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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI_

O.A. No.1871 of 1993

This 7th day of June, 1994

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

H.C. Rustogi
3722/XIII Main Street,
Pahari Dhiraj,
New Delhi-110006

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Applicant

By Advocate: Shri B.S. Mainee

VERSUS

Union of India, through:

1. The Secretary,
Minsitry of Railways,
Rail Bhavan,
New Delhi.
2. The Financial Adviser &
Chief Accounts Officer (Admn.)
Western Railway,
Churchgate,
Bombay.
3. The Sr. Accounts Officer (FTA),
Western Railway,
Kishanganj,
Delhi.

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Respondents

By Advocate: Shri Romesh Gautam

O R D E R

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

This O.A. No.1871/93 has been filed against the impugned order No. FTA/Genl/Rly.Qtr./Retention Vol.III dated 3.8.1993 passed by the Sr. Accounts Officer (FTA), Western Railway, Kishanganj, Delhi. This is annexure A-1 of the paper-book.

2. The uncontroverted facts in this OA are that the respondentds have recovered an amount of Rs.33,255/- from the DCRG of the applicant towards retention of the quarter beyond the authorised period.



Contd.....2/-

The circular of Railway Board No. E-78/RC-10/8/RB2 dated 2.3.1979 stipulates that Investigating Inspectors posted in the Special Section under Executive Director (Vig.) will be allowed to retain the Railway quarter for a period of one year from the date of their release from one Zonal Railway to the other. This is Annexure A-2 of the paper-book. It is admitted by both the parties that the Executive Director (Vig.), Railway Board sent a d.o. letter to the respondent No.2 on 26.11.90 requesting that the applicant be allowed to retain the Railway quarter on normal rent till his superannuation on 30.4.1992 (annexure A-3). The applicant also submitted a representation to the same effect to the respondent No.1 on 18.9.91. In terms of the Railway Board's circular the applicant, who was released on 10.11.89, was allowed to retain the quarter till 9.11.90 on normal rent. The ^{period} ~~entire~~ beyond 10.11.90 to 30.4.92 was considered as unauthorised by the Railway authorities and penal rent was recovered from the applicant to the tune of Rs.33,255.00. Aggrieved by this order of recovery, the applicant has filed this OA in this Tribunal on 7.9.1993 and obtained an interim stay against the recovery on 9.9.93. The said interim order has continued till date.

The principal relief sought by the applicant is that the impugned order be quashed and the respondents be directed to refund the amount withheld from the retirement benefits of the applicant along with interest on it. He has further prayed that the respondents be directed to release all the post-retirement passes withheld in respect of the applicant.

4. A notice was issued to the respondents who contested this applicant and opposed the grant of reliefs prayed for.

5. Heard the learned counsels, Shri B.S. Mainee for the applicant and Shri Romesh Gautam for the respondents and also perused the record of the case.

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6. The learned counsel for the applicant said that the recommendation of the Executive Director (Vig.), Railway Board was a kind of assurance and on the basis of this assurance the applicant remained in the quarter. He, however, did not deny that as per the Railway rules the applicant was entitled to retain the quarter only for one year from the date of his release and not beyond it. It has also been admitted during the course of arguments that the ED (Vig.) is not the competent authority to give any assurance on behalf of the Railway Board. The letter can utmost be treated as a request and it has no force since he is not one of the Members of the Railway Board. Shri Mainee further argued that there is no specific order from the respondents to vacate the quarter and that before such an order is issued no employee can be treated to be in unauthorised occupation of the quarter. It is also mentioned that no replies were sent by the respondents to the representations of the applicant in 1991. No orders were issued till the date of retirement regarding vacation of the quarter. He quoted several rulings to show that the principles of natural justice were not followed in this case. It was necessary for the respondents to issue a show-cause notice to the applicant before declaring him to be in unauthorised occupation and proposing to charge penal rent if he did not vacate the quarter by a specific date. In this connection he quoted the case of B. Sankaraiah vs. Union of India, 1993 (2) 114, CSJ CAT, in OA No.365/92 decided by Cuttack Bench on 23.12.92. The ratio of the judgment is that before an order is passed for recovery of penal rent and damages for unauthorised occupation of government accommodation, notice has to be given to the occupant to show cause why penal rent/damages should not be charged from him. Where it is not done, the order of recovery is liable to be

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quashed. It was held that where action is being proposed to be ~~taken against~~ a government servant which may affect his service prospects, a notice of the proposed action must be given to the concerned government servant failing which the principles of natural justice will be violated. In this case penal/damage rent was recovered when the applicant, who was working in South-Eastern Railways and who was posted at Raipur in 1981 and was transferred to Bhilai, did not vacate the quarter at Raipur which was allotted to him upto the prescribed period. In case of transfer under the Railway Rules an employee is allowed to retain the quarter for one month only for shifting of his family and household effects etc. The operative portion of the judgment in this case reads as follows:

"The total amount payable by the applicant on this account be calculated and since Mr. Purohit has given his consent on behalf of the applicant to recover the money from the DCRG amount the total amount due from the applicant on account of normal rent, electric charges, water charges etc. be recovered from the DCRG amount and this being a consent order the principles laid down by the Hon'ble Judges of the Full Bench, would have no application to this part of the order. It is directed that the judgment be implemented within 60 days from the date of receipt of a copy of this judgment."

