

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 27th day of May, 1998.

O.A. No. 04 of 1998

HON. MR. S.K. AGARWAL, MEMBER (J)

Prem Chandrason of late Sri Gulab Singh working
as Dy. C.Y.M. N. Railway, Kanpur.

Applicant.

By Advocate Shri Anand Kumar

versus

1. Union of India through General Manager, N. Railway Baroda House, New Delhi.
2. Divisional Railway Manager, N. Railway Allahabad.
3. Senior Divisional Safety Officer N. Railway Allahabad.
4. Station Supdt. N. Railway Tundla.

Respondents.

By Advocate Shri T.N. Kaul.

O R D E R (RESERVED)

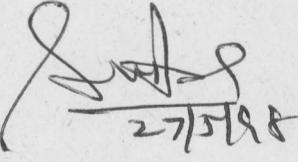
Hon. Mr. S.K. Agarwal, Member (J)

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed to quash the letter dated 17.11.95 issued by the D.R.M., Allahabad for recovery of damage rent and to give direction to respondents to refund the amount which has already been recovered from the salary of the applicant.

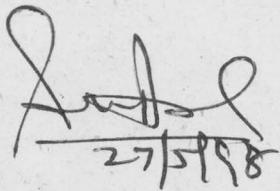
2. In brief the facts, as stated by the applicant are that the applicant was appointed as Trains Clerk under Chief Controller, Tundla in the year 1978 and he was allotted a railway quarter No. 236-B Type II Dhobi Ghat Railway Colony, Tundla. Thereafter, the applicant was selected as Assistant Yard Master and was further promoted as Chief Yard Master and posted at Tundla. It is submitted

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that the applicant was transferred and spared on 31.5.93 and posted at G.M.C. Kanpur on administrative grounds. The applicant is a S.C. candidate and the Railway Board in case of S.C./S.T. have issued letter/circular dated 24.12.85 addressed to General Managers of Indian Railways and others regarding posting/promotion/transfer which is mandatory as well as statutory in which it has been stated that transfer of S.C./S.T. employees should be confined to their native districts or adjoining districts or the place where administration can provide quarters. The applicant was transferred from Tundla to Kanpur but at Kanpur, he was not allotted any railway quarter inspite of the instructions and the applicant was compelled to retain the quarter No. 236-B situated at Tundla as his children were getting education at Tundla and his old father was suffering from cancer whose treatment was going on at Tundla. The applicant submitted representation on 24.8.93 to D.R.M. N. Railway, Allahabad with the submission that his son has been suffering from bone and nose diseases and his treatment was going on by Railway doctor at Tundla and his old father was suffering from Cancer. Again the applicant submitted representation on 28.11.93 but no permission was granted to the applicant to retain the quarter, therefore, the applicant made again representation dated 7.1.94 alongwith certificate issued by Dr. D.N. Gupta and Dr. B. Ahuja. Thereafter, the respondent No. 3, Senior Divisional Safety Officer, N. Railway Allahabad informed the applicant vide letter dated 4.3.94 that the competent authority has rejected the representation of the applicant for retention of the quarter. It is submitted that the applicant was entitled to Type III quarter at Kanpur, he was not allotted on the ground that after vacation, the applicant is entitled for the quarter. The applicant also took personal interview with Shri Dinesh Tripathi, Senior D.S.O. Allahabad but his

