

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 876
TxNo.

1986

Pronouncement of
DATE OF DECISION 6.11.87

Shri R.C. Srivastava Petitioner

Shri R.R.Rai Advocate for the Petitioner(s)

Versus

Union of India and others Respondents

Shri S. P. Kalra and Advocate for the Respondent(s)
Shri Ajay Goel

CORAM :

The Hon'ble Mr. Justice D. Pathak, Vice Chairman

The Hon'ble Mr. S. P. Mukerji, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No


(S. P. Mukerji)


(D. Pathak)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 876/86

Date of pronouncement
of decision : 6.11.87

Shri R.C. Srivastava Applicant

Vs.

Union of India and others Respondents

Shri R.R. Rai Counsel for Applicant

Shri S.P. Kalra and
Shri Ajay Goel Counsel for Respondents

CORAM

The Hon'ble Mr. Justice D. Pathak, Vice Chairman

The Hon'ble Mr. S. P. Mukerji, Administrative Member

(Judgment of the Bench delivered by Hon'ble
Mr. S.P. Mukerji, Administrative Member)

The applicant who is working as Deputy Chief
Signal and Telecom. Engineer (DS&TE) in the Northern
Railways has moved the Tribunal under Section 19 of
the Administrative Tribunals Act, 1985 by his applica-
tion dated 20.10.86 praying that the recovery of
the MRA from the salary of the applicant should be
stopped and the impugned recovery should be refunded
with costs.

2. The brief facts of the case are as follows.

The applicant was transferred from New Delhi to
Ghaziabad on 25.6.1985 but was allowed by the

by the General Manager to retain the railway quarters occupied by him in Delhi at the normal rent for the first two months (24.6.1985 to 23.8.1985) (Annexure 'x' to the application) and on payment of double the amount of assessed rent or double of the normal rent or 10% of the emoluments which ^{ever} is highest for the subsequent six months (24.8.1985 to 23.2.1986). He was transferred back to Delhi from 13. ² 1986 to 16.3.1986 and thereafter re-transferred to Ghaziabad on 17.3.1986. In Ghaziabad for DS&TE there is an earmarked house which was to be allotted to him and that house fell vacant on 14.7.1985. However, the house was not allotted to him and admittedly used by the respondents as hostel for the trainees. The house was finally allotted and he occupied the same on 18.8.1986. The applicant has been aggrieved by the impugned order dated 14.8.1986 passed by the Workshop Accounts Officer, Ghaziabad by which the applicant has been loaded with an ^{excess} obligation to pay ~~an~~ arrears of rent for the House Delhi ^{for} Rs.2,625.45 and for the Ghaziabad House for Rs.2,338.20 totalling Rs.4,963.45.

3. The main contention of the applicant is that so far as the Delhi House is concerned, he was allowed normal rent for first two months i.e. from June to August, 1985 and double the rent for subsequent six months, however, because of his re-transfer to Delhi between ^{February} December 1986 and March, 1986 he should ~~not~~ have been charged

normal rent for this period. As regards the Ghaziabad House, since that house was not allotted to him prior to Aug, 1986 and was utilised by the respondents for hostel purposes, during that period he should not be made liable to pay rent for the Ghaziabad House also. He has also argued that the Accounts officer, on the basis of the impugned order and against the decision of the General Manager, has started illegally and wrongly recovering the arrears from his salary. He has also stated that the Accounts Officer, who passed the impugned order, is prejudiced against him because the applicant had taken action against two officials working in the Accounts Department for alleged unauthorised occupation of railway quarters.

4. The respondents have stated that the Accounts officer could not order recovery of penal rent from the applicant's salary and the enhanced rent for six months had been ordered by the General Manager. About Ghaziabad house they have stated that since the house is non-pool accommodation attached to the office held by the applicant, the question of allotment did not arise; and that the applicant was supposed to have occupied the Govt. accommodation at Ghaziabad immediately after it was vacated by the predecessor and now formal order of allotment was necessary.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We agree with the respondents

that the Accounts Officer had no power to order the recovery of the arrears. We find that the impugned order passed by the Accounts Officer is in violation of the orders passed by the General Manager himself on 23.1.1986 (Annexure 'D') and 22.9.1986 (Annexure 'U'). In accordance with the latter order the applicant is liable to pay the following rent in so far as the Delhi house is concerned.

<u>Period</u>	<u>Rent</u>
24.6.85 to 23.8.85	Normal rent
24.8.85 to 12.2.86	Double the rent or 10% of pay emoluments whichever is higher
13.2.86 to 17.3.86	Normal rent
18.3.86 to 17.5.86	Normal rent.

6. The order at Annexure 'U' does not cover the period between 18.5.86 and 17.8.86 ^{after which date} ~~for which the~~ ^{for} applicant occupied Ghaziabad house. In accordance with the rules and the aforesaid order of the General Manager the applicant is liable to pay double ^{the} rent or 10% of the pay emoluments whichever is higher for this period also. The learned counsel for the applicant fairly conceded that the aforesaid order of the General Manager of payment of double rent or 10% of the pay emoluments whichever is higher for the aforesaid periods is justified. However, he argued that in calculating 10% of pay emoluments only that part of the allowances should be taken into account as emoluments which is in the nature of pay. We need

not go into the intricacies of the definition ^{decide} and to ~~decide~~ which part of the allowances can be considered as pay but would direct that 10% pay emoluments should be calculated on the basis of definition of emoluments as given in Rule 1916 of the Indian Railway Code for the Engineering Department, 1971. We see no reason to give ~~benefit~~ effect ^{automatically} to the impugned order of the Accounts Officer dated 14.8.86 which should be deemed to have been superseded by the order of the General Manager dated 22.9.1986.

7. So far as the Ghaziabad House is concerned, the letter of 31.8.1985 written by the Secretary, Workshop Housing Committee, Signal Workshop, Ghaziabad clearly indicates that the Ghaziabad house meant for Deputy C.S.T.E was being used as Hostel accommodation. The letter of 7.8.86 (Annexure 'T') addressed to the Workshop Accounts Officer by the General Manager ~~that~~ ^{indicates} the accommodation meant for DCSTE was to be allotted to DCSTE or released for the housing Committee, Ghaziabad. This shows that without allotment the applicant could not have occupied the Ghaziabad House. The penultimate para of the General Manager's letter dated 22.9.1986 (Annexure 'U') makes the position beyond any doubt, as follows.

"GM(G)/NDS has also decided vide his above cited letter dated 7.8.1986 in reference to query made by you that CSTE has been advised on 11.7.1986 to allot the Banglow No.L-5 to the officer at GZB or to release the same to the Housing Committee, since CSTE is the controlling officer for same."

8. In the facts and circumstances we do not find any justification for the respondents to levy rent for the Ghaziabad House on the applicant prior to

18.8.1986 when he occupied the same. In the result we allow the application with the direction that no rent should be charged from the applicant for the Ghaziabad House for the period prior to his occupation of the same on 18.8.1986. We also direct ^{that} for the periods from 24.6.1985 to 23.8.1985 and 13.2.1986 to 17.5.1986 he should be charged normal rent for the Delhi House and for the rest of the period in question till 17.8.1986 ^{or} the date of vacation of the Delhi House whichever is later the applicant should be charged double ^{the} rent or 10% of his pay emoluments whichever is higher, in accordance with the relevant rules. The excess recovery made from his salary should be refunded to the applicant after making adjustments against his dues in accordance with this order, within a period of three months from the date of communication of this order. There will be no order as to costs.

S. P. Mukerji
6.11.87
(S. P. Mukerji)
Member (A)

D. Pathak
(D. Pathak)
Vice Chairman