

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD.**

Original Application No. 1247 of 1998

Tuesday this the, 21st, day of October, 2008

Hon'ble Mr. K.S. Menon, Member (A)

Satya Prakash Srivastava son of Late Shiv Bahadur Lal, working as Train Ticket Examiner, Gorakhpur resident of Quarter No. T-2-C in front of Railway Mail Service, Railway Station, Gorakhpur.

Applicant

By Advocate: Sri S.S. Tripathi.

Vs.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager (Commercial) North Eastern Railway, Varanasi.

Respondents

By Advocate: Sri K.P. Singh

ORDER

By K.S. Menon, Member (A)

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking direction of this Court to quash the impugned order dated 15.06.1998 passed by respondent No. 2 in which deduction of damage rent w.e.f. 29.05.1995 to 16.06.1996 for unauthorized occupation of residential quarter as well as cancellation of said quarter has been ordered.

2. The facts of the case in brief are that the applicant is Train Ticket Examiner, Gorakhpur East under N.E. Railway, Gorakhpur. He was allotted Railway Quarter No. T-2-C at Gorakhpur by the competent authority on 29.05.1995. The applicant was transferred from Gorakhpur to Chapra, Varanasi Division where the applicant worked till 16.06.1996. The applicant had not vacated the premises on his transfer to Chapra Varanasi as his family and school going children were living in the same quarter, for which he was paying monthly rent on a regular basis. After 16.06.1996, the applicant was

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transferred from Chapra, Varanasi Division back to Gorakhpur division. The applicant states that quarter in question was regularized in his favour by the competent authority vide Order dated 16.08.1996 (copy of the same has not been annexed with the O.A.). It is alleged by the applicant that based on audit report dated 30.12.1997 in which an objection was apparently raised regarding his unauthorized occupation in the said quarter from 1995 to 16.06.1996. The Regional Officer, Senior Ticket Collector, Gorakhpur vide letter dated 20.05.1998 directed the applicant to deposit penal rent of Rs.15,292/- on account of unauthorized occupation of the said quarter for the above mentioned period. The respondents have also indicated that in the event of failure to deposit the said amount, they would be constrained to refer the matter to the District Magistrate, Varanasi for recovery of the amount (copy of the Order is annexure-1). The applicant had taken up the matter with the respondents stating that on transfer from Gorakhpur to Chapra, he was not provided any accommodation at the transferee station hence he could not move his family. He also continued to pay monthly rent for the quarter retained at Gorakhpur. The applicant further submits that on his transfer back to Gorakhpur division, the respondents had regularized the quarter allotted in his favour. Therefore, levying damage rent is illegal, especially as he ⁱⁿ was not given any opportunity of hearing nor ~~he~~ ^{he in} was issued any show cause notice (copy of the order dated 15.06.1998 is annexure-2). The applicant submits that it is a settled principle of law that once tenancy has been regularized, order of recovery of penal rent cannot be passed nor ^{can} allotment of accommodation ~~can~~ be cancelled. In support of this argument, he has drawn reference to a Judgment passed by this Tribunal in O.A. No. 379 of 1995 P.P. Prasad vs. Union of India and others, in which the Tribunal vide its Order dated 27.04.1995 restrained the respondents from recovering the amount of penal rent, directed in the impugned order (copy of Judgment is annexure-3). In view of above, learned counsel for the applicant submits that the impugned order levying damage rent as well as cancellation of allotment of accommodation is illegal, uncalled for and violative of principles of natural justice and prays that the impugned order dated 15.06.1998 be quashed and set aside, and the Court may pass direction, as deemed fit and proper to meet the ends of justice.

3. Scrutiny of records reveals that prayer for interim relief was granted in favour of the applicant and operation of impugned order dated 15.06.1998 was stayed vide Order dated 04.01.2000.