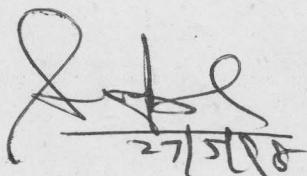

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request was rejected and recovery of damage/penalty rent at the rate of Rs 813 and Rs 430 by way of electric charges was started from the salary of the applicant from the month of May, 95 without any notice or proceedings initiated under Public Premises (Eviction of unauthorised occupants) Act, 1971 (for short the Act, 1971). It is also submitted that the applicant is not paid any H.R.A. Thus, the applicant is suffering a loss of Rs 1800/- per month which is against the principles of natural justice as well as violation of Article 311(2) of the Constitution of India. The applicant submitted representation against the recovery of damage rent from the salary and requested to stop the ~~deduction~~ ^{sum} but with no effect. It is therefore, submitted that the recovery of damage rent cannot be made from the salary of the applicant under the Act, 1971 and if it is done, the same is arbitrary, and against the rules. The respondents have no power to make recovery of damage rent as its proper course is to initiate proceedings under Public Premises (Eviction of unauthorised occupants) Act, 1971 and not otherwise. It is also submitted that without cancelling the allotment of the quarter allotted at the old station the recovery of damage rent for non vacation of railway quarter on transfer is illegal and void, hence any recovery made therein should be refunded. It is therefore, requested that this Tribunal is to quash letter dated 17.11.95 (Annexure A-1) issued by D.R.M., N. Railway, Allahabad for recovery of damage rent and direction be given to respondents to refund the amount which has already been recovered from the salary of the applicant.


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3. A counter has been filed by the respondents. It is submitted that the applicant was transferred from Tundla to Kanpur and therefore, first he should have vacated the railway quarter at Tundla and then he should have applied for railway quarter at G.M.C. Railway quarter cannot be allotted to him without vacating the railway quarter at Tundla. It is also submitted that the permission to retain the railway quarter was not given to the applicant because the application dated 7.1.94 for retention was based on medical certificate of private doctor. Moreover, the medical certificate was issued in favour of his father who was not a depend-ant member of the employee since the applicant was in unauthorised occupation of railway quarter in Tundla with effect from 31.5.93, therefore, the question of allotment of railway quarter at G.M.C. does not arise. It is also submitted that without initiating any proceedings under the Act, 1971 damage rent can be recovered and the order for recovery of damage rent was proper and correct. It is also submitted that before deducting the damage rent, the applicant was advised to vacate the railway quarter within 15 days failing which action has been initiated. The case of allotment of railway quarter cannot be considered for the applicant at G.M.C. as he was already occupying the railway quarter at Tundla. It is also submitted that cancellation of allotment before deducting damage rent and taking disciplinary action is not necessary. Therefore, on the basis of counter filed by the respondents, it is submitted that the applicant has no case and thus the original application be dismissed with costs.

4. I have heard the learned lawyer for the applicant and the learned lawyer for the respondents and perused the record.



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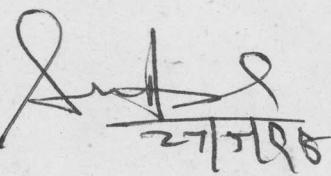
5. The learned lawyer for the applicant has submitted:

- i) that it is necessary to initiate proceedings under Public Premises (Eviction of unauthorised occupants) Act, 1971 before charging the damage rent.
- ii) that the allotment of quarter should have been cancelled before charging penal/damage rent.
- iii) the damage rent/penalty rent is exorbitant and, therefore, before assessing penal/damage rent, no opportunity of hearing was provided to the applicant.

6. In support of his contentions, learned counsel for the applicant has referred:

- i) 1994(I) A.T.J. 59 Avdhesh Kumar vs. Union of India
- ii) (1994) 27, A.T.C. , 704
- iii) (1994) 27, A.T.C., 366

7. The learned lawyer for the respondents has objected to all the arguments and submitted that it is not necessary to initiate the proceedings under Public Premises (Eviction of unauthorised occupants) Act, 1971 before passing an order or charging penal/damage rent. He has further submitted that it is also not necessary that a formal order of cancelling the allotment is to be issued. As soon as the applicant becomes in unauthorised occupation of the quarter, the allotment made to him is deemed to have been cancelled and in support of his contentions, he has referred to a Full Bench Allahabad C.A.T Judgment in the case of Ram Poojan vs. Union of India and others delivered in C.A. No. 936/93 decided on 22.2.96.


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8. I have given thoughtful consideration to the rival contentions of both the parties and perused the whole record.

