

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

Orders of tribunal

25/02/2014

O.A. No. 432/2012

Mr. P.N. Jatti, Counsel for the applicant.

Mr. Mukesh Agarwal, Counsel for the respondents.

Heard the learned counsel for the parties.

Order reserved.

Anil Kumar
(Anil Kumar)
Member (A)

Vv

27-02-2014

OA No. 432/2012

Order pronounced today in the
open court by the Honble Bench.

[Signature]
27/2/14

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 432/2012

Order reserved on: 25.02.2014

Order pronounced on: 27 .02.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

K.K. Gupta S/o late Shri Ugreshen Gupta, by caste Gupta, aged about 66 years, R/o Ganesh Talab, Dada Bari, Kota, O/o Post Master, Dada Bari, Post Office, Kota-9, presently ret. as postal assistant N.G. Mandi Post Office, Kota, Head Post Office Kota (Rajasthan).

...Applicant

Mr. P.N. Jatti, counsel for applicant.

VERSUS

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur-7.
3. Senior Superintendent Post Offices, Kota Dn., Kota.
4. Post Master General, Southern Region, Ajmer.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER

The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was a permanent employee of the Department of Posts. He superannuated on 30.09.2006 as P.A. from N.G. Mandi, Kota, Head Post Office.

2. Learned counsel for the applicant further submitted that being an employee of the department, a residential quarter was allotted to the applicant in Dada Badi Postal Colony, Kota in 1995-1996.

Anil Kumar

On retirement, the applicant was not in a position to vacate the said official residence because he was not paid his retiral benefits on the ground that a departmental proceeding was pending against him at the time of superannuation.

3. The applicant submitted an application to the authorities to retain the said quarter. He also deposited the double the licence fee of the quarter as per rules to the department.

4. Learned counsel for the applicant also stated that no notice by the competent authority was served to the applicant to vacate the quarter though some letters were received from the office of the respondents in this matter dated 10.01.2008, 05.09.2008 and 23.10.2009. The reply to all these letters was also submitted by the applicant but no action was taken by the authorities after filing the reply by the applicant. A further notice from the Assistant Director Rajasthan Southern Region, Ajmer was served to the applicant vide letter dated 16.03.2010 stating to treat the period of retention of the said quarter from 01.06.2007 to the date of vacation of the quarter as unauthorized occupation of quarter no. 3/4, Dada Bari, Kota. The applicant submitted a reply to this notice as well.

5. Subsequently, the applicant on his own vacated the said quarter on 12.09.2010 and the possession of the quarter was given to the authorities on 13.09.2010 though no notice for eviction was ever served on the applicant:

Anil Kumar

6. Learned counsel for the applicant stated that the respondents have arbitrarily recovered an amount of Rs. 3,00,423/- from the gratuity and leave encashment of the applicant against the provisions of law and, therefore, the respondents be directed to refund an amount of Rs. 3,00,423/- along with interest to the applicant.

7. Learned counsel for the applicant also submitted that it was necessary on the part of the respondents to cancel the allotment. In the absence of such cancellation of allotment, permission to retain the quarter will be presumed and recovery of enhanced licence fee / damage rent would become irregular. He further argued that as per the order dated 25.02.2004 of the Department of Posts, only Estate Officer is the competent authority to issue notice for eviction of the quarter, if the respondents did not want to extend the permission beyond 31st May, 2007 then they should have immediately issued a notice for eviction and proceed according to law. No eviction notice was served to the applicant by the competent authority i.e. the Estate Officer, therefore, the action of the respondents is quite arbitrary and against the instructions of the department and, therefore, Annexure A/21 for recovery of Rs. 2,45,229/- and Annexure A/22 for recovery of Rs. 1,36,048/- be quashed and set aside.

8. Learned counsel for the applicant submitted that the recovery of the damage rent has been made from his gratuity which is against the provisions of Rule 71 of Central Civil Services

Anil Kumar

(Pension) Rules, 1972. According to the learned counsel for the applicant, the recovery and adjustment of Government dues from gratuity can be made which remain outstanding till the date of retirement of the Government servant. In this case, these dues pertain to the period which starts after the date of retirement of the applicant; therefore, no recovery can be made under Rule 71 of CCS (Pension) Rules, 1972.

9. On the contrary, learned counsel for the respondents submitted that the applicant had occupied the quarter on 14.02.1996. As per instruction contained in SR 317 B-11 and SR-317 B-22, any government servant may retain govt. accommodation / postal quarter allotted to him upto maximum period of 8 months of his retirement. The relevant provisions are as below: -

Under SR-317-B-11: 02 months on normal license fee, further 02 months a double license fee,

Under SR-317-B-22: Further 2 months license fee 4 times and further 2 months license fee 6 times.