Thus, it would be evident that the ratio established in the above-quoted case is not applicable in the present case. Though, the learned counsel for the applicant asserted that this case is fully covered by the above-mentioned judgment, it is not so. The facts of the case are different and the case is on a different footing because in this case the recovery from DCRG was



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permitted with the consent of the parties and the Full Bench ruling in this regard was made inapplicable in this case. Thus the contention of the learned counsel for the applicant that the present case is fully covered by the aforesaid case is not borne out by facts and circumstances of the case and also by the operative portion of the judgment quoted above.

7. The learned counsel for the respondents produced a letter before the Bench with a copy to the applicant's counsel addressed by the applicant to the competent authority saying that in the calculation made by the respondents, there was a mistake of only Rs.287/- having been charged in excess after deduction of penal/damage rent and therefore the respondents owe the said amount to him. This letter of the applicant will work as an estoppel in his case. This by implication means that he has accepted the recovery made by the respondents from his DCRG amount as correct minus Rs.287/-. It the statement it has been stated that this amount of Rs.287/- represents the damage rent for four days. The respondents quoted the Railway Board's circular to show that where a quarter is retained for more than 10 days the rent for the entire month would be due from the occupant. Thus, if the quarter was in occupation of the applicant for 27 days and he vacated the same on 28th day of that particular month, the rent would be recovered for the whole month and therefore nothing was due to the applicant.

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8. A calculation chart has also been filed by the learned counsel for the respondent along with the rules as to how recovery would take place in case of unauthorised occupation. The rules applicable to Railway servants stipulate that in case of retirement, a railway servant will be permitted to retain the railway quarter for 4 months on payment of normal rent and for the next four months on payment of double the normal rent or 10% of the emoluments whichever is the highest. In case of other employees of the Central Government the rules are that an employee after retirement can retain government quarter for 4 months on normal rent and for another four months on double the normal rent on grounds of illness of self or of his wife or education of children who are in school/college. The rule of recovery at the rate of 10% of emoluments or double the normal rent, whichever is the highest, is not there in case of Central Government employees whereas it is there in case of Railway employees. In case of unauthorised occupation of quarter, it has been specifically laid down that DCRG will not be released and that damage rent at the rate of Rs.15/- per sq. metre of plinth area in respect of Type-I to IV quarters and Rs.16/- per sq. metre of plinth area in respect of Type-V and above, will be charged. In addition, garden charges and other charges as are applicable will also be recovered. Further, it has been stipulated that for every month of unauthorised retention of Railway quarter, i.e. part of month exceeding 10 days in calendar months will be taken as a full month



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and one set of post-retirement passes will be disallowed. Thus the rules for retention of railway quarter in case of railway servants are much more stringent than those rules framed by the Directorate of Estates, Ministry of Urban Development.

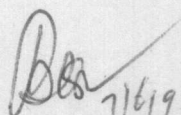
9. The applicant had a right to retain the railway quarter for a period of 1 year only as envisaged in the circular quoted above. Beyond that period he will be deemed to be in unauthorised occupation of the quarter and the aforesaid rules of the Railway Board would be applicable and he would be liable to pay penal/damage rent as laid down in the relevant rules. The rules also envisage that recovery of penal/damage rent will be made from DCRG amount. Where assurance is pitted against the mandatory rules, mandatory rules for retention/declaration of unauthorised occupation will prevail. The rules of Railway Board are crystal clear and in the circumstances they will prevail. The statute itself excludes the principles of natural justice. This comes into force only when there is an eviction by force. This is not so in this case. The rules thus envisage how the matter is to be dealt with.

10. In the light of the Railway Board's rules and also in the light of the declaration of the applicant himself that he is liable to pay the amount minus Rs.287/- it will work as an estoppel against him. Refund of Rs.287/- is also not admissible as per the rules as indicated above since he stayed in the quarter beyond a period of 10 days of a particular month and therefore nothing is due to him.



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11. In the above facts and circumstances, the application is dismissed as devoid of any merit or substance, leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)

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