

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.926 OF 1998
TUESDAY, THIS THE 29TH DAY OF OCTOBER, 2002

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

H.N. Pandey son of Sri Vishwanath Pandey
resident of Railway Quarter No.14-C,
Type-I, Dugmagpur, Post Office-Sindhora,
District-Mirzapur.

..... Applicant

(By Advocate Shri S. Dwivedi)

Versus

1. Union of India through
the General Manager, Northern Railway,
Borada House, New Delhi.
2. The Addistant Engineer,
Northern Railway,
Chunar.
3. The Section Engineer (Permanent Way)
Northern Railway, Chunar.

..... Respondents

(By Advocate Shri G.P. Agrawal)


O R D E R

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

By this O.A., the applicant has challenged the orders dated 9.7.1998 and 10.08.1998 passed by the Assistant Engineer, Northern Railway, Chunar and against the recovery of Rs. 26,382,72P. as damage rent by letter dated 09.07.1998 (Annexure A-1). The Assistant Engineer had directed the Section Engineer to carry out the recovery in easy instalments from the salary of the applicant @ Rs.1014.72 Paise per month for 26 months, the total amount being Rs.26,382.72 Paise. As per para 11 (non recovery of damage rent as pointed out by the order), the objection of audit is annexed at page 16 of Annexure A-4 wherein it is mentioned that the applicant was allotted quarter no.20-C type-I at Karchhana ^{hub} due to his unauthorised occupation of Railway quarter ^{from} dated 25.11.1991 to 28.01.1994 ~~as such~~ ^{vide} he is liable to pay damage rent to be calculated/Railway Board's letter No.F(X)I/193/11/2 dated 21.12.1995 per SQM and the amount be recovered from the employee concerned under intimation to audit.

2. The applicant has challenged these orders by stating that vide order dated 25.11.1991, the applicant was allotted quarter No.20C at Karchhana, therefore, he cannot be said to be an unauthorised occupant of the said quarter. Vide order dated 23.10.1992, the applicant was transferred from Karchhana to Chunar against which he gave a representation to the respondent authorities but while disposing of his representation, the authorities asked the applicant to join at chunar vide their letter dated 4.11.1994. It is submitted by the applicant that in compliance of the said order of the respondents, the applicant joined at chunar on 25.1.1994 and vacated the quarter on 28.1.1994. It is further submitted by the applicant that after he vacated the quarter on 28.1.1994 the said quarter was allotted to Shri Pancham vide order dated 29.1.1994 (Annexure R-3 of the rejoinder). Therefore, it is submitted by the applicant that he had vacated the quarter within two months from the date of his transfer. Therefore, it cannot be said that he was an unauthorised occupant of the quarter from 25.11.1991 to 28.1.1994. The applicant's counsel has also submitted that no show cause notice was given to the applicant before starting recovery of Rs.1000/- per month from his salary. Therefore, he was forced to approach the Tribunal for protecting his rights.

3. The respondents, on the other hand, have opposed the O.A and have stated that this O.A is barred by section 20 as the applicant did not file any representation to the authorities before approaching the Tribunal. He has also submitted that since the applicant was in unauthorised occupation from 23.10.1992 to March, 1995, ~~they have submitted that the~~ ⁹² applicant had not vacated the quater no.20-C up to March 1995 and since he was transferred in October, 1992, from October 1992 to March 1995, the quarter was occupied unauthorisedly by the applicant. Accordingly, the authority has rightly deducted Rs.1000/- per month from the salary of



the applicant. The respondents have, thus, ^{prayed} ~~submitted~~ that the O.A. should be dismissed with costs.

4. I have heard both the counsel and perused the pleadings as well. The perusal of respondents own counter shows that they are not ^{themselves aware of} ~~based~~ of what they have stated. In para 6 of the counter they have stated that the applicant vacated the quarter on 28.01.1994 which is also evident from the audit[#] report as they have also stated that he was unauthorisedly occupying the ^{Railway} accomodation with effect from 25.11.1991 to 28.01.1994 and even the impugned order states the period for

unauthorised occupation is from 25.11.1991 to 28.01.1994. ^{but yet in para 8 they have stated he didn't vacate the Qr till March 1995} It is also relevant to see that the respondents have already allotted the quarter no.20C in favour of Shri Pancham vide their order dated 29.10.1994 which is annexed as Annexure RR-3 to the rejoinder. Therefore, it is clear that the applicant had vacated the quarter No.20-C on 28.10.1994 ^{otherwise they couldn't have allotted the Qr to some 3rd person.} and if that be so, it is not understood as to how the respondents have stated in para 8 that the applicant had not vacated the quarter till March, 1995. There is yet another aspect of the matter that in the audit objection at page 16 it is specifically mentioned that he was allotted quarter no. 20-C type 1 at Karchhana. If the applicant had been allotted quarter no. 20-C by the respondents on 25.11.1991, as stated by the applicant in para 3 of the O.A. which is not disputed by the respondents in the reply, naturally the applicant cannot be said to be an unauthorised occupant of the quarter from 25.11.1991. The applicant has categorically made an averment in para 3 that the applicant was allotted quarter no. 20-C by PWI Meja on 25.11.1991 and the applicant had taken possession of the said quarter and Railway authorities were deducting ^{Rs.20/- as rent} Rs.20/- of the said quarter from the salary of the applicant. In the counter affidavit the respondents have simply said that the contents of the application need no comment. Therefore,

[Signature]

in law, the statement made by the applicant stands admitted. If the applicant have been allotted quarter in November 1991, by the authorities themselves which is evident from the facts narrated above naturally the impugned order by which recovery is said to be made from the salary of the applicant from 25.11.1991 to 28.11.1994 is not legal and justified. I have specifically asked the counsel as to whether any notice ^{was} given to the applicant before starting the recovery to which I have been informed that no such notice was given to the applicant. The law is well settled that no order having civil consequence should be passed without giving ~~the~~ notice to the person concerned or ^{without} complied with the principles of natural justice. Specially in the instant case, when the applicant was already allotted the quarter and had vacated the same on 28.1.1994, if any recovery was ^{sought} ~~to~~ to be made for any valid grounds, the least ^{that} was expected from the respondents, was to comply with the principles of natural justice but since the respondents have straight away started the recovery from the applicant's salary, he had no option but to approach the Tribunal for his rights. Accordingly, the objection taken by the respondent's counsel that the O.A. is not maintainable, ~~for~~ not having exhausted the remedy is rejected ^{on} the present facts of the case. Since I have already held but the impugned orders are not in accordance with law the same are also quashed and set aside. The orders dated 9.7.1998 and 10.8.1998 are accordingly quashed and set aside. The order sheet shows that the applicant was protected by the Tribunal by its order dated 25.11.1998. Therefore, no recovery has been made from the salary of the applicant.

5. It is however, left open to the respondents that in case they still ^{feel any} ~~be made~~ recovery ^{can be} against the applicant for any valid ^{reasons} ~~ground~~ and for the correct period, they must give a show cause notice to the applicant giving him sufficient time to give his representation against the said



notice and the respondents shall pass a reasoned and speaking order before making any recovery if so advised.

6. With the above instructions, the O.A. is accordingly partly allowed, with no order as to costs.



Member-J

/Asthana/