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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No.389/91

Decided on: 2.9.93.

Channa

...Applicant
Versus

Union of India & Another ...Respondents

CORAM:

Hon'ble Mr. J.P.Sharma, Member(J).

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

For the applicant ...**None**.

For the respondents ...Shri H.K.Gangwani,
Counsel.

JUDGMENT (ORAL)

(Hon'ble Mr. J.P.Sharma, Member(J):

The applicant is a railway employee working under DRM, Central Railway, Jhansi. He has been working as a Pointsman since 7.6.57 and at the time of filing of the application was working as Leverman at Jhansi station. By the Memo dated 8.3.86, he was allotted quarter no.K-133 G (annexure A-4). But he could not be given possession of the same. So, by another Memo dated 19.7.86, he was allotted another quarter no.RB-I/792 E. However, this quarter was allotted to some other person, namely, Smt. Ram Rati Bai and the belongings of the applicant were thrown away in collusion with certain outsiders. He was again allotted another quarter no. RB-I/661 A by the Memo dated 2.8.86 but he could not get the vacant possession as it was under occupation of one Wali Khan. However,

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by the letter dated 11.9.86, he was allotted another quarter no.M-532 B (annexure A-7). This fact is disputed by the respondents and in the counter it is stated that the applicant in an unauthorised manner took possession of the quarter on 10.5.86. The fact remains that the applicant was not given the vacant possession of any of the quarters allotted to him at 3 occasions in succession and those quarters were in occupation of some other persons. Since the applicant was in an unauthorised occupation of the quarter, by the letter dated 21.2.90 he was directed to vacate the same. Departmental inquiry was also initiated against him and as a measure of punishment, the penalty of withholding of all the passes and PTO for the year 1990, 1991 and 1992 was imposed. Since he remained in unauthorised possession of the quarter, he was assessed to damage/penal rent @ Rs.975 per month.

Aggrieved by these orders of recovery dated 20.10.89, 21.2.90 & 6.12.90, the applicant has filed the present application praying for the grant of the relief that the impugned orders be quashed and the respondents be directed to regularise the allotment of quarter under occupation of the applicant and also reimburse the excess penal rent/damages realised from him. A notice was issued to the respondents. They contested the application and opposed the grant of the relief to the applicant.

In the reply, it is admitted by the respondents that the applicant was allotted quarter no.K-133 G by the Memo dated 10.3.86. It is also

admitted that the applicant was allotted another quarter no. RB-I 792 E by the Order dated 19.7.86. It is also admitted that this quarter was subsequently allotted to one Smt. Ram Rati Bai, Safaiwali. It is also admitted that he was allotted another quarter no. RB-I-661-A. It is disputed that the applicant was allotted the quarter in his possession, i.e., MB 532 B and he unauthorisedly occupied the same. One of us had already heard the matter earlier (Shri J.P.Sharma). We have also waited for the learned counsel for the respondents more than half an hour. Shri H.K.Gangwani, counsel for the respondents appears. We have perused the pleadings of the parties on record and the annexures annexed to these pleadings. It cannot be disputed that there is no order of clear allotment of the quarter in favour of the applicant with regard to the quarter in his occupation, i.e., MB 532 B. It can also not be controverted that a person in unauthorised occupation of an official residence has not to be judged from the same bases as a regular allottee with regard to payment of rent/licence fee. The Superintending Engineer of Estates has also framed certain rules in that regard and there is circular of the Railway Board for assessment of the damage/penal rent with regard to premises in unauthorised occupation of the railway servants. However, the facts of this case are based totally on a different set of circumstances. If the administration of the railways is working in such a manner that after allotment on 3 occasions different quarters to the applicant, and in one of the cases even after allotment and occupation by the applicant of the allotted quarter, articles of

daily use and other items were thrown away by subsequent allottee of the same premises, then the case of the applicant cannot be taken to be as one of unauthorised occupant. If a person is not allotted any official residence, he is satisfied but if once accommodation is provided, he is after getting possession of the same. The respondents railway should have proceeded against those unauthorised persons who did not vacate the quarter earlier allotted to the applicant. Even in the case of the applicant, it appears that the occupation of the quarter no. MB 532 B cannot be said to be without any caniavance from the side of the CYM, Jhansi. Secondly, the applicant has already been punished in a DAR for misconduct and penalising him for recovery of penal rent would amount to another punishment for which administration is at fault. The applicant in the application in para 5.11 has mentioned that in such similar other cases also, the quarter in occupation of unauthorised occupants have been regularised. He has mentioned the name of Shri R.R.Samadhiya, Shri Tiwari, Smt. Kusum Gupta and Smt. Prabha Srivastava of DRM Office, Jhansi. The respondents in their reply have admitted this fact. However, they have added that this was done on the representation of all the recognised unions. If the case of the applicant is not processed by the union, then he should not be put to a disadvantageous position. This amounts to discrimination. The applicant is a low-paid employee and in such a situation, where the applicant has not been given the

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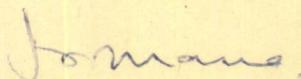
possession of the railway quarter, then realising damage/penal rent for the quarter in his occupation would not only be unjust but unfair.

In the above facts and circumstances, we allow the application with the direction to the respondents to regularise quarter no. MB 532 B in the name of the applicant or allow him to continue in the quarter on the normal licence fee till an alternative quarter is provided to him either a new one or an old which was allotted to him. The impugned order of recovery of damage rent of July 1989, Feb., 1990 and December, 1990 (annexures A-1, A-2 and A-3) are quashed. Any recovery effected from the applicant in the shape of damage/penal rent in excess of the prescribed licence fee shall be refunded to the applicant. The respondents to comply with the directions within a period of three months. Costs on parties.



(B.R. SINGH)

MEMBER (A)



(J.P. SHARMA)

MEMBER (J)

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