

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No.O.A.1463/1990.

Date of Decision: 25-10-1990.

Bharat

....

Applicant.

Shri G.D. Bhandari

....

Counsel for the Applicant.

V/s.

Union of India & Ors.

Respondents.

Shri P.S. Mahendru

....

Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgement? *Yes*.
2. Whether to be referred to the Reporter or not? *Yes*.
3. Whether their lordships wish to see the fair copy of the judgement? *No*.
4. Whether to be circulated to all Benches of the Tribunal? *No*.

J.P. Sharma
(J.P. SHARMA)
Member (J)

P.C. Jain
(P.C. JAIN)
Member (A)

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(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is an Office Khalasi under Permanent Way Inspector, Baraut (U.P.), has assailed order ~~order~~ dated 30.10.88 (Annexure A-1) by which he was informed to vacate the Quarter No.23-A, Bagpat Road, within 7 days because his duty was in Baraut office, failing which penal rent was to be recovered. He has prayed for quashing of the above impugned order and for a direction to the respondents to stop recovery of Rs.523/- per month from his monthly salary and also to order refund of the amount deducted. In the alternative, he has prayed for a direction to the respondents to issue him Luggage and Family Transfer passes for shifting to Baraut station and also for allotment of a quarter to him at Baraut.

2. The relevant facts, in brief, are as below: -

The applicant was appointed as a Gang-man under P.W.I., Bagpat Road in 1974. He was medically declared unfit as a Gangman in 1979 and was absorbed as a Khalasi. He was allotted a quarter at Bagpat Road, which he did not vacate in spite of his transfer to Baraut. By impugned

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order dated 30.10.1988, he was asked to vacate the quarter within 7 days, failing which penal rent was to be recovered. The P.W.I. started recovering Rs.113/- per month for the quarter from October, 1988 which amount was increased to Rs.523/- per month from July, 1989. The recovery of rent as above has also been challenged by the applicant in this application.

3. The applicant's case, in brief, is that no official orders have been issued by the competent authority transferring the Headquarters of the PWI staff as a whole from Bagpat Road to Baraut Station and that no transfer orders "worth the name" have been issued for the transfer of the applicant from Bagpat Road Station to Baraut Station. It is further stated that the PWI was bound to issue the Luggage and Family Transfer pass to the applicant, but it was not issued to him. It is also stated that no notice cancelling the allotment or even a show cause notice had been issued to the applicant. He claims to have acquired a prescriptive right to the allotment of the Quarter at Bagpat Road Station. The impugned orders are said to be arbitrary and also discriminatory "as all other staff working under the same PWI have been residing at various way side places and stations under his jurisdiction and it is only the applicant who has been picked up for step motherly treatment on account of personal bias of the PWI against the SC employees." The impugned orders are alleged to be violative of statutory rules, administrative instructions as also the principles of natural justice.

4. The respondents have contested the application and have stated that the Headquarters of the PWI, Bagpat Road, was shifted to Baraut along with his office staff including Office Khallasi vide order dated 5.9.1984 (Annexure R-1). Accordingly, the headquarters of the

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applicant, who was Office Khallasi, was also shifted to Baraut Station. The allegation of bias against the PWI has been refuted. The increased amount for the occupation of the quarter is said to have been charged in accordance with the rules on the subject. As regards the issue of Family and Luggage Pass to the applicant, it is stated that the applicant never applied either for retention of his quarter at Bagpat Road, nor for the issue of Family and Luggage Pass; nor did he apply for the issue of any suburban pass for travel from Bagpat Road to Baraut. The plea of discrimination has also been refuted and it has been denied that any member of staff shifted from Bagpat Road was retaining his quarter at Bagpat Road.