4. The respondents on notice have filed the Counter. They state that quarter in question T-2-C at Gorakhpur was allotted to the applicant and as per rules in force, once an employee has transferred, allotment after expiry of permissible period shall automatically be terminated in terms of Railway Board's letter dated 15.01.1990. It has also been submitted by the respondents that there is no guarantee that an employee will be allotted quarter at the new station automatically. He would have to wait for his turn as per seniority list being maintained in that station. As the applicant did not ^{create in} ~~have allotted~~ the quarter after permissible period, he is liable to pay the damage rent for the said period. Therefore, there is no illegality in the impugned order dated 15.06.1998 passed by the respondents. It is also submitted by the respondents that the applicant has not submitted any application requesting retention of quarter at Gorakhpur hence there is no question of any ^{in regularization} ~~realization~~ being granted in this case. It is incorrect on the part of the applicant to state that he has not been given any opportunity, as respondents claimed that a notice was issued to him bringing to his notice that retention of his quarter was ^{2 unauthorized} ~~enforced~~ and hence he is liable to pay the damage rent. They had also brought to his notice that his request for regularization of quarter at Gorakhpur would be considered after the damage rent was deducted vide their letter dated 17.03.1999. In view of the above, the respondents submitted that applicant is not entitled to any relief as prayed for in para-8 (i), 8 (ii) and 8 (iii) to the O.A. and thus, the O.A. is liable to be dismissed.

5. Heard Sri S.S. Tripathi, learned counsel for the applicant and Sri K.P. Singh, learned counsel for the respondents and perused the pleadings on record.

6. It is an admitted fact that the applicant was transferred to Chapra, Varanasi division during the period 29.05.1995 to 16.06.1996 and also that he was not allotted any quarter at Chapra, Varanasi division. Therefore, as per respondents, he is stated to be in unauthorized occupation of the said quarter during above

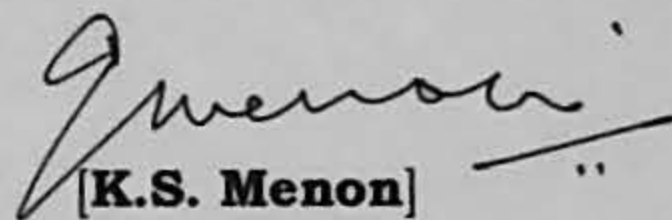
mentioned period hence liable to pay the damage rent in accordance with the Railway Board's letter dated 15.01.1990. The relevant portion of the above mentioned Railway Board's letter is reproduced as under: -

"Item No. 17: On expiry of the permissible/permitted period indicate in all the above cases, the allotment of quarter in the name of the employee at the old station will be deemed to have been terminated automatically. Retention of quarter by the employee after expiry of the permissible period will be treated as unauthorized. During the period of unauthorized occupation the employee should be required to pay damages rate of rent in respect of the railway quarter. Realisation of damages rate of rent should not be pended on the ground that the employee has appealed or the case of the employee has been referred to the Ministry of Railways for regularisation of the excess period of retention. If the appeal of the employee succeeds will be allowed refund as due."

A bare reading of the above provision of Railway Board's letter goes to show that once an employee is transferred, the quarter in question stands terminated automatically after the stipulated period of retention. The said letter of Railway Board further stipulated that period of retention is two months on payment of normal rent and further period of 6 months on payment of double the flat rate of license fee/rent if a specific request is so made by the applicant on the ground of children education etc. The respondents have also clearly stated that no such request for retention of quarter was made by the applicant. Hence the period of unauthorized retention should be reckoned from 29.07.1995 to 16.06.1996. It is also provided in the above letter that realization of damage rent should not be pended on account of the fact that applicant has appealed to the higher authorities for regularisation of the excess period of retention. In accordance with the provision, the respondents have raised a demand on the applicant for payment of damage rent. What has not been effectively clarified by the respondents is that if the appeal of the employee succeeds and the quarter allotment is regularized in his favour, damage rent so recovered has to be refunded. This implies that payment of damage rent is subject to decision being taken on the representation of the applicant for regularisation. In the instant case it is admitted that quarter in respect of the applicant had been regularized, as stated by the applicant on 16.08.1996 although as mentioned earlier copy of the said letter has not been annexed by either of the parties to determine ^{the} veracity of the same.

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7. In view of the above, I am of the opinion that if the quarter has been regularized in favour of the applicant on his transfer from ^{supra}, Varanasi division to Gorakhpur, the respondents have no ground to levy the damage rent and recover the same.
8. The O.A., therefore, succeeds. The impugned order dated 15.06.1998, levying damage rent is quashed and set aside. The damage rent, if any, recovered from the applicant, should be refunded to him within a period of three months from the date of communication of this Order. No order as to costs.


[K.S. Menon]
Member 'A'

/M.M/