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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.2312/94

New Delhi: this the 31st day of March, 1997.

HON'BLE MR.S.R.ADIGE MEMBER(A).

HON'BLE DR. A.WEDAVALLI MEMBER(J).

J.C.Verma s/o Late Shri Chandra Bhan,
Employed as a Senior Signaller,
in the Northern Railway,
Telegraph Office,
Delhi.

.....Applicant.

(By N.S.Verma, Advocate)

Versus

1. Union of India through
the Secretary,
Govt. of India,
Ministry of Railways,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railways,
New Delhi.
4. The Divisional Railway Manager,
Northern Railway,
Ambala Cantt.

..... Respondents.

(By Advocate: Shri R.L.Dhawan).

JUDGMENT

BY HON'BLE MR.S.R.ADIGE MEMBER(A).

Applicant seeks quashing of impugned order dated 26.5.94 directing recovery of penal rent amounting to Rs. 34,608/- from him for unauthorised retention of railway quarter No.472-A , Railway Colony, Saharanpur for the period 8.1.87 to 23.2.91 on his transfer to Delhi.

2. Applicant had earlier filed O.A.No.617/93 against respondents' letter dated 18.2.93 directing recovery of the said penal rent, which after hearing

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both sides was disposed of by judgment dated 20.10.93 with a direction to respondents to give applicant an opportunity to show cause and be heard before effecting recoveries.

3. Pursuant to that order, applicant showed cause and was also heard on 16.5.94 after which respondents have passed the impugned order dated 26.5.94.

4. Applicant contends that as his transfer to Delhi was purely temporary, he was entitled to retain the quarter on payment of normal rent in terms of Railway Board's instruction dated 15.1.90 (taken on record). Respondents do not deny that applicant was posted to Delhi on temporary basis but contend that on per their instructions dated 15.1.90 retention of accommodation on temporary transfer can be for only 4 months and applicant was also aware that his transfer was only temporary vide his representation dated 9.2.87 (Annexure-A5).

5. Railway Board's instructions dated 15.1.90 which consolidate the instructions regarding retention of accommodation by railway employees lay down that during the entire period of temporary transfer an employee may be permitted to retain the quarter at former place of posting on payment of normal rent. Temporary transfer shall however not be ordered for a period of more than 4 months unless there are pressing circumstances and in cases of non-gazetted employees such orders will have to be passed personally by an authority not lower than DRM. In the present case neither the order dated 22.1.86 (Annexure-A3) nor the one dated 21.1.87 (Annexure-A4) have been passed

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by the DRM or an officer above him. The applicant cannot legitimately plead lack of awareness of the instructions under which his retention of accommodation beyond the permissible period was in order only if his transfer from Saharanpur to Delhi had been ordered personally by an authority not lower than DRM. There is nothing on record to indicate that such orders were passed by an authority not lower than the DRM in the present case.

6. Applicant has also contended that by not replying to his representation for permission to retain the accommodation in Saharanpur, he was led bonafide to believe that he had been permitted to retain the accommodation and respondents must be deemed to have waived recoveries. Even if applicant did not receive any reply to his representation, manifestly he retained the accommodation at his own risk and responsibility and respondents cannot be deemed to have waived recoveries, nor does it operate as an estoppel against respondents from making recoveries in accordance with rules.


7. Applicant has next contended that the provisions of the P.P.(EUO) Act were not complied with when recovery was ordered but it has now been settled in a CAT Full Bench (Allahabad) Judgment dated 22.2.96 in Ram Poojari Vs. UOI and another- 1996(34) ATC 434 that retention of accommodation beyond the permissible/ permitted period would be deemed to be unauthorised, for which no specific order cancelling allotment is necessary, and penal rent can be recovered from salary without

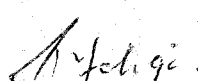
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resorting to proceedings under P.P.(EUD) Act, which is only an alternative procedure and does not bar recovery under Railway Board's circulars. No materials have been shown to us to lead us to believe that the said Full Bench judgment has not become final, and we hold that the ratio of the said judgment is fully applicable to the facts of the present case.

8. Under the circumstance, we find ourselves unable to intervene in the matter. The OA is dismissed. No costs.


(DR.A.VEDAVALLI)
MEMBER(J).


(S.R.ADIGE)
MEMBER(A).

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