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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5

O.A. No. 121/94

Date of decision 28.6.95

Shri I.N.Vohra

PETITIONER(S)

In person

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Sri G.Sarma, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches?

M.G. Chaudhary
Judgement delivered by Hon'ble Vice-Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 121/94

Date of decision : This the 28th day of June 1995.

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN.

Sri I.N. Vohra, I.P.S.
Inspector General of Prisons,
Manipur
Imphal-795001

..... Applicant

Applicant in person

-versus-

- i. Director of Estates
Government of India
Nirman Bhawan
New Delhi-110011
- ii. Asstt. Director of Estates (Accts)
Hostel Section
Government of India
Nirman Bhawan
New Delhi-110011
- iii. Union of India
Represented by the Director of Estates
Government of India
Nirman Bhawan
New Delhi-110011

..... Respondents

By Advocate Sri G. Sarma, Addl. C.G.S.C.

O R D E R

CHAUDHARI J. (V.C.).

The applicant I.N. Vohra, an I.P.S. Officer borne on Manipur-Tripura Cadre. His services were placed at the disposal of Govt. of India by order dated 21.7.87 as he was appointed as

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a member of the Enquiry (Home) Committee into the conduct of Delhi Police during November 1984 riots. He was repatriated to Manipur on 31.3.1990.

2. During the period of aforesaid posting at New Delhi, he was allotted Hostel Accommodation at Minto Road apartment by order dated 11.10.1988 which he occupied from 12.10.1988. It is his case that he vacated that accommodation on 6.3.94 under telegraphic intimation.

3. Even after his repatriation he desired to retain the hostel accommodation at New Delhi which facility is admissible to All India Service Officers posted in North Eastern Region. He was advised by the Asstt. Director of Estates, Govt. of India to submit his application in the prescribed proforma. Accordingly he submitted the application. The Directorate of Estates Government of India thereupon issued the letter No. 4/869/88-Hostel dated 17.7.91 permitting him to retain the hostel accommodation (Suite No. 7/7-Block-I (New) Minto Road Hostel, New Delhi) for the period from 1.6.1990 to 30.6.93 on payment of licence fee of Rs. 272 per month.

4. What transpired thereafter has given rise to an odious controversy.

On 4.2.1994 i.e. after about 2 years 8 months he was called upon by the Directorate of Estates, Govt. of India by letter No. 4/869/88-Hostel dated 4.2.1994 to immediately vacate the hostel accommodation at New Delhi as the retention thereof was permitted only upto 31.3.1992. That was followed by a bill for payment of dues of licence fee for the quarter amounting to Rs. 51488 which he was called upon to pay. The bill was issued by the Asstt. Director of Estates (A/CS), Govt. of India, New Delhi.

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5. The applicant sent a representation against the said bill requesting to amend the bill for the period from 1.4.92 to 30.6.93. That was followed by further representations and eventually the instant O.A. was filed on 13.6.94.

6. The applicant prays that the letter dated 4.2.94 of the Directorate of Estates be quashed and the respondents be directed to calculate the licence fee correctly on the basis of the letter dated 17.7.91. It appears that the respondents commenced Eviction Case and purportedly evicted the applicant from the aforesaid hostel suite through Eviction Squad on 29.4.94.

7. The respondents vehemently oppose the application. Their contentions may be summarised as follows :

1. Retention of the hostel accommodation was permissible only for a period of 2 years as per the O.M. No. 12035/14/77 - Pol-II dt. 26.3.87.
2. The applicant was allowed retention upto 30.6.93 under the original letter because he had suppressed the fact that he belonged to North Eastern Cadre in the proforma submitted by him. The facility is admissible only to such officers and only upto 2 years. Hence the original letter was superseded for valid reason.
3. The applicant failed to hand over vacant possession to the CPWD as per prescribed procedure and thus eviction proceedings had to be adopted and the overstay of the applicant in the premises after 1.4.92 till his eviction on 29.4.94 was unauthorised for which the applicant was not entitled to get the facility of concessional licence fee of Rs. 272 per month.

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[Signature]

4. The bill of dues of rent was correctly prepared and the applicant is liable to pay the unpaid dues.

The respondents therefore pray for dismissal of the application. The respondents however do not dispute the fact that applicant has been posted in North Eastern Region nor the fact of his having been assigned duty at New Delhi as stated by the applicant. They have also no dispute over the various letters issued by the department and the representations filed by the applicant. They however seek to justify the demand of the dues towards rent on the grounds summarised above.

6. The applicant has filed a rejoinder and it is not necessary to set out its contents as these will be reflected in the ~~course~~ of following discussion :

At Annexure A-16 the applicant has shown the details of the calculation of the rent for the disputed period as claimed by the respondents by letter dated 2.6.94 (Annexure-A 16).

