

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 3rd DAY OF June 1998

Original Application No. 817 of 1996

HON.MR.S.DAYAL, MEMBER(A)

Inder Singh aged about 52 years
S/o Sri Ram, R/o C/o Shri Shyam
Lal, House No. 222 A, railway Colony, Saharanpur.

... . . Applicant

(By Adv: Shri Rakesh Verma)

Versus

1. Union of India through the
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Senior Divisional Mechanical
Engineer, Northern Railway
Ambala Division, Ambala
3. Carries & Wagon Supdt.
Northern Railway, Khan Alampura
Yard.

... . . Respondents

(By Adv: Shri A.V. Srivastava)

O R D E R

BY HON.MR.S.DAYAL, MEMBER(A)

This is an application filed u/s 19 of the
Administrative Tribunals Act 1985.

2. The applicant has come to the Tribunal for setting
aside of notice dated 28.6.96 by which respondent no.3 is
directed the petitioner to vacate the quarter no. 528-G Type
I Railway colony, Saharanpur within three days and for
recovery of penal rent.

(ii) A direction to the respondents not to make any recovery
of penal rent for the quarter in question and refund the
amount which has already been recovered.

(iii) A direction to the respondents to pay the cost of
the application to the applicant.

3. The facts as narrated by the applicant are that the respondents have started recovery of Rs.1709/- per month for the quarter allotted to him from the salary of the applicant. The applicant was working as Highly skilled fitter Gr.I in Khan Alampura Yard and he is in receipt of basic pay Rs.1470/- per month in the scale of Rs.1320-2040/-. The applicant was allotted quarter no. 528-G Type I at Railway colony Sahranpur in the year 1973 when he was working as Khalasi in khan Alampura Yard. The applicant's son Sri Yashpal Singh who was working as a fitter under respondent no.3 applied for permission to share the quarter no. 528-G railway colony, Sahranpur with the applicant. This permission was accorded to the applicant's son by the respondent no.3 on 17.2.95. The applicant had made an application for allotement of Type II quarter and in pursuance of the application he was allotted type II quarter by letter dated 21.1.96 at railway colony Sahranpur and the quarter no. was 489 A. By this letter the applicant was directed to occupy the allotted quarter within seven days with a further direction to vacate the Type I quarter no. 528-G immediately. This was followed by another letter dated 3.2.96. The applicant took over the possession of newly allotted quarter No. 489-A on 5.2.96. He vacated the quarter no. 528-G type I railway colony Sahranpur which was allotted to him on 8.2.96. His son Sri Yashpal singh was working as a Fitter had made an application to Asstt. Engineer through Carries & Wagon Supdt. Khan Alampura Yard praying there in that the quarter No. 528-G Type I, Railway colony Saharanpur may be regularised in his name. The quarter was allotted to his son Sri Yash Pal Singh by order dated 12.2.96. Sri Yashpal Singh took over the possession of the aforesaid quarter no. 528-G Type I, railway colony, Sahranpur on 13.2.96. The respondent no.3 after a passage of more than four months of time issued notice dated 28.6.96 directing the applicant to vacate and hand over the railway quarter no.528-

G Type I and for recovery of penal rent. It is stated that this order has been issued on the basis of either misconceived facts or wrong information. The applicant replied to this notice on 3.7.96 mentioning that he had already vacated and handed over the aforesaid possession of the quarter and the rent of the quarter should be charged from the occupier of the quarter Sri Yashpal Singh. It is stated that the applicant is subjected to recovery of Rs.1709/- per month w.e.f. July 1996.

4. The respondents in their reply have challenged that the application is not within the period of limitation and should be rejected. They have also stated that this application has been preferred against notice to vacate railway accommodation and hence is not maintainable. It is stated that the final order was passed by the respondent no.2 on 14.7.96 which has not been challenged in this case. It is denied that any recovery of penal rent have been effected from the salary of the applicant w.e.f. July 96. It is mentioned by the respondents that the applicant's son Sri Yashpal Singh applied for railway accommodation but one type I quarter was available. The son of the applicant tendered his refusal for allotment of type I quarter which is evident from notice dated 27.9.95. It is mentioned that the applicant occupied type II quarter but did not vacate the type I and occupied two quarter simultaneously ^{which} ~~if~~ he was not authorised to do under the rules. It is stated that the applicant's son had a right to stay in the quarter as long as the quarter was allotted to the applicant and did not have any right once the retention of the quarter became unauthorised on the part of the applicant. The applicant had submitted a vacation recoprt of type I quarter on 8.2.96 and he was authorised to take possession but on inspection it was found that the family ~~for~~ ^{of} the applicant still resided in it. It is stated that the quarter was in the pool of respondent no.3 who alone

