.8.2002 (Ann.A/2), by which allotment of quarter 338/4 was cancelled and the respondents ordered recovery of damage rent @ Rs.25/- per square meter. The exact relief clause reads as under :

"That the impugned orders dated 10.7.2002 and order of charging damage rate of rent from the poor applicant vide order dated 5.8.2002 be quashed and set aside and the applicant be allowed to continue possession of Quarter No.338/4 situated at Itarana, Alwar MES Campus and order of vacation of the quarter may kindly be quashed and set aside."

2. Facts of the case as enumerated in the OA are that applicant is working as Chowkidar in MES Alwar on a regular post. He was allotted quarter No.338/4, Itarana, Alwar, in July, 1998. On 10.7.2002 a notice was served upon the applicant to vacate the aforesaid quarter before 20.7.2002 because he had subletted it to Army person, which is violative of Para 45 of SAO 10/S/86. It is stated that no reasonable opportunity to explain was given to the applicant and that during the period when physical verification of the premises was done to arrive at the conclusion that the quarter had been subletted by him, he was on leave. On receipt of the notice, when he contacted the respondents he was told that no action will be taken against him if he vacates the premises and

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accordingly he gave a letter in writing. That in spite of this, the respondents issued letter dated 5.8.2002 (Ann.A/2) stating that since applicant has not vacated the quarter, damage rent would be charged @ Rs.25/- per square meter. It is further averred that the applicant is a low paid employee, was discharging his duties regularly and that during the period of his absence due to leave some ex parte inquiries were done and notice dated 10.7.2002 was issued for wrong reasons. That there was no intention to keep any tenant in the allotted quarter by him. That he himself was living in it and on return from leave during which a person was asked by him to look after the quarter in his absence also left and he started living in the quarter exclusively as before. Due to these reasons, issuance of subsequent order dated 12.8.2002, by which damage rent is threatened, is wrong. Aggrieved by this situation, the applicant had filed a writ petition before Hon'ble Rajasthan High Court on 23.9.2002 vide Writ Petition No.7735/2002 and respondents had filed a reply thereto raising preliminary objection that the Hon'ble High Court has no jurisdiction in the matter and the petitioner withdrew the writ petition and has now filed this OA.

3. In the grounds it is stated that the impugned orders are arbitrary and discriminatory as other persons in similar circumstances have not been penalised like him. The same are also in clear violation of principles of natural justice as no opportunity of being heard has been given to the applicant before passing the impugned orders. The action of the respondents is also not in tune with good administrative practice because the applicant is a low paid employee and should have been given opportunity to explain. That the action of the respondents is misconcieved because relative, and not tenant, was staying in the quarter at the time of physical verification. The action of the respondents is illegal also because they got letters written from the applicant by creating misconception in his mind that no action would be taken against him and he will be allowed to continue in the quarter if he gave in

writing. Recovery of damage rent will visit him with civil consequences.

4. The respondents have given a detailed reply. It is contended that after allotment of above quarter the applicant never lived peacefully in it and that respondent No.2 received enumerated complaints, copies of two of which from Shri Anil Singhal and Shri S.C.Gupta have been placed as Ann.R/1 & R/2 respectively. They are neighbours and in the complaints it is alleged that occupant of quarter No.338/4 has subletted the quarter to some Army person, the family of whom is causing lot of disturbance to normal family life. This fact was proved during inquiry by Board of Officers twice on 5.11.2001 and 10.7.2002. On 5.11.2001, one Hawaldar Mohammed was found occupying the quarter and on 10.7.2002 one Naik Ashok Prasad was found in occupation of the same. On both the occasions neither the applicant nor any of his family members were found in the quarter allotted to the applicant. Both the Board of Inquiry proceedings are placed on record as Ann.R/3 & R/4 respectively. It is further stated that the government quarter was allotted to the applicant for use by him and his family and not for subletting, which is amply proved by the inquiry reports. It is also alleged that by repeating subletting in spite of notice proves that applicant has made it a practice to make money out of the quarter allotted to him for his personal use. After the first inquiry by the Board, the applicant was asked to vacate the quarter as he had violated the rules, vide letter dated 9.12.2001 (Ann.R/5) but the applicant neither gave an explanation nor vacated the said quarter. On the contrary, subsequent inquiry revealed that he had sublet the quarter to another person thereafter in utter disregard to superior's authority's order in a manner unbecoming of a government servant. After the subsequent inquiry also another notice dated 10.7.2002 was issued to the applicant and he was again asked to vacate the quarter by August 01, 2002, by letter dated 29.7.2002 (Ann.R/6). Thus, it is clear that applicant was given sufficient opportunity by the controlling authority. It is also stated that at the time of subsequent inquiry on 10.7.2002 the