10. Learned counsel for the respondents further submitted that accordingly, the applicant was permitted to retain the quarter till 31.05.2007 by the competent authority as under:

From 01.10.2006 to 31.11.2006 at normal license fees,
From 01.12.2006 to 31.01.2007 at double license fees,
From 01.02.2007 to 31.05.2007 at four and six times license fees.

Anil Kumar

He also submitted that further permission was not granted to the applicant to retain the quarter as there is no provision of the same under the rules.

11. Learned counsel for the respondents submitted that the applicant did not vacate the quarter up till 11.09.2010, therefore, a notice was issued to him vide SSPOs, Kota-1, No. D2/2A-7/07-08 dated 10.01.2008 (Annexure R/3) to vacate the quarter within 10 days deemed the cancellation of allotment under FR 45-A, SR 317-B-11 SR-317-B-22 & D.G., P&T Memo No. 42/48/64-NB dated 06.08.1965 (Annexure R/2). But he did not vacate the quarter. Therefore, a notice was again issued to him vide SSPOs, Kota-1, No. D2/2A-7/07-08 dated 05.09.08 to vacate the quarter within 10 days (Annexure A/12). But he failed to comply the notice. Again a notice was issued to him vide SSPOs Kota-1, No. D2/2A-7 dated 23.10.09 to vacate the quarter within 7 days (Annexure A/14) and again a notice was issued to him vide Assistant Director (notified as Estate Officer vide Annexure A/19) O/o the PMG, Raj. S/R, Ajmer, No. Bldg/SR/13-1/Retention/II dated 16.03.2010 (Annexure A/16). Finally, he vacated the quarter on 12.09.2010.

Thus, due to unauthorized occupation of Postal Quarter from 01.06.2007 to 11.09.2010, it was ordered to recover the damage rent amounting to Rs. 276969/- from him vide Assistant Director (notified as Estate Officer vide Annexure A/19) O/o the PMG, Raj. S/R, Ajmer, No. Bidg/SR/13-1/Retention II dated 6/7.10.2010

Anil Kumar

(Ann. R/4). Therefore, the PM, NGM HO was ordered to recover the damage rent amount to Rs. 276967/- from him vide SSPOs, Kota-1. No. D2/2A-7 dated 11.10.2010 (Annexure R/5).

12. Learned counsel for the respondents stated that the total amount of recovery of Rs. 3,76,300/- also includes the damage rent of Rs. 2,76,967/- from the applicant. The balance recovery is on account of amount paid to Smt. Ranjana Vijay (Rs. 72891/-), penal interest Rs. 15/- on KVP for Rs. 2000/-, over payment of provisional pension + DR, Rs. 27,123/- These recoveries are not under challenge.

13. Learned counsel for the respondents submitted that there is no provision under rules to allow the retention of the Government quarter by an employee, who has retired, beyond the period of 8 months. The applicant was allowed permission to retain the said quarter upto 31.05.2007 i.e. upto 8 months after the retirement of the applicant. He drew my attention to Annexure R/2 (FR-45-A, Swamy's Fundamental Rules, page 188), in which it has been clearly stated that -

"(3). Where a residence is retained under sub-rule (2), the allotment shall be deemed to be cancelled on the expiry of the admissible concessional periods unless immediately on the expiry thereof the officer resumes duty in an eligible office at the station."

He submitted that since the applicant was allowed to stay in the quarter upto 31.05.2007 (maximum period allowed to him

Anil Kumar

under rules), therefore, thereafter, the allotment shall be deemed to be cancelled.

14. He further submitted that the same rules provide that where, after an allotment has been cancelled or is deemed to be cancelled under any provision, the residence remains or has remained in occupation of the officer to whom it was allotted, such officer shall be liable to pay damages for use and occupation of the residence, etc. Thus, damage rent in the present case has been rightly calculated with effect from 01.06.2007.

15. Learned counsel for the respondents further submitted that the applicant himself has admitted in the Original Application that the notices to the applicant were issued on 10.01.2008, 05.09.2008 and 23.10.2009 and subsequently on 16.03.2010. Thus, it cannot be said that the applicant was not given any notice, therefore, the rules of natural justice were also followed. He also submitted that the applicant being an employee of the department clearly knows the rules regarding the occupation of a Government quarter. He also knows that he cannot retain the accommodation beyond 8 months after his retirement, therefore, it was his duty to vacate the said quarter after the expiry of the extended period. But the applicant instead of vacating the quarter on 01.06.2007 vacated on 12.09.2010. Therefore, the action of the respondents to charge the damage rent is according to the rules and the instructions on the subject issued from time to time.

