

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABA D BENCH

ALLAHABAD

Allahabad this the 15th day of May 1998.

Hon'ble Mr. S. Dayal, Administrative Member

Original Application no. 76 of 1997.

Avnish Kumar Srivastava, S/o Shri J.N. Srivastava
R/o 270-B, Officers Railway Colony, Lahartara, Varanasi,
Assistant Audit Officer, N.E.R. Varanasi.

.... Applicant

C/A Shri K.G. Srivastava

Versus

1. The Director of Audit, N.E.R. Gorakhpur.
2. General Manager, N.E.R. Gorakhpur.
3. Union of India through the Secretary in the Ministry of Railways, New Delhi.

.... Respondents

C/R Shri P. Mathur

O R D E R

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant has filed this application praying that order dated 24.11.95 and 14.04.96 be set aside and that the damage rent recovered from the applicant may be

// 2 //

refunded to him. Order dated 24.11.95 is by way of intimation to the applicant that damage rent of the Railway quarter no. 37 B for the period from 16.07.95 to 31.10.95 amounts to Rs. 4056.19 only. The applicant was required to deposit this amount in the office of Senior Audit Officer (Administration) failing which the amount was to be recovered from the pay of the applicant from December 1995 to February 1996 by order dated 16.04.96. The applicant was informed that the damage rent of Rs. 2163.28 will be deducted from his salary with effect from April 1996 and that the difference of arrears from 16.07.95 based on the rate of damage rent at Rs. 28 per Sq. metre should be deducted in instalments from his salary.

3. The applicant has mentioned in his application that he was posted as Assistant Audit Officer at Bareilly in 1994 and he immediately joined his duties. He had requested for retention of residential accommodation at Bareilly and the respondents by their letter dated 30.06.95 granted the permission for retention of Government Quarter. He claims that he was allotted Railway Quarter in Varanasi on 03.06.96 and occupied it on 13.06.96. He says that on receipt of letter dated 16.04.96 from Senior Audit Officer intimating him that he should be liable for damage rent @ Rs. 2163.28 p.m. only and this order was passed on the basis of Railway letter no. F(X)/T/93/11/2 dated 21.12.95. The applicant has made representation to the Director of Audit N.E. Rly., Gorakhpur on 01.08.96 which was rejected by the letter on 03.08.96. He preferred appeal of the General Manager N.E. Rly., Gorakhpur on 04.10.96 but his appeal was not forwarded by the Superior Authorities to the

// 3 //

General Manager. He also claimed that only estate officer could have imposed damage rent. He also claimed that he was not given any show cause notice before the rent was initiated.

4. The argument of Shri K.G. Srivastava learned counsel for the applicant and Shri P. Mathur learned counsel for the respondents were heard. Pleadings on record have been taken into consideration.

5. Learned counsel for the applicant has challenged the jurisdiction of Senior Audit Officer in passing order dated 24.11.95 & 16.04.96. He has argued that the applicant did not fall within the perview of instructions contained regarding retention of railway accomodation by the Railway Audit Staff on accurance of their transfer. The specific claims was that if the officer has been transferred from the Railway concerned only then he will come within perview of the instruction but since he was transferred from one division to another, he does not come within the perview of such instructions. Besides the instructions reagrding retention of quarter after transfer are applicable only to Railway Staff and not to Railway Audit Staff. This representation of the applicant was turned down by Audit Officer (Administration) who mentioned that in board's letter dated 15.01.90 provision has been made for applying rules for retention of quarter on transfer to the Railway Audit officials also. The applicant although belonging to Railway Audit department was in possession of Officer's accomodation sanctioned to him by Railway Authorities and, therefore, the rule ragarding retention of accomodation as applicable

to Railway Officers would also be applicable to the applicant although he belonged to Railway Audit. The rules which have been annexed to the counter affidavit by the respondents clearly stipulate that the accommodation can be retained for a period of two months on payment of normal rent and for another period of six months on payment of double the normal rent on the ground of education or health. The applicant has already availed the benefit of these provisions. He was asked to pay damage rent after a period of maximum retention period after education/health ground was over. Hence this argument of the applicant has no validity.