was competent to grant any further permission for allotment, regularisation etc. of the said quarter as he was the pool holder. The applicant's son made an application to Asstt. Engineer Northern Railway Sahranpur for regularisation of type I quarter. It is stated that this application should have been addressed to respondent no.3 and not to the Asstt. Engineer. It is stated that the Asstt. Engineer on his own level allotted the said type I quarter in favour of the son of the applicant Sri Yashpal Singh on out of turn basis vide order dated 12.2.96. When it was found that the allotment has been made by incompetent authority without following the due procedure in this regard, the earlier order dated 12.2.96 was cancelled vide order dated 20.2.96. It is stated that the son of the applicant did not thereafter vacate the said type I quarter. It is claimed that the facts make clear that type I quarter was never allotted in the name of the son of the applicant by any competent authority. It is stated that ^{owing to} ~~despite~~ the cancellation of illegal allotment order dated 12.2.96 by the impugned notice dated 28.6.96 issued by the respondent no.3, the applicant was directed to vacate the quarter. It is stated that the matter was placed before respondent no.2 who ordered that the applicant should be asked to pay the penal rent Rs.1709/- per month so long as he was in occupation of type I quarter. It is stated that the son of the applicant was allotted type I quarter no. 62-D at SRE by order dated 10.7.96.

5. The arguments of Sri Rakesh Verma for the applicant and Sri A.V. Srivastava for the respondents were heard. The pleadings on record have been considered.

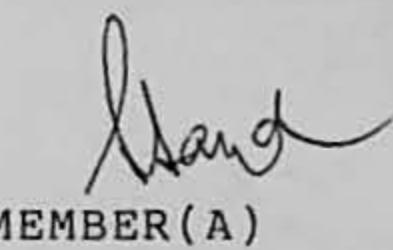
6. It is clear from the facts narrated by the respondents themselves in their counter reply that the type I quarter no.528-G at railway colony Sahranpur remained under the occupation of the applicant's son from 12.2.96 till cancellation of the allotment on 20.2.96. It is also clear that the occupation ~~of~~ this quarter on the part of the

applicant's son was on the authority of an allotement letter issued by the Asstt. Engineer Northern railway Sahranpur. The case of the respondents that the allotement should have been made by pool holder who is respondent no.3 in this case and not the Garrage and wagon supdt. Khan Alampura Yard only would not make the occupation of the quarter on the part of the applicant's son unauthorised because it was an order passed by an official who was high enough in the hierarchy and the applicant's son would not have any reason to suspect that order was passed without jurisdiction. Under the circumstances the notice issued by the respondents on 28.6.96 to Sri Inder Singh who is the applicant in this case was misconceived and cannot be sustained under the law. In the light of the facts of this case it cannot be said that order dated 14.7.96 which imposes penal rent on the applicant for retention of quarter no. 528-G type I at the rate of Rs.1709/- per month ~~cannot~~ be sustained. It is claimed by the respondents that since this order is not challenged, therefore, the present OA is non maintainable. However, the present OA was filed on 31.7.96 and this order dated 14.7.96 appears to be an ~~internal~~ communication to a subordinate of the authority passing this order and there is nothing on record which may show as to when this order was communicated to the applicant. The applicant has come to us stating that the recovery was made without passing any order and without showing any reason for making recovery. Therefore there is reason to presume that this order was not known to the applicant when the application was filed. In any case the order imposing the penal rent is consequential to the notice dated 28.6.96 which is the impugned order in this case and has also to be set aside. Any recovery if any made pursuance of such an order ^{deserves} to be refunded to the applicant.

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6. The orders dated 28.6.96 and 14.7.96 are, therefore, set aside. Recovery if any made from the applicant in this connection shall be refunded to him within three months from the date of communication of this order.

7. There shall be no order as to costs.



MEMBER(A)

Dated: 3-6-1998

Uv/