9. Railway Board's letter dated 15.1.90 lays down a

consolidated and comprehensive instructions on the subject of retention of railway accommodation by railway employees on the subject in supersession of all previous instructions. In this letter in respect of permanent transfers the following provisions have been made:

"(i) A railway employee on transfer from one station to another which necessitates change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of two months on payment of normal rent or single flat rate of licence fee/rent on request by the employees on educational or sickness account the period of retention of railway accommodation may be extended for a further period of six months on payment of special licence fee, i.e. double the flat rate of licence fee/rent. Further extension beyond the aforesaid period may be granted on educational ground only to cover the current academic session on payment of special licence fee.

(ii) Where the request made for retention of railway quarter is on grounds of sickness of self or a dependent member of the family of the railway employee, he will be required to produce the requisite Medical certificate from the authorised Railway Medical Officer for the purpose.

(iii) In the event of transfer during the mid school/colleges academic session, the permission to be granted by Competent Authority for retention of railway accommodation in terms of Item (i) above will be subject to his production of the necessary certificates from the concerned school/college authority."

On the perusal of these instructions it becomes abundantly clear that retention of quarter by the employee after expiry of the permissible period will be treated as ~~unauthorised~~ unauthorised and he would be required to pay damage rent in respect of railway quarter as per instructions issued from time to time.



10. In the case of Ram Poojan (supra) Full Bench of the Allahabad Central Administrative Tribunal held

"(a) In respect of a railway employee in occupation of a railway accommodation, in our considered opinion,

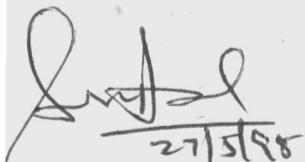
no specific order cancelling the allotment of accommodation on expiry of the permissible/permited period of retention of the quarters on transfer, retirement or otherwise, is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied.

(b) Our answer is that retention of accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorised occupation and there would be ~~maximum~~ an automatic cancellation of an allotment and penal rent/damage can be levied according to the rates prescribed from time to time in the Railway Board's circular.

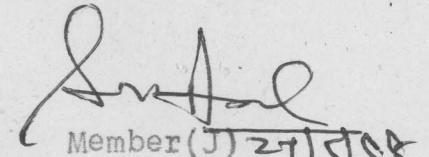
39. We further hold that it would be open to the Railway Authorities to recover penal/damage rent by deducting the same from the salary of the Railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of unauthorised Occupants) Act, 1971.

The learned counsel for the applicant has stressed on the point that before assessing penal rent, no opportunity of hearing was provided to the applicant and penal rent is excessive/exorbitant. In the instant case, the notice for eviction was given to the applicant before passing the order for recovery of damage rent. It is not the case of the applicant that the damage rent has been fixed in contravention of the executive instructions from time to time whereas it is stated by the learned lawyer for the respondents that the damage rent has been assessed on the basis of latest executive instructions issued by the Railway Board in this connection and the same is recovered from the applicant. Therefore, I do not incline to accept the contention of the learned lawyer for the applicant and there is no violation of principles of natural justice or the damage rent assessed is excessive or exorbitant.

11. In the instant case, the applicant did not vacate the quarter even after permissible limits although no permission was accorded to him even for the period of 8 months as provided under the rules, therefore, recovery of damage rent against the salary of the applicant is neither arbitrary nor against any rule or executive instructions and the said order of recovery cannot be quashed merely on the ground that allotment of quarter before making any order of recovery was not cancelled or any proceedings under Public Premises (Eviction of unauthorised Occupants) Act, 1971 was not initiated before passing the order of recovery of damage/penal rent and there has not been any violation of principles of natural justice while assessing the damage rent.


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12. The applicant has therefore, no case as this Original Application is devoid of any merit. Therefore, the applicant is not entitled to any reliefs sought for. I therefore, reject this Original Application with no order as to costs.


Member (J) 27/5/98

Allahabad dated:
Shakeel/-