

Central Administrative Tribunal
Principal Bench, Delhi.

Regn. No. OA-804/88

Date of decision: 15.1.1988

Shri C.L. Verma

....

Applicant

Vs.

Union of India

....

Respondents

PRESENT

Applicant in person.

Shri Inderjit Sharma, counsel, for the respondents.

CORAM

Vice

Hon'ble Shri B.C. Mathur/ Chairman.

This is a case under Section 19 of the Administrative Tribunals Act, 1985 against the impugned order No. 716-W/196-540 dated 11.4.1988 passed by the Divisional Engineer, Northern Railway, Ferozpur Cantt, under which the Deputy Chief Personnel Officer (Gazetted), Northern Railway, Baroda House, New Delhi, has directed recovery of Rs. 924.80 per month as market rent in addition to denial of Rs. 600.00 per month house rent allowance, and order No. 716-W/196-54 dated 31.1.1988 passed by the Divisional Railway Manager, Northern Railway, Ferozpur Cantt, on the same subject as well as order no. 672-W/PPEA/FZR dated April 19, 1988. The applicant was served with show cause notices under Section 4(i) and under Section 7(3) of the Public Premises (Eviction of Unauthorised Occupant) Act, 1971 for deposit of Rs. 17831.00 as arrears of rent with effect from 24.3.86 to 12.12.87 despite the fact that the applicant was granted retention of the quarter from 23.4.86 to 22.10.1986 and the applicant was under the belief that further retention upto the next academic session was also sanctioned under the rules.

2. The brief facts of the case, as stated by the applicant, are that the applicant was posted as Assistant Engineer-II Maintenance at Ludhiana under Divisional Railway Manager, Northern Railway, Ferozpur on 5.6.1982 when quarter No. L-36/B at Ludhiana was allotted to him. On 22.4.1984, the applicant was posted as Asstt. Engineer(Construction) Delhi under the Chief Engineer (Construction) Delhi, and thereafter as Assistant Engineer (Special) Ludhiana under

the Chief Engineer (Construction) Delhi upto 16.10.1985. On 17.10.85, the applicant was temporarily posted as Asstt. Engineer (Construction) Ropar with headquarters at Ludhiana. The applicant remained posted at Ludhiana as such upto 22.2.1986 under Chief Engineer (Construction) Delhi on various assigned posts. From 23.2.1986 to 22.4.1986, the applicant was on leave sanctioned by the Chief Engineer (Construction) Delhi and from 23.4.86 to 23.10.86, the applicant was posted as Asstt. Engineer (Microwave) Delhi under Chief Engineer (Const.) Delhi. While he was posted as Asstt. Engineer (Microwave) Delhi the applicant was granted permission to retain Quarter No. L-36/B at Ludhiana by the Chief Engineer (Const.) Delhi vide his letter dated 22.5.1986 (Annexure A-1). From 24.10.1986 to 12.6.87 the applicant was again posted as Asstt. Engineer (Special) at Ludhiana under Chief Engineer (Const.) Delhi and allowed to remain in the same quarter as authorised allottee and occupant ~~being~~ his headquarters ^{being} at Ludhiana. On 13.6.87, the applicant was posted on a newly created post at Dhilwan which is a disturbed and rural area on the bank of the river Beas in Punjab as Assistant Engineer (SLP) under Chief Engineer (Maintenance) Delhi. According to the applicant, the project on the bank of the river Beas is identical to the project of New Coach Factory at Kapurthala so far as the necessity for a suitable expert officer required for ensuring the timely and proper progress of works is concerned and the applicant is, as such, entitled to the same incentives regarding retention of railway accommodation in occupation at the previous place of posting on payment of normal rent. According to the applicant, Dhilwan is an uninhabited place in Kapurthala ^{district} where no residential accommodation was available for the applicant. The applicant applied for permission to retain the quarter at Ludhiana on 22.6.1986 on ground of children's education. He also sent a reminder and his case was recommended by the Deputy Chief Engineer (SLC) on 15.9.87. The respondents have not cancelled the allotment of quarter at Ludhiana and he is being

