

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1952/2015

Reserved on : 31.07.2018.

Pronounced on : 03.08.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Anil Kumar Dutta, 63 years
S/o late Sh. Netra Prakash Dutta,
Retired as Assistant Engineer,
R/o B-6 1st Floor,
Gali No.6, Sabji Mandi Road,
Uttam Nagar, New Delhi-59. Applicant

(through Sh. T.D. Yadav, Advocate)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary,
Delhi Secretariat,
I.P. Estate, New Delhi.

2. The Deputy Secretary (PWD),
Govt. of NCT of Delhi,
Public Works Department and Housing,
Allotment Branch 5th Level, 'B' Wing,
Delhi Secretariat, New Delhi.

3. The D.D.O., O/o Executive Engineer,
Construction Division, VI
I.P. Bhawan, 4th Level CPWD,
New Delhi-02. Respondents

(through Sh. Vijay Pandita, Advocate)

ORDER

The applicant in OA was allotted flat No. 13-D, Type-VI, Delhi Administration Flats, Vikas Puri, New Delhi on 11.03.2003. The

applicant was working as Assistant Engineer in CPWD and retired after attaining the age of superannuation on 30.04.2012. On 19.06.2012, the applicant requested for retention of government accommodation upto 31.12.2012 since he was suffering from chronic asthma. On 26.07.2012, the applicant received a notice from the Estate Office, and on 04.04.2013, he was directed to vacate the said premises, which he did on 27.04.2013. The vacation report of accommodation was issued by the respondents on 13.05.2013.

2. The current O.A. has been filed against the impugned order dated 15.09.2014 vide which the respondents informed the applicant regarding the outstanding dues of Rs. 2,76,494/- in respect of Flat No. 13-D, Type-IV, Delhi Administration Flats, Vikas Puri, New Delhi (upto 13.05.2013) and have requested him to deposit the same. However, vide another letter dated 12.03.2015, the respondents have enhanced the outstanding dues from Rs.2,76,494/- to Rs. 2,83,515/- in respect of the same flat, the cut off date being the same i.e 13.05.2013.

3. The applicant avers that the respondents are demanding dues from him, which have been calculated on the basis of an Administrative Order dated 24.06.2013 of Government of National Capital Territory of Delhi, Public Works Department. He submits that in the said O.M., the revised rate for unauthorized occupation of

General Pool Residential Accommodation has been revised w.e.f. 01.01.2003 (with retrospective effect), which is illegal and unjust. He has, therefore, sought the following reliefs:-

- "(i) To set aside and quash the impugned Orders/Letter dated 15.9.2014 and 12.3.2013 [Annexure A(Colly)].
- (ii) To direct the respondent to issue correct outstanding dues to the applicant as per rules.
- (iii) To direct the respondents to allow the applicant to deposit amount approx. Rs.70,000/- only in respect of above said flat instead of outstanding dues Rs.2,83,515/-.
- (iv) To direct the respondents to pay gratuity amounting Rs.91400 to the applicant with 18% interest.
- (v) To direct the respondents to issue no dues certificate in favour of the applicant.
- (vi) To pass any other order/s as deemed fit and proper in the facts and circumstances of the case.

4. In their counter, the respondents state that market rent is liable to be charged from the applicant for unauthorized occupation of the flat and the calculation has been done correctly by them in accordance with relevant rules on the subject.

5. During the course of hearing, the learned counsel for the applicant Sh. T.D. Yadav stated that the outstanding dues shown against the applicant for unauthorized occupation are wrong and misconceived. Drawing attention to the Administrative Order dated 24.06.2013 of Public Works Department, GNCTD of Delhi, he stated that the revised rates prescribed vide the aforesaid order have been made effective w.e.f. 01.01.2013 i.e. retrospectively, which is not

tenable. The learned counsel stated that the aforementioned Administrative Order dated 24.06.2013 revising the damage charges with retrospective effect, was challenged in WP(C)-5510/2013 & CM No. 12264/2013 (**G.S. Dhodi Vs. GNCTD & Anr.**). In their order dated 31.10.2014, the Hon'ble High Court has held that the revision in the rates has to be prospective and the damage charges have to be computed on the prevalent rates. Thus, Sh. Yadav argued that to demand damage charges from the applicant at the revised enhanced rates, who retired as early as 30.04.2012, is totally illegal.

6. The learned counsel for the respondents Sh. Vijay Pandita reiterated the points already raised in the counter to the OA. A copy of the Hon'ble High Court order was also handed over to Sh. Vijay Pandita by Sh. Yadav in Court.

7. I have gone through the facts of the case carefully, considered the rival submissions and perused the relied upon citation by the applicant.

7.1 The applicant, who retired on 30.04.2012, vacated the premises allotted to him on 30.05.2013. The issue in the current O.A. pertains to the rate at which the damage charges are to be recovered from him for the aforesaid unauthorized occupation of the flat. The amount calculated by the respondents swings from Rs. 2,76,494/- (impugned order dated 15.09.2014) to Rs. 2,83,515/-

(impugned order dated 12.03.2015). The main plea of the applicant is that the market rent being charged from him for the unauthorized occupation of the quarter should be at the prevalent rate rather than at the enhanced rate prescribed in the Administrative Order dated 24.06.2013. The applicant contends that as per his own calculation, the amount due from him is only R.70,000/- and not Rs.2,76,515 or Rs.2,83515 as demanded in the impugned orders.

7.2 Before adjudicating the issue, it is relevant to examine the provisions of the O.M. dated 24.06.2013, referred to above. The same reads as under:-

"Sub: Revision of rates of damage charges for unauthorized occupation of General Pool Residential Accommodation of Delhi Govt.

