

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 147 of 1997

Allahabad this the 02nd day of February, 2000

Hon'ble Mr.S.K.I. Naqvi, Member (J)

D.P. Srivastava, C/o Sri Shiv Kumar Lal Srivastava,
 C/o C.K. 60/25 A, Karn Ghanta, Varanasi.

Applicant

By Advocate Shri S.K. Om

Versus

1. Union of India through General Manager,
N.E. Railway, Gorakhpur.
2. Divisional Railway Manager(Commercial),
North Eastern Railway, Sonpur.
3. Assistant Personnel Officer, North~~er~~East-
ern Railway, Barauni at Sonpur.

Respondents

By Advocate Shri Prashant Mathur.

O R D E R (Oral)

By Hon'ble Mr.S.K.I. Naqvi, Member (J)

Shri D.P. Srivastava while working
 as Travelling Ticket Examiner in N.E. Railway, he^{fr}
 was transferred from Barauni to Sonpur in the month
 of January, 1990. At Sonpur, he did not get any
 official accommodation and, therefore, he requested
 for permission to retain the official accommodation
 allotted to him at Barauni and as per applicant's Case^{fr}

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S. K. Naqvi

the permission~~@@~~ was granted. Subsequently, the applicant was transferred back to Barauni from Sonpur on 01.4.1992 and continued to occupy the quarter in his possession at Barauni which is 317-H, Type II without seeking fresh allotment order but subsequently he moved the authorities to re-allot that very quarter to him and the same was allotted. The applicant has further mentioned that the respondents have deducted the damage rent from his salary for the period from 01.10.1990 to 31.3.1992 to which the applicant claims ^{he is} not liable to pay on the ground that vide order dated 17.6.95, the Divisional Railway Manager(Commercial) regularised his occupation from 01.4.1992 to 14.6.1993 and ordered for deduction of damage rent from 18 months only from 01.10.1990 to 31.3.1992 amounting to a sum of Rs.18,360/- and for this amount, the applicant has referred the order dated 26.10.1995 from the same authority i.e. D.R.M.(Commercial) under which it has been communicated that the competent authority has passed the order to charge double of the normal rent for the period from 01.10.1990 to 31.3.1992. In this order, there is also direction for payment of excess amount to the applicant which has been charged as damage rent ^{which} ~~and~~ should have been the penal rent only ^{double} i.e. /the normal rent.

2. From the side of the respondents, there is no dispute in respect of narrated facts but it has been pleaded that the referred order dated 26.10.1995, copy of which is annexure-5 to

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the O.A., has not been passed by the competent authority and, therefore, it cannot be given effect.

3. Considered the arguments placed from either side and perused the record.

4. In this matter, there is only a dispute in respect of competence of the authority who passed the order dated 26.10.1995, which is annexure-5 to the O.A. This order has been referred para-18 of the application but this para has not been specifically replied in the counter-reply. An opportunity was given to the respondents to come up with some affidavit to explain the position in respect of this controversy which arises due to this annexure-5 but the same has not been availed and in the absence of specific denial from the side of the respondents and failure to explain the same through affidavit for which sufficient opportunity was given, there is no reason to hold that this order dated 26.10.1995, copy of which is annexure-5, has not been passed by the authority who is not competent to pass such order. Moreover, it is also to be taken in account that this order is coming from Divisional Railway Manager(Comm.) Sonpur, who is not expected to be ignorant of his competence to pass the order.

5. With the above observation, I find, *and order accordingly*, that the applicant is entitled to refund of the amount paid in excess for the period from 01.10.90 to 31.3.1992 for which damage rent has been charged

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and he was liable to be ^{pay} paid only penal rent.

6. I do not find it a fit matter to provide for any interest, as claimed. No order as to costs.

S. A. Wagner
Member (J)

/M.M./