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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

DA No.393 of 1995.

NEW DELHI, this the 26th day of July, 1995.

HON'BLE MR B.K.SINGH, MEMBER(A)

Shri Nawab Singh Meena,
P/Man 'A', Math Station, Jhansi Division,
resident of R.BII/24-A Railway Colony,
Railway Station, Faridabad(Haryana).Applicant.
(through Mr O.P.Khekha, Advocate).

vs.

Union of India, through

1. The Secretary, Railway Board, New Delhi.
2. The Divisional Railway Manager,
Central Railway, Jhansi.
3. The Senior Divisional Operating Manager,
Central Railway, Jhansi. Respondents.
(through Mr H.K.Gangwani, Advocate).

ORDER

(delivered by Mr B.K.Singh, Member(A).

This O.A.No.393/95 has been filed
under Section 19 of the Central Administrative
Tribunals Act, 1985, seeking a direction of
this Tribunal not to evict the applicant from the
railway quarter No.R.B.-II/24-A, Railway Station,
Faridabad(Haryana) till the disposal of the appeal
preferred by the applicant dated 16.1.1995 against
the order of removal from service as well as
subsequent proceedings.

On notice, the respondents contested
the application and the relief prayed for by
filing a reply.

The admitted facts are that the

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applicant has not been allotted the accommodation RB-II/24-A Railway Colony, Faridabad. He is an unauthorised occupant of the said quarter and during the course of arguments it was clearly stated by the learned counsel for the respondents that with the connivance of the lower staff, the applicant broke open the lock of the house and entered illegally without any allotment to him. This fact has been indirectly corroborated by the learned counsel appearing on behalf of the applicant by his statement that right from the year 1988, the applicant has been paying the market rent of Rs.900/- instead of Rs.30/-, which is the normal licence-fee for the quarter. The learned counsel for the applicant indirectly proves the statement made by the learned counsel for the respondents that he is an unauthorised occupant and that market rent is being charged since no regular allotment was made to the applicant, he has been paying the market rent as an unauthorised occupant. It was further submitted that the applicant was transferred to Math vide order dated 28.7.92 and the attendance-sheet of Math was produced before the Tribunal to show that he joined at Math on 19.8.1992 after being duly relieved on 17.8.1992 from Faridabad. It is also admitted that the applicant is not entitled to retain the quarter illegally occupied by him beyond a period of two months on payment of normal rent as contained in the Master Circular on allotment of quarters and retention thereof on transfer etc. issued by the Government of India, Ministry of Railways(Railway Board). It is clear from the facts of the case itself that the applicant

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joined his new place of posting at Math on 19.8.1992, after being relieved on 17.8.1992 from Faribad. It is admitted by both the parties that the applicant is still in occupation of that quarter. There is no rule which prescribes that an employee belonging to SC/ST community cannot be transferred without his consent. The Government of India even in case of deputation has now dispensed with the requirement of taking consent of any Government Servant for sending him on deputation. Transfer is an incidence of service and no consent is required for one's transfer. As a matter of fact, when a person joins a Government Service, he has to realise that transfer is one of the conditions and in case of All India Transfer liability one can be transferred to any part of the Country.

It is further admitted by both the parties that the applicant has since been removed from service and he has also filed an appeal to the appellate authority on 16.1.1995 which is more than 6 months new. There is no bar in the CAT Act that a man should not come to the Tribunal after the punishment orders have been passed by the disciplinary authority. Sections 20 and 21 of the CAT Act lay down that if an appeal is preferred, limitation period will be 1½ years instead of one year. No interim order has been passed by this Tribunal on the eviction notice issued on 17.4.1995, received by the applicant on 18.5.1995. It is admitted by both the parties that the applicant has been removed from service on 13.1.1994. The question of punishment is not under challenge in this O.A.

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The prayer is only to retain the quarter till the appeal is disposed of. There is no such provision in the Master Circular issued nor is there any provision in the Indian Railways Act to that effect that a person cannot be thrown out from unauthorised occupation if it is admitted by him that he has been paying the market rent right from the very inception, that is from 1988 onwards when he forcibly occupied the house. The Railways are competent to take recourse to provisions contained under Sections 138 and 190 of the Indian Railways Act and the various instructions contained in the Master Circular issued by them in regard to the eviction of unauthorised occupants and also for charging market rent. The applicant is paying market rent is accepted by both the parties which goes to prove that he is in unauthorised occupation of the house from 1988 onwards. He was transferred and the transfer is an incidence of service and cannot be challenged as has been held by the Supreme Court in a catena of judgments in Gujarat State Electricity Board vs. A.R. Sudgani, Peshani AIR 1989 SC 1433, it has been clearly laid down that transfer from one place to another is a condition of service and the employee has no choice in the matter and in case of defiance of transfer order he is liable to be dismissed from service. The Hon'ble Supreme Court in case of Kamlesh Trivedi vs. I.C. AR ATC(1988) 3 SCC 445 and Shiley Bass vs. State of Bihar 1991 1ab I.C.(SC) 360 held that the Court should not interfere in the matter of transfer on administrative grounds or in public interest. Thus the applicant is guilty of having occupied the house without any allotment to him

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and also is guilty of retaining the same even after his transfer. In view of the provisions contained under Sections 138 and 190 of the Indian Railways Act read with the Master Circular issued by the Railway Authorities regarding retention of quarter on transfer, the Railway Administration cannot be faulted ^{with} for issuing the orders dated 17.4.1995 and they are perfectly justified in issuing an order contained in letter No.E/35 Qr./unauthorised/N9/ dated 17.4.1995. No cogent reasons have been advanced by the learned counsel for the applicant as to why this order should be stayed or why the applicant should not be evicted. Railway authorities are fully entitled to take recourse to eviction proceedings for removing an unauthorised occupant since it is an admitted fact that the applicant has been paying the market rent for having forcibly retained the quarter from 1988. The application is devoid of any merit or substance and is dismissed accordingly leaving the parties to bear their own costs.

26th July, 1995.

"SDS"


(B.K. Singh)

Member (A)