

**Shri Devender Kumar, Son of Shri Vs. Delhi Development Officer,**

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**Court : Central Administrative Tribunal CAT Delhi**

**Decided On : Feb-15-2008**

**Judge : S Raju**

**Appellant : Shri Devender Kumar, Son of Shri**

**Respondent : Delhi Development Officer,**

**Judgement :**

1. Applicant, a Sectional Officer, impugns respondents' order dated 7.11.2007 whereby on account of non-surrender of the staff quarter, the proposal to recover arrears of water charges and also HRA and license fee w.e.f. 10.4.2003 till date has been proposed.

2. Applicant, who was allotted staff quarter accommodation at Quarter No. 20-C (SQC), MIG Houses by the DDA took on paper possession on 10.4.2003. However on visiting the accommodation when it was found in a very depilated state where the electricity connection was not even installed, there was no water connection except a general water connection in the locality, thereafter he did not take physical possession of the accommodation and wrote to the respondents as to cancellation of accommodation, vide his application dated 19.5.2003.

3. On 18.6.2003, staff quarter allotment branch as per the application of applicant cancelled the allotment of accommodation and directed the junior engineer to take possession of the accommodation after payment of electricity and water bill. As no electricity and water connections were installed in the premises, those who have

taken possession in the same locality, their HRA had been deducted from 1.7.2003. However, applicant after the order passed when he had not taken the physical possession enjoyed HRA till September, 2006 where the water charges have been telephonically sought to be recovered from applicant, which was responded that applicant had never lived in the quarter, yet on 4.5.2007, water and electricity charges have been sought to be recovered from applicant to which he responded to and as nothing was done by the respondents led to filing of OA No. 1496/2007, which was disposed of on 23.8.2007 with a direction to treat the OA of applicant as advance taken in the supplementary representation.

4. In compliance thereof, an order passed on 7.11.2007, applicant has been directed to deposit a sum of Rs. 8347/- on account of water charges up to July/2007 and till the date of vacation of staff quarter, failing which recovery should be effected from his salary.

5. Learned Counsel of applicant stated that having not taken possession of the accommodation and the same was cancelled on 18.6.2003, there was not consumption of electricity and water. As such, the junior engineer having failed to take possession, it cannot be imputed to applicant, who was not even apprised of such a proposal, as unlike others, the HRA was not stopped from 1.7.2003. Accordingly, it is stated that applicant is not liable to pay any charges and moreover, when he is residing at a different address prior to the allotment of said quarter and thereafter also such a recovery would be unreasonable.

6. On the other hand, respondents' counsel Shri Rajinder Nischal, vehemently opposed the contentions and stated that applicant who has taken possession of the accommodation with fixture failed to surrender it to the concerned custodian i.e. quarter allotment branch, as such he is liable to pay the interest as the said accommodation could not be allotted for such a period to anybody else. HRA of applicant was deducted from 1.7.2003. It is stated that as soon as the electricity was provided in the accommodation, applicant is liable to pay HRA and license fee w.e.f. 1.7.2003.

7. On careful consideration of the rival contentions of the parties, as per the Government of India, Ministry of Finance rules on HRA, those who refuse

allotment and surrender the Government accommodation, only then the HRA would be admissible. However, in the present case, applicant, who was admittedly allotted the accommodation and was given possession and not taken physical possession, as electricity connection was not installed. Meanwhile, on 19.5.2003, on his request on 18.6.2003, allotment of accommodation was cancelled and there was no consumption of electricity and water. The junior engineer without any arrears thereof, on 18.6.2003 having failed to take the possession of accommodation from applicant. Respondent though states that applicant's HRA was deducted, yet they are now proposing recovery of HRA approbating and reprobating simultaneously.

8. Other employees have taken possession of the accommodation and when started residing on restoration of electricity etc., their HRA was deducted from 1.7.2003, this has not been done in case of applicant clearly signifies that he has not been treated in the possession of the Government accommodation. The only thing which now to be considered is whether surrendering the accommodation by specific act would amount to vacation of the accommodation. However, in the peculiar circumstances of the case, request for cancellation of accommodation by applicant has been acceded to by the quarter allotting authority and accommodation was cancelled w.e.f. 18.6.2003 and at that time, neither any electricity connection was provided in the accommodation and applicant without taking any physical possession has not consumed water etc, the accommodation is deemed to have been vacated as non-vacation and surrender of the accommodation would not be attributable to applicant.

As the concerned junior engineer despite direction having failed to take possession of the accommodation, which is lying vacant right from 19.5.2003, applicant cannot be burden without any reasonable basis the license fee and deduction of HRA because he has not been residing in the Government accommodation from 18.6.2003 deeming it to be the date of vacation.

9. It is trite that any action of the administrative authority when discretion is vested should be exercised judiciously. Unreasonable recovery without any fault attributable to the Government servant should not be allowed.

10. In the result, for the foregoing reasons, this OA stands partly allowed. Impugned order dated 7.11.2007 insofar as recovery of HRA and licence fee from applicant is concerned is set aside. Respondents shall deem the applicant to have vacated the accommodation on 18.6.2003.

However, applicant is liable to pay a sum of Rs. 8347 charges shown by respondents, which shall be deducted from his salary. However, respondents are restrained from effecting any recovery from salary of applicant on account of HRA or licence fee. No costs.

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