6. Learned counsel for the applicant also argued that show cause notice is must because the rate of damage rent can not be presumed to be in the knowledge of all the Railway Officers. Besides the allegation that the railway accommodation was under unauthorised occupation can also be disputed by the railway employees. In addition the measurement of government accommodation may also be subject to dispute. Hence, show cause notice is a must which gives the railway officials an opportunity to explain any of these issues under the rule of natural justice. In this connection he drew attention to M/s Motilal Padampat Sugar Mills Co. Vs. State of U.P. AIR 1979 SC 621 and DFO South Kheri & Ors Vs. Ram Sanehi Singh, AIR 1973 SC 205. The first of the case has been cited in order to stress that each employee need not pay damage rent. Such contention is clearly not sustainable because an employee accepts govt. accommodation in if knowledge of rules and his liabilities in retaining govt. accommodation within and without the period so authorised. The second judgment is also not applicable to

// 5 //

the facts of this case for the same reason. The railway accomodation is given subject to certain rules and if these rules are applied, the applicant can not be said to have been visited with civil consequences without any prior knowledge, when he himself retain accomodation beyond the period for which he is authorised to retain such accomodation. Besides the quarters are of specified type-design and have a standard plinth area.

7. Learned counsel for the applicant has mentioned that since the applicant belongs to Railway Audit Department and the rule of allotment and retention of govt. accomodation framed by the railways authorities were not applicable to him, the only way available to the railway authorities for recovering damage rent for the applicant was to proceed against him under Public Premises (Eviction of Un-authorised Occupants) Act 1971 through the Estate Officer. He has, in making this contention, relied on the judgment of Patna Bench in O.A. 608/94 dated 06.06.94 in which it has been held that the damage rent can be charged only under Public Premises (Eviction of Unauthorised Occupants) Act 1971. This contention of the applicant is also not valid. In view of the judgment of full bench in Rampujan Patel vs. U.O.I. & Ors, it has been held in that case that Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is only an alternative remedy and not the sole remedy. It has also been held in that case that cancellation of allotment would not be necessary in view of the specific conditions governing the allotment of govt. accomodation, and the retention of govt. accomodation would be deemed unauthorised on completion of the time limit after transfer, retirement etc laid down by the Govt. Authorities. Learned counsel for the

// 6 //

applicant has produced the CCS (Conduct) Rules, 1964, to show that retention of Govt. accommodation after cancellation of allotment of Govt. accommodation is a misconduct. These rules are only applicable in case disciplinary action/inquiry is to be conducted against the Govt. servant, but they are not to come in the way of recovery of damage rent in case the accommodation is retained beyond the period for which the government servants is authorised to retain the allotted accommodation. In the present case the occupation of the accommodation by the applicant was clearly unauthorised beyond 15.07.95.

8. Having said the above, we find that the rate of Rs. 28/- per Sq. Meter was made to apply retrospectively with effect from 01.06.95 although the order was passed on 21.12.95 and is brought on record by the respondents at annexure 3 to their counter affidavit. Application of enhanced rate retrospectively is not only unfair but also not sustainable under the law. Government employees belong to fixed income group and meet their expenditure from their salary. They have to plan their expenditure in advance and if they are placed under the burden of paying with retrospective effect the expenditure with enhanced damage rent will exceed their income without prior notice and such a burden can not be permitted as it would not be equitable. The instruction dated 21.12.95 enhancing the rate per sq metre of plinth area at Rs. 28/- would only apply with effect from a date subsequent to 21.12.95 which should be not before 01.01.96.

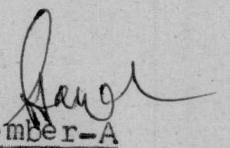
9. In the light of above discussion the applicant is entitled only to the relief that calculation of damage rent would be made at the old rate of Rs. 28/- per sq meter

(16)

// 7 //

of plinth area with effect from 01.01.96. The applicant should be asked to pay the difference damage rent already paid and rent remaining to be paid after fresh assessment of damage rent. In case any amount is recovered in excess of the **fresh** assessment it shall be refunded to the applicant. The respondents are directed to pass order regarding the damage rent in the light of above instructions ^{within three months} of the date of communication of this order.

10. There shall be no order as to costs.


Member-A

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