

Central Administrative Tribunal
Principal Bench

O.A.No.3352/2001

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 9th day of July, 2002

Shri Yashpal Singh
presently working as Senior Section
Engineer (Signal/East)
under Sr. Div. Signal & Telecom Engineer
New Delhi & r/o Railway Quarter No.40 KL
Bara More Sarai, Delhi. Applicant

(By Advocate: Shri D.R.Roy)

Vs.

1. Union of India through
General Manager
Northern Railway Headquarters
Baroda House
New Delhi.
2. Divisional Railway Manager
Delhi Division
Northern Railway
New Delhi.
3. Divisional Superintending Engineer (Estate)
Delhi Division
Northern Railway
New Delhi.
4. Sr. Divisional S & T Engineer
Delhi Division
Northern Railway
New Delhi. Respondents

(By Advocate: Shri R.L.Dhawan)

O R D E R

By Shanker Raju, M(J):

This application is directed against
respondents' order dated 24.8.2001, whereby a recovery
of Rs.3018/- per month has been ordered in 48 monthly
instalments from the salary of the applicant, out of
which the even amount was deducted in October, 2001.
Applicant seeks withdrawal of the impugned order and
refund of the amount already recovered.

2. Applicant, who is working as Senior Section Engineer (in short SSE), and all technical staff under him are classified as "Essential" category for the purpose of Railway accommodation. To maintain the railway operations and to attend to emergencies and breakdowns day and night, some residences have been allotted to this category from general pool and are designated as "non-pooled accommodation". These are to be managed by the senior subordinates. Applicant, who is a senior subordinate holding the charge of his office, himself was residing in a "non-pooled accommodation" Type-II, Railway Quarter No.59/7, Bara More Sarai, Delhi though below his entitled category, which he vacated on 29.8.1997. He allotted this to one of his most wanted unhoused technical staff, namely, Sh. Brij Mohan, Mechanical Signal Maintainer on 30.8.1997 and sent this information to Divisional Superintending Engineer (Estate), Respondent No.3.

3. Subsequently, Respondent No.3 through his letter dated 3.12.1997 allotted the general pool quarter No.40-KL to the applicant and possession of which was taken on 4.12.1997. As it was in a depliated condition after repairs it was de-facto given for residence of the applicant on 3.1.1998. The aforestated information was sent to Senior Divisional S & T Engineer, Respondent No.4 on 19.2.1998. Applicant had taken Type-III Flat for himself but has not returned back Type-II Flat to the general pool. Respondent No.3 had desired to have Type-III Quarter

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• No.40-KL in "non-pooled accommodation" of Signal & Tele Branch with simultaneous surrender of Flat No.59/7 in general pool in lieu of Flat No.40-KL.

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4. Applicant was threatened with penal action for not vacating Type-II Quarter No.59/7 and consequently penalty of damages of unauthorised occupation of Type-II Quarter No.59/7, was fixed at Rs.3018-00.

5. Respondent No.4, controlling officer of the applicant, through his letter dated 23.2.1998 recommended for reconsideration of deduction of penal rent in respect of Quarter No.59/7 against the applicant by holding that at no time Quarter No.59/7 was under his unauthorised occupation.

6. Respondent No.3 by a letter dated 12.5.1998 rejected the aforesaid proposal on the ground that the applicant is not empowered to allot Type-II Quarters to anybody working under him as it is the prerogative of the DSE (Estate) as such the aforesaid quarter will remain in the name of the applicant and he has to vacate the quarter immediately otherwise he will be responsible for recovery made from time to time.

7. Again, through letter dated 4.9.1998, Respondent No.4 written to Respondent No.3 proposing regularisation of Quarter No.59/7 to Shri Brij Mohan and reconsideration of the case on the ground that the quarter was allotted to Shri Brij Mohan, MSM on 5.9.1997 and the information was conveyed by SSE to DSE (E) and the HRA is being regularly deducted from

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the salary of Shri Brij Mohan since September, 1997. In this back ground, it is stated that Railway quarter No.59/7 was never in an unauthorised occupation of the applicant.

8. Applicant ultimately got quarter vacated on 24.7.2001 and surrendered the same to Respondent No.3. Despite this penalty order has been passed at Annexure-A1 deducting damages from his salary from September, 2000.

9. Shri D.R.Roy, appearing for the applicant, impugned the order on the ground that there was ~~no~~^{no} wilful disobedience by the applicant to the orders of the senior, ultimately Quarter No.59/7 was vacated. Orders of allotment by applicant to Shri Brij Mohan were much earlier to the grant of non-pool status to Quarter No.40-KL in lieu of the aforesaid accommodation, he has acted within the rules bonafidly by allotting accommodation being non-pooled, being a competent authority after taking advice from his superior authority. It is stated that no action under Discipline and Appeal Rules could be ordered against the applicant.