charged assessment rent at the rate of Rs. 137.00 per month, denying him Rs. 600.00 per month H.R.A. The applicant was communicated orders dated 31.1.1988 on 1.2.1988 whereby recovery of four times the assessed rent or 10% of emoluments whichever was higher was ordered in terms of Railway Board's letter dated 29.8.81 with effect from 13.6.87 till vacation of quarter from the applicant. The applicant represented against these orders (Annexure A-8) on 20.2.1988, but the same was rejected. On 11.4.88, Respondent No.3 issued a notice directing ^{for} recovery of Rs. 924.80 per month from the salary of the applicant for the retention of quarter at Ludhiana. Again on 28.4.88, the applicant was issued a show cause notice proposing action under Sections 4(a) and 7(3) of the Public Premises (Eviction of Unauthorised Occupant) Act, 1971 against the applicant without any prior notices and proposing recovery of Rs. 17831.00 as arrears of rent arbitrarily.

3. The applicant has argued that under Rule 14 of the Railway Quarters and Recovery of Rent Rules, if an officer is transferred during a scholastic session, rent will be recovered as follows:

First two months normal rent.

Next 6 months ... twice the normal rent or twice the assessed rent or twice of what he was paying or 10% of emoluments, whichever is higher, as mentioned in R-4 of the rejoinder.

4. The case of the respondents is that the house at Ludhiana is a non-pool house under the charge of the DRM, Ferozpur. It belongs to the Ferozpur Division Pool and not to the Northern Railway Headquarters. The applicant was posted at Ludhiana as A.E. (Maintenance) on 5.6.82 and as such the DRM, Ferozpur, had allotted him the house. Once he was transferred to Delhi, he had to vacate the house which is under the pool of the DRM, Ferozpur. The Chief Engineer (Const.) Delhi granted permission to the applicant

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for retention of the quarter for the period from 23.4.86 to 22.10.86 on the condition that the applicant would pay for the first two months normal rent and thereafter double the assessed rent or double the normal rent or 10% of the emoluments whichever was highest on educational ground. The Chief Engineer had also ordered that if these terms were not acceptable, the applicant would vacate the quarter. It is stated on behalf of the respondents that the Chief Engineer (Const.) Delhi is not the pool holder of the aforesaid quarter and that the quarter belongs to open line and only D.R.M. Ferozpur is competent for its allotment. The respondents have stated that the project of the New Coach Factory at Kapurthala has nothing in common with the place of posting of the applicant and the facilities allowed to officers at Kapurthala Coach Factory are applicable only to those people who are posted at Kapurthala in the Coach Factory and has nothing to do with the unauthorised retention of the quarter at Ludhiana by the applicant. Besides retaining the house at Ludhiana, the applicant took possession of the quarter No. E-39 at Dhillwan, which is a non-pooled quarter. He occupied it on 1.1.88 and made a representation on 1.5.88 for repairs of this quarter, almost a year after his transfer to Dhillwan. The applicant continued to make representations to the headquarters office for retention of the house at Ludhiana over which only DRM, Ferozpur had control. The respondents have stated that the reason for doing so by the applicant is that he wanted to raise a false plea in future to the effect that the authorities did not reply to his various representations. Since the applicant had already been permitted by the Chief Engineer (Const.), Delhi, to retain the quarter for the maximum period permissible under the rules, no further extention could be given to the applicant. The General Manager, Northern Railways, was requested vide letter dated 31.1.88 to recover from the applicant market rent i.e. four times the assessed rent or 10% of the emoluments whichever was higher with effect from 13.6.87 till the quarter was vacated. The applicant was asked to state duly

supported by school certificates about the classes his children were studying, but he did not comply with this request. On his transfer to Delhi as Asstt. Engineer (Microwave), he was no longer entitled to retain quarter at Ludhiana, but since he was allowed by the Chief Engineer to retain the quarter on the condition that he would pay higher rent after two months, he could not continue in the same house thereafter ^{as per the} ~~as per the~~ allowed by the C.E.