1.4.92 to 31.3.93 @ 2229 p.m.	Rs. 26748.00
1.4.93 to 31.3.94 @ 2474 p.m.	Rs. 29688
1.4.94 to 28.4.94 @ 2474 p.m.	Rs. 02209
Total	Rs. 59114

He has shown the amount as per his calculation in letter dated 13.6.94 (Annexure 17) as below :

Balance due upto 31.3.90	Rs. 469
Rent @ Rs. 272 per month from 1.4.92 to 30.6.93	Rs. 4080
Rent from 1.7.93 to 28.2.94 @ Rs. 2229 per month	Rs. 17832
Rent from 1.3.94 to 6.3.94 for six days @ Rs. 2229 per month.	Rs. 431
Total	Rs. 22812

Thus the difference in the two figures is of
Rs. 36302.

9. The applicant has fairly conceded that as from 1.7.93 he would be liable to pay the full rent per month. He also concedes that from 1.3.94 to 6.3.94 also he is liable to pay the full rent. However he submits that for the period from 1.4.92 to 30.6.93 he is not liable to pay the full rent but only the concessional rent and he is not liable to pay any rent for the period from 7.3.94 to 29.4.94 since he had intimated by telegram on 6.3.94 that he had vacated the Suite. According to him as on 6.3.94 no other bills were outstanding there was no reason for the respondents not to have taken the physical possession of the Suite on the strength of his telegram and they have put him to humiliation by launching eviction proceedings and purporting to take possession through the eviction squad and that that was an unnecessary exercise for which he cannot be held liable.

10. In the above noted background the points that fall for determination are as follows :

1. Whether applicant is guilty of suppression of a material fact as alleged by the respondents ?
2. Whether the respondents have acted illegally in superseding the original permission given upto 30.6.93 on the ground of alleged suppression and without cancelling the original permission dated 17.7.91 ?
3. Whether the respondents were justified in taking eviction proceedings ?
4. Whether the amount of dues claimed by the respondents is correct ?
5. What is the liability of the applicant ?
6. What Order ?

10. Points 1 to 5.

The gravamen of the respondents case is that the applicant had suppressed the vital fact that he belonged to North Eastern Cadre and he was being reverted to Manipur on completion of his tenure at Delhi in the proforma (Annexure R 1 to Written Statement) dated 5.3.91 and because of that it was thought that he was transferred to Manipur and on that basis he was allowed retention upto 30.6.93 although under the applicable O.M. dated 26.3.87 he could have been allowed the same only for a period of 2 years.

The above contention however is not acceptable for several reasons. The respondents admit in para 10 of the written statement that in the application with which D E 2 Form for allotment was submitted the applicant had mentioned that he belonged to Manipur-Tripura Cadre. Surely therefore when the letter was issued by the competent authority on 17.7.91 (Annexure A-9) it will have to be assumed that the said authority had applied his mind to the record pertaining to the allotment of the accommodation. He could not be expected to have mechanically acted on the basis of the proforma (Annexure R-1 to written statement). The D E 2 Form (copy of which is at Annexure A 18) shows that the applicant had stated thus " I am an IPS Officer of Manipur-Tripura Cadre, have come on temporary posting in the above committee " Surely when extension of the period of allotment initially made on the basis of this Form was sought, the concerned authority was expected to refer to this Form. and had it been so done - and we have no reason to assume that it was not referred to - it cannot be held that the competent authority could be misled by the details stated in the proforma. It is pertinent to note that at the top of the proforma (Annexure R 1) the form is described as follows :

Sub

" Application form for retention/allotment of alternative Central pool accommodation in respect of Civilian Central Govt. Employees posted to the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and Union Territories of Arunachal Pradesh etc."

Column 5 of the form reads :

"5. Whether the office to which posted outside is

- (i) A Central Govt. office
- (ii) An office of Union Territory

Against this column the applicant stated

' I belong to IPS which is an All India Service. At present posted in Manipur State'.

It will thus be noticed that the particulars stated were in terms of the category of the form as reflected in its heading. It is not the case of the respondents that a wrong form was filled in. Moreover when the application was for retention of already allotted accommodation it could not be considered without reference to the application and D E 2 form under which it was allotted. It is also not the case of the respondents that the competent authority had been misled by the particulars in the proforma. No affidavit of the competent authority who had issued the order dated 17.7.91 has been filed to say so nor any notings on the office files are produced to demonstrate that the said authority had been misled by the proforma. In para 10 of written statement the respondents have indeed stated thus :

"But his omission of not mentioning this fact in the proforma for retention resulted in the mistake for which he himself is to blame".

✓ This is ^{far} ~~far~~ from saying that the competent authority was so misled. Rather it points to the mistake, if at all there was any mistake - on the part of the competent authority if he has mechanically passed the order on the basis of only the proforma without cross checking the particulars from the record of allotment.