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applicant was on weakly rest, which is proved vide document placed at Ann.R/7, and on this day he should have been at home and not out of station without permission but physical verification revealed that one Naik Ashok Prasad was occupying the quarter. Names of the family members of the applicant, as per service record, are placed at Ann.R/8 and it is stated that Naik Ashok Prasad is not a relative as per this list. It is further stated that applicant himself has admitted in his application dated 12.8.2002 that he had a tenant living in the quarter, when he stated in it that he has got vacated the quarter from the tenant and now no tenant is residing in the said quarter. A copy of this application is annexed as Ann.R/9. Thus, the allegation of subletting is proved as per record. It is also stated that he has not taken permission to keep any outsider in the government accommodation. By these facts it is proved that the applicant has violated Rule 15(A) of CCS (Conduct) Rules, 1965 (Ann.R/10). That as per SR-317-B-21 (2) the authority concerned is empowered to impose damage rent upon the defaulter. Copy of the said rule is annexed as Ann.R/11. The facts of writ petition in High Court and respondents' preliminary objection about maintainability of the same are admitted. While denying the grounds, arbitrariness and discrimination are denied because letter dated 10.7.2002 was served after second physical verification. However, when compliance was not made the order dated 5.8.2002 was issued. In view of the admission of the applicant in his application dated 12.8.2002, addressed to respondent No.2, no doubt remains about violation of Conduct Rules. In face of above facts as per SR-317-B-21(2) the applicant was declared unauthorised occupant and as such order dated 5.8.2002 was issued, which is perfectly legal. That being low paid employee is no justification for violating rules. The veracity of claim that respondents extracted written admission is vehemently denied. Since sufficient opportunity was given to the applicant before ordering penal rent, the ground of violation of natural justice is also denied.

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5. During arguments learned counsel for the applicant travelled through the contents of the application and the rejoinder and pleaded that though relevant rules have been quoted, fullest compliance of the same has not been made inasmuch as the letters shown as notices are not in the nature of show-cause notices but are in the nature of orders for compliance. That there is definite procedure as per the extant rules which should be followed before leveling penal rent and the same has not been followed. The allegation of discrimination was repeated by drawing attention to the report of Board of Inquiry dated 5.11.2001, in which applicant's name is at S.No.40 with remark against his name "Hawaldar Mohammed 12 FSG residing with him". In the same list eight other allottees of government accommodation were found living with other than members of the family of their families, but no action has been taken against them. Applicant's plea that on the day of inquiry he was on leave due to his wife's illness has not been considered by the respondents and his pay ever since above notices has not been paid to him even though he is a low paid employee of the government. It was repeated that admission of guilt in Ann.R/9 was obtained by deceit. It was also stated that at the root of the whole controversy is the fact that respondents were discriminating against the applicant because he belongs to 'Meena' community. Serious objection was raised regarding this new factor, not seen anywhere in the pleadings and the same was, therefore, withdrawn by the learned counsel for the applicant.

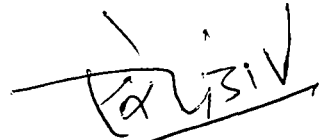
6. Learned counsel for the respondents, on the contrary, disputed allegations of discrimination, arbitrariness, deceit in obtaining admission of guilt etc. He stated that respondents had allotted to him a quarter higher than the category entitled to him. That twice Boards conducted inquiry dispassionately, they consisted of unconnected officers and as per administrative practice Annexure R/5 is by all accounts a notice and not an order, as claimed by the applicant. In view of these, the OA deserves to be dismissed.

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7. After careful consideration of all the facts it is seen that the applicant was definitely not using the premises for his exclusive use. Both Boards of Inquiry have proved this as also the document annexed to reply to rejoinder by the respondents i.e. a letter from Principal, Bajrang Public School, Kalwari, Alwar. which reads that applicant's children are studying in the village, even though learned counsel for the applicant claims that due to non-payment of his pay, the applicant had to shift his family to the village. The inquiry also established twice that person not authorised to stay was staying in the accommodation and the same had been subletted to them and that no permission for either was taken from the competent authority. It is also seen that the impugned order (Ann.A/1) was issued on 10.7.2002 and (Ann.A/2) was issued on 5.8.2002, which clearly state the fact of sharing/subletting and in letter dated 10.7.2002 gives notice period of ten days during which the applicant could have reacted and explained his position to the respondents but the same was not done. Letter dated 5.8.2002 was then issued threatening damage rent. But before all these orders, letter dated 9.8.2001 (Ann.R/5) was also issued which has not been revealed by the applicant. By this letter a notice period of three weeks is given and this letter clinches the issue of natural justice. Thus, it cannot be claimed that applicant has not been given any opportunity before the impugned action. It is also found that recovery of damage rent is as per relevant provisions in rules. The position regarding this has been amply explained in the main reply and reply to the rejoinder. In the reply to rejoinder it is stated that Hawaldar Mohammad had admitted before the Board of Officers that the applicant had subletted the quarter to him. On subsequent physical verification also another Army personal was found living in the quarter, which left no doubt in the mind of the respondents about the illegality and indiscipline being perpetuated after the notice (Ann.R/5), which has not been replied by the applicant. In these circumstances, the relief prayed for regarding continuance of the allotment of the quarter, and quashing of charging of damage rent cannot be granted.

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8. Therefore, the OA is dismissed as devoid of merits with no order as to costs.

A handwritten signature in black ink, appearing to read 'A.K. Bhandari', is written over a horizontal line.

(A.K. BHANDARI)

MEMBER (A)