In pursuance of the Dte. Of Estate O.M. 18011/2/2006-Pol-III dated 06.12.2012 and with the prior approval of Lieutenant Governor of Delhi, the rates of damage charge for unauthorized occupation of General Pool Residential Accommodation of Delhi Govt. have been revised w.e.f. 01.01.2013 and will be in force till further orders. The details of revised rates are as under:-

Category	Existing/Previous damage charges w.e.f. 01.05.2002 (per sq. Mtr. Per month)	Revised rate w.e.f. 01.01.2013 (In multiple of licence fee)
Type-I to IV	Rs.150/-	55 times of normal licence fee
Type-IV Special and above including Hostel	Rs.220/-	65 times of normal licence fee

In cases, where damage charges have been recovered on previous rates between 01.01.2013 to till date, the difference

between previous rates and new rates of damage charges may be recovered."

8. While examining the validity of the said O.M., Hon'ble High Court of Delhi in the case of **G.S. Dhodi** (supra) where the O.M. dated 24.06.2013 was impugned, has held that:-

"10. It is well settled that normally a retrospective levy would not be permissible unless specifically authorized by law. The Supreme Court in [State of M.P. and another vs. G.S.Dall & Flour Mills](#), AIR 1991 SC 772 had observed as under:-

"the notification of 3/71187 amending the 1981 notification with retrospective effect so as to exclude what may be described in brief as 'traditional industries' though, like Rule 14 of the deferment rules, the exclusion extends' even to certain other non-traditional units operating in certain situations. Though this notification purports to be retrospective, it cannot be given such effect for a simple reason. We have held that the 1981 notification clearly envisages no exclusion of any industry which fulfils the terms of the notification from availing of the exemption granted under it. In view of this interpretation, the 1987 amendment has the effect of rescinding the exemption granted by the 1981 notification in respect of the industries mentioned by it. S. 12 is clear that, while a notification under it can be prospective or retrospective, only prospective operation can be given to a notification rescinding an exemption granted earlier. In the interpretation we have placed on the notification, the 31, 7 87 notification cannot be treated as one merely clarifying an ambiguity in the earlier one and hence capable of being retrospective; it enacts the rescission of the earlier exemption and, hence, can operate only prospectively. It cannot take away the exemption conferred by the earlier notification."

13. It is apparent from the administrative order dated 24.06.2013 that the revision of damage charges is to discourage extended unauthorized occupation of Government accommodation. Whereas prior to revision, the rates for damage charges were fixed on the basis of area of the accommodation (sq. mtrs./month), the revised rates are 55 to 65 times the normal licence fee. This clearly is in the nature of penal charges to act as a deterrent for the unauthorized occupants.

14. Although the decisions referred to above are with respect to statutory levy and punitive action; in the above perspective, where the damage charges are penal in nature, the principle enunciated would be equally applicable to the administrative order dated 24.06.2013.

15. It is relevant to note that the Central Government had revised the damage charges by an Office Memorandum dated 06.12.2012. However, the said revision was prospective (i.e. w.e.f. 01.01.2013). The respondent had also consequently revised the damages charges but the same can only be implemented prospectively.

16. Accordingly, the petition is allowed and further damage charges being the differential amount computed on the basis of the then prevalent rates and revised rates (as per administrative order dated 24.06.2013) for the period 01.01.2013 to 20.05.2013 would not be recoverable from the petitioner. The application also stands disposed of. "

It is thus clear that the enhanced rates specified in the O.M. dated 24.06.2013 will be effective prospectively.

9. The applicant in the current O.A. had already retired before issue of the said O.M., hence the revised rates for the purpose of calculating the damage charges would not apply to him at all. Not only that, he had also vacated the Government accommodation on 13.05.2013, i.e. even prior to issue of O.M. dated 24.06.2013.

10. During the course of hearing, the learned counsel for the applicant Sh. T.D. Yadav drew my attention to calculation chart in respect of the applicant available at pages 51 & 52 of the OA. He submitted that the market rent has been demanded from the applicant w.e.f. 16.09.2011 to 31.12.2012 despite the fact that the applicant was still in service on 16.09.2011.

11. Learned counsel for the respondents Sh. Vijay Pandita clarified that vide Order dated 05.09.2012 (R-1), the allotment of the

accommodation to the applicant was cancelled by the Competent Authority on 15.09.2011 when he was transferred from PWD to CPWD.

12. Sh. T.D. Yadav, learned counsel for the applicant argued that being a Government servant, he was still entitled to Government accommodation and market rent for this period should not be charged from him. Undoubtedly, a Government servant is entitled to accommodation but the fact remains that there is a separate pool accommodation for each department be it the PWD or the CPWD. The respondents were well within their rights to accept or reject the representation of the applicant for retention of the said accommodation on his transfer to CPWD. Hence, to this extent, the respondents are correct in calculating the market rent w.e.f. the date of cancellation of the accommodation of the Government servant.

13. In view the overall facts and circumstances of the case, the O.A. is partially allowed. The impugned orders dated 15.09.2014 and 12.03.2015 are quashed and set aside. I direct the respondents to recalculate the exact amount of outstanding dues against the applicant at the applicable rates, prevalent between 30.04.2012 to 31.05.2013, as per the rules and regulations governing the unauthorized retention of Government accommodation in such situations. This exercise must be completed within a span of three

months from the date of issue of a certified copy of this order. No costs.

**(Praveen Mahajan)
Member (A)**

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