It is also pertinent to note that even in the proforma the applicant did not state that he was 'transferred' to Manipur. However the letter dated 17.7.91 written by Shri V. Nagarajan, Assistant Director of Estates (H) and addressed to the Director General of Police, Manipur, a copy of which was marked to the applicant, mentions in first para that " as Shri N. Vohra has been transferred to Manipur (Imphal) and relieved of his duties on 31/03/1990, the allotment of Suite No. 7/7-Block-I (New) Minto Road Hostel is hereby deemed to have been cancelled in his name with effect from 31/05/90 after allowing the concessional period of two months as admissible under the rules". This revital is an unmistakable pointer to the fact that the authority was fully acquainted with the fact of allotment. It cannot therefore be imagined that he could not be aware that the applicant had belonged to Manipur-Tripura Cadre as stated in DE 2 form. In this context the ~~revital~~ in second para has to be understood which reads :

"Further, it has been decided by the Competent Authority to permit Shri I.N.Vohra, A.I.G.P. to retain Suite No. 7/7, Block-I (New) Minto Road Hostel on payment of 1½ times standard licence fee as defined under FR-45-A, or 15% of the emoluments drawn by him as defined under FR-45-C on the date of his transfer to Manipur whichever is less for the period with effect from 01/06/1990 to 30/06/1993 or on the date of his posting from North Eastern Region to any other place or until further orders whichever is earlier".

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Since there is reference made to applicants' 'transfer' and to the fact that he is relieved of his duties on 31.3.90 in first para a look at the order dated 19.3.90 (Annexure A-4) is highly illuminating. The subject of the order is :

" Repatriation of Shri I.N. Vohra, I.P.S.(MT : 78) to his parent cadre of Manipur, Tripura".

The order states that "Shri Vohra shall stand repatriated to his parent State of Manipur It is therefore requested that the officer may be asked to report to the Govt. of Manipur after he is relieved from the Committee w.e.f. 31.3.1990".

Since the letter dated 17.7.91 clearly refers to the fact of transfer to Manipur and the date of relieving it is obvious that the letter was within the knowledge of the competent authority and that rules out the possibility of the being misled by the proforma. Consequently it is not possible to accept the ground of suppression. That seems to have been invented as an after thought possibly under the impression that since the order dt. 17.7.91 was not in tune with the O.M. dt. 26.3.87 it was mistakenly passed and with a view to cover up that mistake. We do not however think that there was such a mistake committed. The letter clearly shows that it was issued in response to the endorsement made by the Director General of Police, Manipur forwarding the application of the applicant. What was that endorsement or whether the competent authority was persuaded to give concession upto 30.6.93 because of that endorsement or other factors then ^{prevailing} preventing and in the exigency of the situation is not clear as neither that material has been produced nor referred to in the written statement.

Turning now to the order dated 4.2.94 (Annexure A-10) issued by the Asstt. Director of Estates (Hostel) it states that any further

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retention beyond 31.3.92 is not permissible under the allotment rules and the applicant may be asked ^{to} vacate the suite immediately and he is also liable to pay damages for the period of overstay from 1.4.92 till the suite is vacated or got vacated through the process of law. What rules are referred as 'allotment rules' however has not been shown.

On the basis of written statement the reference has to be understood to be to O.M. No. 12035/14/77-Pol.II dated 26.3.87 (mentioned earlier also). Copy of that O.M. has been produced at Annexure R II to written statement. That however introduces a peculiar situation because in para 4 it is provided thus :

"As indicated above, these orders would be valid for a period of six months from 1.11.86, or till revised orders are issued whichever is earlier".

The said O.M. therefore could not be applicable on 4.2.94 when the order superseding previous order was passed in the absence of it having been shown by the respondents that the period of its operation had been extended or any revised orders were issued. The use of the word 'earlier' also makes it difficult to treat it as applicable on the said date by implication.

It is stated in para 5 of the written statement that the fact that the applicant belonged to North Eastern Cadre came to light when he, in his letter dated 27.1.94 he sought retention beyond 27.1.94 and at that stage it was realised that the orders contained in the letter dated 17.7.91 ~~orders contained in the letter dated 17.7.91~~ were erroneous and immediately were superseded and fresh orders allowing him the permissible period of retention of two years which ended on 31.3.92 were issued on 4.2.94. The order dated 17.7.91 was not specifically cancelled at any time. Nor there was any propriety in allowing retention for 2 years when that period had already

been expired. In substance the fresh orders curtailed the period under the original order without cancelling or modifying it.

Allegation of suppression levelled against the applicant in the written statement is a serious matter. The respondents therefore had to establish the same convincingly which they have failed to do as that is the inevitable conclusion ^{I am} ~~we are~~ led to reach having regard to circumstances discussed so far.