5. Shri Inderjit Sharma, learned counsel for the respondents, emphasised the point that the officer was in occupation of a house at Ludhiana and another house at Dhilwan. The applicant himself had made an application for retention of the Ludhiana house for a period of six months, but he is still occupying the same.

6. The applicant has stated that the quarter No. L-31 at Ludhiana, which is a non-pool house, has actually been divided into three parts. L-31A is for the resident of the Maintenance Engineer, Ludhiana, and L-31B is under the charge of the C.E. (Const.) and one part is an office portion attached with 31-A and the applicant lives only in 1/3rd of the original house. According to the applicant, he has remained in the rest house at the railway station and vacated the Dhilwan (Beas) house which was ^{not} fit for occupation. He has produced photographs of ^{the} house indicating the delapidated condition of the house and which actually collapsed soon after he vacated it. According to him, he belongs to an essential category. He was not given any HRA, no project allowance and the Inspector of Works had confirmed that the house could not be maintained under the normal rent. The applicant states that the eviction from a back date is wrong ^{and} that the allotment should have been cancelled first. He has been kept in dark about such proceedings although he has paid regular rent till now. Had he known that he would have to vacate the house, he would have tried his best for transfer, but he continued to work at a hard place under orders of the Chief Engineer.

7. There is no doubt that Shri C.L. Verma has been in occupation of the house at Ludhiana for some years and whether it was

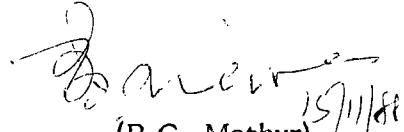


under the charge of the DRM Ferozpur or the Chief Engineer (Const.) Delhi, unless he is given notice of cancellation of the allotment, he cannot be charged market rent. In any case, if the Chief Engineer (Const.) has allowed retention of the house upto a period, no penal rent can be charged upto that date. The Asstt. Engineer would be quite justified in assuming that the orders passed by the Chief Engineer (Const.) has the full authority, but the terms allowed by the Chief Engineer for retention of the house at Ludhiana have to be accepted. Again, ^{the} house at Ludhiana was allowed by the Chief Engineer so that the schooling of the children would not be disturbed but this facility is confined to eight months only. The applicant had applied for retention of the house for a period of six months. HE cannot expect to retain the house beyond eight months, permissible under the Railway Rules unless permitted to do so by the competent authority. Whether the officers posted on construction work in a difficult place like Beas project should be given the same facilities as ~~the~~ officers posted at Kapurthala Coach Factory is a matter to be decided by the Railway Administration. It is not possible for a court to compare the condition of officers working in two projects and it is for the Railway to decide what facilities will be provided to different categories of officers, depending on various factors. As such, the terms applicable to officers working in Kapurthala Coach Factory cannot be applied in the case of the applicant. It is ordered that market rent cannot be charged from a retrospective date and the officer should have been given proper notice asking him to vacate the quarter. The respondents are directed to rexamine the case and recover rent strictly as permissible under the Rules, but the applicant will have no right to continue in the house at Ludhiana when he is not posted there. Orders for recovery of arrear rent on market rent basis are also not tenable and therefore orders dated 11.4.1988, 31.1.1988 and 28.4.88 are quashed. The respondents may recalculate the rent payable by the applicant strictly according to rules in force. They would be at liberty to charge the applicant



house rent for the period the allotment was regularised by the Chief Engineer on the conditions specified by him in the letter regularising the same.

8. In the circumstances, the application is partly allowed. There will be no orders as to cost.


(B.C. Mathur)

Vice-Chairman

15/11/81