5. We have perused the documents on record and have also heard the learned counsel for the parties.

6. There is nothing on record to dispute the issue of order dated 5.9.84 by which the headquarters of PWI, Bagpat Road was shifted to Baraut. There is nothing also on record to show that the applicant was not a part of the office staff of PWI. The respondents have stated that he was an Office Khallasi and, as such, he was a part of the office staff. The allegation of the applicant that the PWI for personal reasons got his headquarters shifted, has been refuted in the counter-affidavit and is also otherwise not substantiated from the documents on record. In these circumstances, the contention of the applicant that he was not issued any individual transfer order is not tenable; because the headquarters of the whole office of the PWI had been shifted, individual orders ^{were} ~~are~~ not necessary. The respondents have categorically stated in the counter-affidavit that consequent upon shifting of the headquarters of the PWI, from Bagpat Road to Baraut, the PWI and other staff started functioning at Baraut with effect from

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September, 1984. It is also categorically stated in the counter-affidavit that the applicant had been performing his duties in the office of PWI at Baraut since September, 1984 and that the headquarters of the applicant has been shown at Baraut in the Muster Roll as well as the Travelling Allowance Journals of the applicant. It has been denied that he was working as Chowkidar at Bagpat Road till 1988 as alleged. The applicant, in his rejoinder affidavit, has drawn attention to Annexure A-1(a), of the O.A. The said Annexure does not indicate that he continued to perform his duties at Bagpat Road. It simply says that he would perform the duty of Chowkidar from 8 hours to 20 hours in respect of the office and store as was being done by him for the last two years. This note was given to him on 21.11.83, whereas his headquarters was shifted to Baraut in September, 1984. We have, therefore, no hesitation in holding that the headquarters of the applicant had been duly ordered to be shifted from Bagpat Road to Baraut.

7. In view of the above finding, it has to be held that the applicant was bound to vacate the quarter allotted to him at Bagpat Road on his transfer to Baraut. For this neither any notice nor any show cause notice was required to be issued as it is a standing provision in the rules having statutory force that a Government servant should vacate residential accommodation allotted to him at his place of posting on his transfer to another place within the time allowed for that purpose. Admittedly, the applicant did not vacate the quarter. He was asked vide the impugned order dated 30.10.88 to vacate the same within 7 days, failing which penal rent was to be recovered. Even then, he did not vacate it. He says that he made two representations - one on 14.2.89 (Annexure A-2) and the other in December, 1989

(Annexure A-3). The respondents have stated that no representation dated 14.2.89 was received by them. As regards the representation made in December, 1989, the respondents have stated that the applicant was called by the Divisional Superintending Engineer-II, New Delhi along with the Assistant Engineer, Shamli and PWI, Baraut on 31st May, 1990 and he was impressed upon to vacate the quarter in view of his transfer from Bagpat Road to Baraut, but he refused to do so. Though the applicant has denied the above assertion of the respondents, yet he has not done anything to substantiate the same. The respondents have also filed a copy of the Railway Board's letter dated 1.4.1989 (Annexure R-2), which is on the subject of charging of damages for unauthorised occupation of residential accommodation pursuant to the implementation of the recommendations of the Fourth Pay Commission. According to this letter, the instructions issued vide the Railway Board's letter dated 23.9.76 were withdrawn and it was directed that a damage rate of Rs.15/- per SQM of plinth area in respect of types A to D (Types I to IV) quarters was fixed. ~~Regarding~~ ^{the} Garden charges and other charges, as applicable, were to be recovered in addition. The rate of damages as above was made effective from the date of issue of those orders, but all pending cases prior to the date of issue of those orders were to be based on the pre-revised orders. It was also stated that the term "Market Rate" will no more be applicable for charging/recovery of damages. Accordingly, recovery of damages from the applicant was started and that too, as stated by the applicant himself, with effect from June / July, 1989. The vires of the orders issued by the Railway Board have not been challenged. The orders issued by the Railway Board have statutory force. Therefore, the recovery of damages in accordance with those orders cannot be defaulted. The contention of the applicant that he should have been given a show cause notice before the recovery of the damages is not tenable because recovery made in accordance with Government rules and that too

with prospective effect cannot be said to be either arbitrary or illegal.

8. As regards the alternative prayer of the applicant to the effect that the respondents be directed to issue Luggage and Family Transfer Pass to the applicant for shifting to Baraut station and for allotting him a quarter at Baraut station, we are of the view that even if the applicant had not applied for the Luggage and Family Transfer Pass within the normal time allowed, he should be issued such passes even now if he applies for the same. As regards the allotment of a quarter at Baraut station, this necessarily has to be in accordance with the rules on the subject and we are not inclined to issue any special directions in this regard.

9. Subject to the above, the application is dismissed, leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
Member(J)

P. C. Jain
(P.C. JAIN)
Member(A)