If the period in the original order was the result of a mistake that mistake squarely would have to be owned up by the respondents and their attempt to lay the blame upon the applicant repeatedly in the written statement is wholly unjustified.

^I ~~we~~ therefore hold that the respondents have failed to establish that the order dated 17.7.91 was the result of suppression of a vital fact on the part of the applicant or he is guilty thereof. No element of dishonest intention to derive a wrongful gain on his part has been established though hinted nor it is deducible from the material produced.

Consistently with the above conclusion ^I ~~we~~ hold that the respondents have acted illegally in superseding the order dated 17.7.91 by order dated 4.2.94 and the order dated 4.2.94 cannot be sustained in law.

Next, turning to the aspect of eviction although it is stated by the respondents that since on enquiry from the CPWD office it was learnt that they had not received the vacant possession of the suite and therefore it was got vacated by resorting to eviction in terms of eviction order, the respondents however admit that they had received the telegram from the applicant.

It appears to ^{me} ~~us~~ that although the applicant had intimated the respondents that he had vacated the accommodation from 6.3.94 and his bonafides need ~~not~~ not be doubted yet technically he was

required to comply with the formalities of handing over vacant possession to the C.P.W.D. Similarly, even though he submits that no bill such as for electricity etc was pending yet he had to obtain 'No dues' certificate. One may appreciate the difficulty and expense required to go from Imphal to New Delhi only for completing the formality and even though the applicant contends that on the basis of his telegram the respondents could have broken the lock and taken possession yet as he had not specifically authorised or asked the respondents to do so by the telegram or by a separate letter, ^g we do not accept his contention that he must be deemed to have vacated the accommodation 6.3.94 and he would not be liable to pay the rent for the whole month. In these circumstances if the respondents had proceeded to take the possession by formally passing an eviction order that cannot be held to be illegal. ^g We hold that applicant is liable to pay the rent for the whole month of March, 1994.

That takes ^{me} ~~us~~ to determining the extent of liability of the applicant.

As discussed above the applicant would be liable to pay only the concessional rent @ Rs. 272 per month for the period of 1.4.92 to 30.6.93 (covered by the order dt. 17.7.91) and to pay the rent at full rate for the period from 1.7.93 to 29.4.94 (i.e. upto the end of the month).

As far as the rate of rent applicable for the period from 1.7.93 to 29.4.94 is concerned the applicant has shown it at Rs. 2229 per month whereas respondents have shown it as Rs. 2474 per month in the particulars annexed to demand notice annexure A 16. However in Annexure A 19 the rate is shown as Rs. 2229 per month upto 31.3.93 and Rs. 2474 per month from 1.4.93. ^g We see no reason

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to go behind these rates. Hence the position would be as shown below :

Previous dues	-	0469
From 1.4.92 to 31.3.93 (12 months) @ Rs. 272 p.m.	-	3264
From 1.4.93 to 30.6.93 (3 months) @ Rs. 272 p.m.	-	816
From 1.7.93 to 31.3.94 (9 months) @ Rs. 2474 p.m.	-	22266
From 1.4.94 to 29.4.94 (i.e. for one month) @ Rs. 2474	-	2474
		<hr/>
		Total Rs. 29289

The applicant has stated that he has already paid Rs. 22812. Subject to verification thereof he will be liable to pay an amount of Rs. 6477. The calculation at flat rate of Rs. 2229 per month from 1.7.93 made by the applicant cannot be accepted. Because of the rate difference he has to pay additional amount of Rs. 6477.

§ We therefore hold that the applicant is liable to pay an amount of Rs. 6477.00 to the respondents towards the rental dues.

In the result following order is passed :

- i. The impugned order dated 4.2.94 (Annexure A 10) is set aside to the extent it relates to the period from 1.4.92 to 30.6.93 and it is declared that the applicant is liable to pay the rent for that period @ Rs. 272 per month only.
- ii. The amount mentioned in order dated 2.6.94, Annexure A-1 as Rs. 59114.00 shall be read as Rs. 29289.00. The order is set aside to the extent of the amount in excess of Rs. 29289.00.



iii. It is declared that the applicant is liable to pay the amount of Rs. 29289.00 towards the dues under order dated 2.6.94.

iv. Subject to the verification of amount so far paid by the applicant he is directed to pay the remaining amount out of Rs. 29289 within a period of six weeks from today failing which the respondents will be at liberty to recover the same in accordance with the law.

As it is stated by the applicant that he has already paid Rs. 22812 the balance payable by him will be only Rs. 6477 subject to verification of payment of Rs.22812.

The O.A. is partly allowed in terms of the aforesaid order. No order as to costs.

M.G. Chaudhari
(M.G. CHAUDHARI)
Vice-Chairman

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