10. It is further stated that Quarter No.59/7 was in S&T Pool and was in possession of the applicant since 1.10.1998 and was allotted to him as per the orders of his Controlling Officer, i.e., ~~SDSTE~~^{SDSTE}(~~SDSTE~~). On vacating the accommodation, the same on the advice and orders of Senior ~~DSTE~~^{DSTE} given to him, it has been allotted to Shri Brij Mohan and the information was sent to all the concerned including Estate Officer as

a consequence payment HRA was stopped to Brij Mohan whereas the applicant was continuously paid his HRA. Finally the Flat No.59/7 was handed over to Respondent No.3, the possession of the accommodation cannot be considered or deemed against the applicant as he acted as per the advice and under supervision of his senior. The senior S&T officer is competent to allot the accommodation for non-pool category to his sub-ordinate staff. Applicant de-facto acted on the authority on the directions of the senior DST(E). It is only after the allotment that a proposal has been made to transfer the flat to general pool accommodation in lieu of quarter No.40-KL. This lead to controversy. In so far as the damages are concerned, it is stated that the applicant as well as 'Shri Brij Mohan MSM, licence fee was deducted from their salaries and HRA has also not been paid to them. As such the punishment imposed upon the applicant is not in accordance with law and is arbitrary.

11. Respondents' counsel Shri R.L.Dhawan denied the contentions of the applicant and stated that applicant was in possession of Type-II Quarter No.59/7 in November, 1997, when at his request, he was allotted Type-III Railway quarter No.40-KL by DSE(E) and he occupied the quarter on 4.12.1997, when he was required to handover the vacant possession of Type-II No.59/7 to DSE(Estate). However, the applicant has not handed over the vacant possession. Quarter No.59/7 was in general pool, controlled by DSE(E) and does not belong to the pool of SSE. As the applicant has working as SSE, he was not competent to allot the

quarter No.59/7 to Shri Brij Mohan. As such the damage rent was rightly recovered from the applicant from 30.8.1997 to 30.7.2001.

12. However, respondents have not denied that the applicant, who is working as SSE, was competent to allot quarters falling in his pool to the eligible Railway staff but being a general pool quarter, he was not competent to allot Quarter No.59/7. He unauthorizedly stepped into jurisdiction of the DSE(E) as such orders have been passed to recover the damage rent for the aforesaid period from his salary.

13. It was incumbent upon the applicant to handover the vacant possession of Quarter No.59/7 to DSE(E). Thus the applicant's unauthorised allotment deemed that the quarter had been in his possession. On retaining two Railway quarters, the competent authority has rightly decided to recover the damage rent.

14. I have carefully considered the rival contentions of both the parties and perused the material on record. It is not disputed that being a Senior Section Engineer, the applicant is competent to allot quarter belonging to his pool to the eligible Railway Staff but as the aforesaid Quarter No.59/7, Type-II belong to general pool and controlled by DSE(E) and does not belong to the pool of SSE, despite permission of Senior Divisional S & T the applicant was not competent to allot this accommodation, which

was beyond his pool, to Shri Brij Mohan. Although it is equally established that during the stay of Shri Brij Mohan in the accommodation and till the applicant has taken possession of Quarter No.40-KL, Type-III, which has been declared as non-pool accommodation in lieu of Quarter No.59/7, licence fee and HRA was deducted from their salaries. Applicant had vacated the Quarter No.59/7 on 30.7.2001 and handed over the vacant possession does not water down his action without any competence. Although his controlling authority has written to the DSE(E) to reconsider the issue but the same has not been acceded to as without any authority the applicant allotted the accommodation beyond his pool and it is to be deemed to be in his possession till it is formally handed over to the respondents. However, it was also certified by the Senior authority of the applicant vide Annexure-A8 that the applicant has allotted the accommodation without jurisdiction and he was never in possession of two quarters simultaneously and since HRA and licence fee was continuously deducted, the order of damages was withdrawn. This has not been acceded to by the respondents and no decision has forthcoming.

15. I am of the considered view that the decision of the respondents to separately hold the proceedings against the applicant under Discipline and Appeal Rules for his alleged misconduct, cannot be found fault with. However, the question remains that from the alleged allotment of this accommodation to one Shri Brij Mohan by the applicant beyond his jurisdiction, no loss has been accrued to the Railways as they have been getting the requisite licence fee

and HRA has not been disbursed to either applicant or Shri Brij Mohan. Strictly speaking though, the action of the applicant is beyond jurisdiction, but it appears that the same has been taken in good faith. Presuming that the accommodation falls in a non-pool category and under his control and jurisdiction, due permission of the senior was sought which has been established by two communications sent by his senior to the competent authority for review of the action taken against applicant.

16. For the reasons recorded above, and discussion made, I am of the considered view that although no illegality is found in the action of the respondents but yet keeping in view the peculiar facts and circumstances of the present case and more over as no loss has been caused to the Railways, as the HRA has not been paid to the applicant and Shri Brij Mohan as well as licence fee has been deducted from their salary, the impugned order of imposing recovery of damages against the applicant for the period 30.8.1997 to 30.7.2001 is not justifiable.

17. In this view of the matter, and having regard to the discussion made above, Respondents No.2 and 3 are directed to reconsider the imposition of damage charges upon the applicant in the light of the letters written by Senior DS&T on 4.9.1998 and 5.9.2001 and thereafter to pass a detailed and speaking order. In the event, it is decided to withdraw the orders of recovery of damages, the sum of Rs.3018/- already recovered from the salary of the applicant, be returned to him. The aforesaid directions shall be complied with within a period of three months from the date of receipt of a copy of

this order. Till the final decision is taken in the matter, the interim order already passed shall remain in operation. No costs.

(M)

S. Raju
(Shanker Raju)
Member(J)

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