

(19)

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.2344/91

New Delhi this the 29th day of November, 1995.

Hon'ble Sh. B.K. Singh, Member(A)

Sh. B.R. Gautam,
S/o Phool Chand Gautam,
Senior Clerk under PW-I,
Northern Railway,
Raja Ka Sahas Pur,
Distt. Moradabad, UP.

Applicant

(through Sh. G.D. Bhandari, advocate)

versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Northern Railway,
Moradabad, UP.

Respondents

(through Sh. P.S. Mahendru, advocate)

ORDER
delivered by Hon'ble Sh. B.K. Singh, Member(A)

This O.A.No.2344/91 is directed against the deduction of Rs.500/- P.M. from the pay of the applicant beginning from the month of December, 1990. This is Annexure A-1 of the paperbook.

The admitted facts are these. The applicant has now retired and prior to his retirement, he was holding the post of Senior Clerk in the Northern Railway Moradabad. He was appointed on 12.04.1958 in the Loco Branch of the Mechanical Department of the Northern Railway in Moradabad Division. He was subsequently promoted as a Fireman in the cadre of running staff. On 28.10.1983, he was medically decategorised and was absorbed as a Clerk in the Engineering Department in the same division and was posted under PW-I Chandausi. He was transferred on 28.07.1988 to Rajghat Narora under

B

20

-2-

PW-I. He was not provided any railway quarter and he continued in the quarter allotted to him at Chandausi on account of the education of the children. He submitted an application on 25.08.1988 to respondents for permitting him to retain the railway accommodation at Chandausi and he followed the same by several representations but there was no response from the respondents. It is only when the respondents started deducting Rs.500/- P.M. from the pay of the applicant beginning from the month of December, 1990 and since there was no response to his request to allow him to retain the quarter at Chandausi, this application was filed on 01.10.1991 seeking the following reliefs:-

(i) direct/command/order the respondents to stop recovery of Rs.500/- from the monthly salary of the applicant, which is over and above the normal licence fee of Rs.55/- and further declare that the aforesaid decision of the respondents is illegal.

(ii) set aside and quash respondents order dated 1.8.89 (A-2) whereby the applicant has been transferred from the post of a Senior Clerk, which is a separate cadre and Seniority Unit to the post of a Material Checking Clerk which is another Cadre having a separate Seniority Unit. More so when it has also been mentioned in



21

-3-

the impugned order of transfer that he will have no right to the seniority in the new Cadre.

Since the applicant has already retired, relief No.(ii) of para-8 was not pressed during the time of arguments. The learned counsel for the applicant confined himself only to relief No.(i).

On notice the respondents filed the reply contesting the application and grant of reliefs prayed for.

Heard the learned counsel for the parties and perused the record of the case.

As stated above, relief No.(ii) regarding quashing the transfer order was not pressed. The basic question that the learned counsel for the applicant raised was that the applicant was transferred from Chandausi to Rajghat Narora and from there to another station Raja Ka Sahaspur and no accommodation was provided to him either at Rajghat Narora or at Raja Ka Sahaspur and the applicant was coming from Raja Ka Sahaspur to Chandausi. It is also admitted that no option or consent was obtained from the applicant for his transfer from the post of Senior Clerk to that of Material Checking Clerk and from the cadre post to an ex-cadre post. A perusal of the record also shows that there is no clarification whether this was a permanent transfer or temporary transfer from the cadre post to



22

-4-

ex-cadre post. If it was a permanent transfer, there should be a specific order to that effect. If the transfer was permanent then the applicant could have retained the quarter for two months and there should have been cancellation of the accommodation allotted to him. It is admitted that there was no cancellation of the allotment made in favour of the applicant. The learned counsel for the applicant drew the attention of the Tribunal to Railway Board's Circular No. E(G)85QR1-9 dated 15.1.1990. Para-2 of this circular is on the subject of Temporary Transfer and it lays down that (i) during the entire period of "temporary" transfer an employee may be allowed to retain the quarter at former place of posting on payment of normal rent/flat rate of licence fee/rent. Temporary transfer should not, however, be ordered for a period of more than 4 months unless there are pressing circumstances. (ii) temporary transfers of non-gazetted employee initially for a period in excess of 4 months or by extension of the temporary transfer for periods aggregating more than 4 months should be ordered personally by an authority not lower than the Divisional Railway Manager. In respect of gazetted employees, such temporary transfers should be ordered with the approval of the General Manager. (iii) in cases where temporary transfer is converted into permanent one, the railway employee may be allowed to retain the railway accommodation at the old duty station for further period as admissible on permanent transfer on payment of rent as prescribed therefor, from the date on which the employee is informed of the permanent transfer. This



23

period will be over and above the period already allowed to the employee on temporary transfer. (iv) the Railway Administration should review all cases of temporary transfer before the expiry of the period of 4 months.

This has not been done in the case of the present applicant as is clear from the perusal of the record. It is also not clear whether temporary transfer resorted to was made permanent. Atleast there is no averment to that effect. The applicant continued in the old quarter, and the respondents levied damage rent of Rs.500/- P.M. instead of Rs.55/- which is the normal rent. The learned counsel for the applicant argued that for charging damage rent of Rs.500/-, neither the provisions of Section 138/190 of the Indian Railway Act was followed nor the provisions of Section 7 of the P.P.E. Act, 1971 were followed. A perusal of the record clearly shows that the respondents have sent a letter vide Annexure R-1 on 25.5.90 informing the applicant that he is an unauthorised occupant of the quarter and if he did not vacate the said quarter within 15 days from the receipt of this letter, action would be initiated against him under the relevant sections of the P.P.E. Act, 1971. There is no record to show that before levying Rs.500/- as damage rent, the provisions of Section 7 of the P.P.E. Act, 1971 have been followed. The provisions of Sections 4 & 5 have to be followed before eviction order can be passed against a person declared an unauthorised occupant.



24

-6-

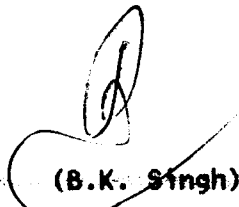
Before action is taken under P.P.E. Act, 1971, there should be cancellation of the allotment made in favour of a person. In the instant case, a perusal of the record shows that the allotment was never cancelled and, therefore, there was no possibility of initiating action under the provisions of Sections 4 & 5 or Section 7 of the P.P.E. Act, 1971. The pre-condition is cancellation followed by proceedings under Sections 4 & 5 for eviction and Section 7 for charging the damage rent. Admittedly the provisions of Section 7 have not been followed by the respondents and as such the order charging damage rent of Rs.500/- cannot be sustained. The Estate Officer is under an obligation as a quasi judicial officer to serve a notice and then afford adequate opportunity to the applicant to state his case before eviction orders are passed or damage rent is charged. It is admitted by both the parties that there has been total non-observance of the principles of natural justice in this case as the provisions laid down under Section 7 of the P.P.E. Act, 1971 have not been followed by the respondents and as such the order charging the damage rent of Rs.500/- w.e.f. December, 1990 is quashed and set aside. The applicant would be liable to pay only normal licence fee till the date of his retirement. The respondents are also directed to release his gratuity after deducting the normal licence fee, water & electricity charges with 12% simple interest from the date of retirement to the date of payment. The application succeeds and is allowed and the orders charging the damage rent are quashed and set aside. In the circumstances there will

2

25

-7-

be no order as to costs.


(B.K. Singh)
Member (A)

/vv/