

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1412/2000

New Delhi, this the 13th day of January, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri V. Srikantan, Member(A)

Purshottam
133-K, Loco Railway Colony
DCM Road, Kishan Ganj, Delhi .. Applicant

(Shri G.D.Bhandari, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway, Bikaner
3. Station Supdt., Northern Railway
Delhi Sarai Rohilla, Delhi .. Respondents

(Shri R.L. Dhawan, Advocate)

ORDER(oral)

Shri Justice V.S. Aggarwal

By virtue of the present application, Shri Purshottam, s/o Shri Hari Kishan, applicant seeks quashing of penalty order dated 7.7.2000 whereby his yearly increment has been stopped for one year and secondly, to declare that the action of respondents of making deduction/recovery of Rs.1995 per month from March/March, 2000 is illegal.

2. The relevant facts are that the applicant is employed in the Indian Railways as a Pointsman. He has been allotted a railway quarter on the 1st floor of a multi-storey building. According to the applicant, his wife is a heart patient. He had requested for allotment of ground floor flat. In this regard he submitted an

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application for mutual exchange of the ground floor flat along with a third person but no formal order was passed. Applicant occupied the ground floor flat without any formal allotment.

3. Thereafter, department took action against the applicant and imposed the penalty referred to above for unauthorisedly occupying railway flat without its being allotted to him and recovery of above said amount as penal/damage rent.

4. Needless to state, in the reply filed the application has been contested.

5. Learned counsel for applicant pointed the actual position that was being taken by the applicant and the compelling circumstances under which the applicant was prompted to occupy the ground floor flat. However, he has fairly conceded that there was no formal allotment of the said flat by the authority to the applicant.

6. Once such is the situation and no formal allotment has been made, we have no hesitation to hold that the applicant, as a good railway servant, could not have occupied the said flat without there being formal allotment of the authority for occupying the government/railway flat. Once it is so, department has dealt with the applicant by passing the order imposing the punishment referred to above which does not require our interference.

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7. However, with respect to deduction of Rs.1995/- per month from January/March, 2000, the same needs to be looked into.

8. Learned counsel for respondents has referred to us the fact that since the applicant was a trespasser, damage/penal rent is being recovered from him in accordance with the Indian Railway Establishment Manual (IREM) Vol.II, para 1711 and has also relied upon the Full Bench decision of this Tribunal in Ram Poojan Vs. UOI reported on ATFBJ 1994-6 page 244.

9. We take liberty to elaborate para 1711 of IREM Vol.II which reads as under:

1711. Recovery of rent - (a) The rent charged to a railway servant in respect of quarters supplied should not exceed 10 per cent of his/her monthly emoluments irrespective of the scales of pay allotted.

(b) Notwithstanding anything contained in sub-paragraph (a), Railway Administration may, be general or special order, provide for charging a rent in excess of 10 per cent of the emoluments from a railway servant-

(i) who is not required or permitted to reside on duty at the station at which the residence is supplied to him; or

(ii) who, at his own request, is supplied with accommodation which exceeds that which is appropriate to his status, or

(iii) who is permitted to submit the residence supplied to him, or

(iv) who sublets without permission the residence supplied to him, or

(v) who does not vacate the residence after the cancellation of the allotment.

Note-Rent will be recovered from such railway servants who sublet their quarters without permission of the competent authority at the rate of 7 1/2 per cent of the total outlay of the quarter including the cost of land.

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It is on the basis of the same that Railway Board instructions have been issued dated 12.4.89 fixing certain amount of penal/damage rate of rent to be recovered from such employees. Perusal of the same clearly shows and establishes in general contemplating a situation of the railway employee who has been allotted a quarter/house and who overstays in the same after permissible time or sub-let the same. These instructions do not explain the situation where a third person or a railway servant forcibly occupies the railway quarter. Therefore, para 1711 of IREM referred to above has no application to the present situation.

10. In the case of Ram Poojan (supra) referred to above the question formulated by the Full Bench which was to be answered was:

(a) Whether in respect of a railway employee in occupation of a railway accommodation a specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarters on transfer, retirement or otherwise, is necessary before further retention of the accommodation can be considered as unauthorised and penal/damage rent levied or;

(b) Whether the retention of accommodation beyond the permissible period can automatically be considered as unauthorised without any specific order of cancellation of allotment and the penal/damage rent levied accordingly;

11. It is abundantly clear from the decision of the Full Bench that the Tribunal was confronted with a situation where a railway employee was in occupation of the railway accommodation and had overstayed there after the permissible limit and in accordance with rules/

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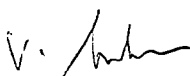
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instructions damage rate of licence fee was to be levied.

The Full Bench was not concerned with the present situation and therefore it must be held to be not applicable in the facts of the present case.

12. The facts enumerated above clearly establish that applicant without any formal allotment occupied the ground floor flat and he can well be deemed to be a trespasser and in such a situation he can be dealt with by the department in accordance with law. However, the amount purported to be recovered on the basis of calculated formula of Railway Board's letter 12.4.89 in such a situation will not apply.

13. Resultantly, we only partly allow the present application in that as regards the deduction referred to above, the impugned order is quashed. Insofar as penalty imposed on the applicant, the OA must fail and is dismissed. However, we make it clear that respondents are at liberty to recover the amount in accordance with law. No costs.


(V. Srikantan)
Member(A)


(V. S. Aggarwal)
Chairman

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