

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXX. No.1567/1995

Decided on:

Shri Puran ChandApplicant

(By Shri Yogesh Sharma Advocate

Versus

U.O.I. & OthersRespondent

(By Shri R.L. Dhawan Advocate

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER

THE HON'BLE SHRI

1. Whether to be referred to the Bench or not?
2. Whether to be circulated to the Benches of the Tribunal?

10
CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1567 of 1995

New Delhi this the 6th day of November, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Puran Chand
S/O Shri Kirpa Ram
R/o Quarter No.149-E, Loco Colony,
Delhi Sarai Rohilla,
DELHI.

...Applicant

By Advocate Shri Yogesh Sharma

Versus

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Bikaner Division,
Bikaner (Rajasthan).
3. The Chief Health Inspector,
Northern Railway,
Delhi Sarai Rohilla,
Delhi.

..Respondents

By Advocate Shri R.L. Dhawan

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant, a Safaiwala under the respondent No.3 is aggrieved by the impugned order by which the applicant was required to pay market

h

11

rent/damages for unauthorised retention of the quarter allotted to him, since 27.9.1988 upto the date of vacation of the quarter. The applicant was allotted the above quarter on his appointment on compassionate grounds under the respondents w.e.f. 27.3.1988. By a hand written order passed on 26.9.1988, the applicant was transferred to Gurgaon under the same respondent No.3. By an order dated 21.12.1992, Annexure A-5, the competent authority considered the cases of unauthorised occupation of sanitary staff taken up by the audit party and it was ordered that since no transfer allowances and packing allowances admissible on transfer were claimed the shift may not be considered as a transfer and the quarter could be regularised. Subsequently, the respondents however, decided to recover penal rent from all unauthorised occupants working under the third respondent by the orders of the respondent No.3 dated 31.7.1995 and 21.7.1995, Annexures R-1 and R-2 respectively. Following this, the impugned order was issued on 7.8.1995 by which the applicant was informed that consequent on his transfer and on his non-vacation of the aforesaid quashed by 25.10.1988, the allotment stood cancelled and that the applicant would be charged for unauthorised retention from 27.9.1988. He was also informed that

h

suitable action under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, shall be taken against the applicant.

2. When the case came up for hearing on admission, the respondents were restrained from taking any further action on the basis of the impugned order and notice was sent to the respondents to file reply. On the completion of pleadings, the parties were heard. Since the matter involved is relatively a short one, the application is disposed of by the following order at the admission stage itself.

3. The respondents in their reply have stated that the applicant was transferred to Gurgaon and he failed to vacate the Railway quarter allotted to him and was considered to be in unauthorised occupation of the Railway quarter w.e.f. 27.9.1988 and, therefore, in terms of para 1711 of the Indian Railway Establishment Manual Volume II, penal rent ^{have to} would be recovered from the applicant. They have also averred that the communication of the respondent No. 3 dated 21.12.92 has been cancelled by the respondent by his letter dated 13.7.1995 and 21.7.1995, Annexure R-1 and R-2 and, therefore, their action to recover the penal rent from unauthorised occupants of the quarters including the applicant was quite in

13

order.

4. I have heard the learned counsel for the parties and have carefully perused the records.

5. It is an admitted position that the applicant on being appointed on compassionate grounds was allotted the Railway quarter Type-I Block 'N' 149/F/Loco Colony, M.G. Delhi Sarai Rohilla w.e.f. 27.3.1988. The hand written order by which the applicant is shown to be transferred to Gurgaon, does not indicate that this is a case of permanent transfer. The respondents have also not shown that the applicant had been duly paid necessary transfer allowance consequent on his transfer, although they have denied the averments made by the applicant in this behalf. There is no material on record produced by the respondents to indicate that the applicant has been duly granted the transfer allowance. Further by the respondents' own letter dated 21.12.1992 at Annexure A-5 that in respect of unauthorised occupation of the sanitary staff, the matter was considered by the competent authority who had approved that the shift need not be considered as a transfer, which means that the quarters may be taken as regularised. Although the respondents in their reply have submitted that the aforesaid letter dated 21.12.1992 at Annexure A-5 has been cancelled, there is no evidence

.5.

14

of such cancellation by Annexure R-1 and R-2. It only communicates a decision to recover penal rent from unauthorised occupants following audit objection. In any case, if the transfer had been made on regular basis, the respondents should have notified to him retention of the accommodation only for the period permissible under the rules. The fact of his cancellation of the quarter and his being treated as unauthorised w.e.f. 27.9.1988 was, in fact, communicated only by August, 1995. The respondents for such delay in apparently have nothing to show the reasons/taking such punitive action. Besides, the applicant is from a Scheduled Caste community and there is nothing in the transfer order to indicate that the transfer is done in public interest. There is no such averment also in the counter-reply filed by the respondents. By the issue of the order dated 21.12.1992, Annexure A-5, the respondents themselves have felt that such cases of shifting of sanitary staff to the same Gurgaon area is not to be treated as transfer. Their subsequent action in cancelling the allotment and treating the retention as unauthorised retrospectively and deciding to recover the penal rent without earlier order of 21.12.92 cancelling the /4 seems to be a complete after-thought. The respondents have also not issued

(15)

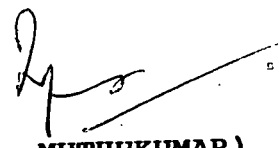
a proper notice for the recovery of any penal rent and also for treating the retention as unauthorised particularly in the light of the decision taken by the respondents by their letter dated 21.12.1992, Annexure A-5, treating the shifting not as transfer. As stated earlier, there is no specific cancellation of this order. It was open to the respondents to follow up the transfer order if it is to be meant as a permanent transfer by issuing appropriate notice, particularly in the case of low paid employee, informing him in time about the period he can retain this accommodation. Instead the respondents originally took the general decision that the shifting to Gurgaon area is not a transfer and after several years decided to recover penal rent and issued a preemptory order cancelling the appointment and treating the retention as unauthorised retrospectively w.e.f. 27.9.1988.

5. In view of the facts and circumstances of the case, the impugned order cannot be sustained and is accordingly set aside. It is, however, open to the respondents to issue appropriate orders in regard to the transfer of the applicant and the nature of transfer and also to inform him about the period upto which he can retain that

h

accommodation from the date of issue of such order.

7. The application is, therefore, disposed of on the above basis. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

RKS