Anil Kumar

16. With regard to the averments of the learned counsel for the applicant that under Rule 71 of the CCS (Pension) Rules, 1972, the Government dues, which remain outstanding only till the date of retirement of the Government servant can be recovered and adjusted against the amount of the gratuity, learned counsel for the respondents drew my attention to sub-rule (3) of Rule 71 of CCS (Pension) Rules, 1972, which is quoted below: -

“(3) The expression ‘Government dues’ includes -

- (a) dues pertaining to Government accommodation including arrears of license fee [as well as damages (for the occupation of the Government accommodation beyond the permissible period after the date of retirement of allottee), if any;
.....”

He argued that this rules clearly provides that the dues pertaining to Government accommodation includes arrears of license fee as well as damages (for the occupation of the Government accommodation beyond the permissible period after the date of retirement of allottee), if any. Therefore, the damage rent has been recovered from the applicant according to the rules. Hence, the Original Application has no merit and it should be dismissed with costs.

17. With regard to the clarification required by this Tribunal from the respondents vide order dated 24.02.2014, learned counsel for the respondents drew my attention to the Annexure R/2, Rule (4) of FR 45-A-Swamy's Fundamental Rules, page 187, deals with Rules for retention of P & T quarters after resignation, transfer, retirement, etc., which provides for the deemed cancellation of

Anil Kumar

Government accommodation and also with regard to the imposition of damages for use and occupation of Government residences.

18. Heard learned counsel for the parties and perused the documents available on record.

19. It is not disputed between the parties that the applicant was allotted an official quarter. The applicant retired on 30.09.2006. On retirement, he did not vacate the Government accommodation / quarter allotted to him. He requested for the extension of the Government quarter. He was allowed to retain the Government quarter upto 31.05.2007 i.e. 8 months beyond the date of his retirement. These facts being not disputed, therefore, the only question arises for consideration is 'whether the action of the respondents in charging the damage rent from 01.06.2007 to till the date of vacation i.e. 12.09.2010 is according to the provisions of law or not?

20. The applicant is a Government servant. He knows the rules of retention of the Government quarter. On retirement, the maximum period to which the extension can be given by the competent authority to retain the official residence is 8 months. This permission was given to the applicant. Thereafter, the notices were also issued to the applicant to vacate the Government quarter. The applicant has himself admitted in para 5.4 of the OA that some letters were received from the office in

Anil Kumar

this matter dated 10.01.2008, 05.09.2008 and 23.10.2009. The contention of the learned counsel for the applicant that these letters are not issued by the competent authority cannot be accepted. It was brought to the notice of the applicant that he is unauthorizedly staying in the govt. accommodation; therefore, he was required to vacate the govt. accommodation. Thus, it cannot be said that he was not given any opportunity or principles of natural justice were not followed by the respondents before issuing the damage rent.

21. Learned counsel for the respondents have shown the instructions of the department wherein it has been clearly mentioned that on the expiry of the extended period, the allotment will be deemed to have been cancelled. Therefore, the contention of the learned counsel for the applicant that the allotment was not cancelled does not hold good. Even otherwise, after 01.06.2007, when no extension was given to the applicant, his staying in that quarter was unauthorized. The applicant knows this fact very well being an employee of the department and he also knows the consequences thereof.

22. The averments of the learned counsel for the applicant that according to the Rule 71 of CCS (Pension) Rules, 1972, no recovery can be made from the gratuity of the applicant, if the dues of the applicant are post retirement. Learned counsel for the respondents shown me sub-rule (3) of the same Rule 71 of CCS (Pension) Rules, 1972, wherein it has been clearly provided

Anil Kumar

that the expression 'Government dues' includes dues pertaining to Government accommodation including arrears of license fee as well as damages (for the occupation of the Government accommodation beyond the permissible period after the date of retirement of allottee), if any. Thus, this sub-rule (3) clearly provides that the damages can be recovered, which become payable to the respondents after the retirement of the employee from the gratuity. Thus, even on this count, the applicant is not entitled for any relief in the present Original Application.

23. Learned counsel for the applicant had argued that the applicant did not vacate the official residence because he was not paid his retiral benefits by the respondents. However, I am not inclined to agree with the averments of the applicant as the retiral benefits could not be paid to the applicant because on the date of his superannuation, there was a departmental proceeding pending against him. Even if the retiral benefits could not have been paid to the applicant for any other reason even then it does not entitle the applicant to over stay in the official residence allotted to him after the expiry of the extended period allowed under rules i.e. after 31st May, 2007.

24. Thus, looking from any angle, the applicant has failed to make out any case for interference by this Tribunal. However, it is made clear that in this Original Application, the Tribunal has dealt only question with regard to the recovery of damage rent of Rs. 2,76,967/-. With regard to the other recoveries, there were no

Anil Kumar

pleadings in the Original Application, therefore, I have not dealt with other recoveries mentioned by the respondents in the reply like payment to Smt. Ranjana Vijay, penal interest on KVP, over payment of provisional pension + DR, etc.

25. Consequently, the Original Application being devoid of any merit is dismissed with no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

kumawat