

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 1470 of 2004

Allahabad, this the 29 day of 10, 2010

Hon'ble Mr. Justice S.C. Sharma, Member (J)

B.N. Ram S/o Late Sukh Ram R/o Ram Duttapur Varanasi Cantt.,
Varanasi.

Applicant

By Advocates: Mr. S.K. Dey
Mr. S.K. Mishra

Vs.

1. Union of India through the General Manager, N. Rly. Baroda House, New Delhi.
2. The Divisional Rly. Manager, N. Rly., Lucknow.

Respondents

By Advocate: Mr. Prashant Mathur

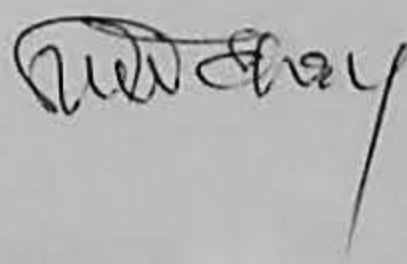
ORDER

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Under challenge in the O.A. is the order dated 03.08.2004 (annexure A-7). It has been prayed that the respondents be directed to refund Rs.87,000/- recovered from the D.C.R.G. and Rs.54,000/- deducted from his salary with due interest.

2. The pleadings of the parties may be summarized as follows:

The applicant was posted as Chief Parcel Supervisor at Varanasi Cantt. and retired w.e.f. 30.09.2000. The applicant was in occupation of Railway quarter No. T-39, AAEN Colony, Varanasi

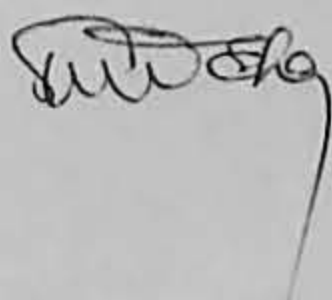


Cantt. on normal rent of Rs.80/- per month having proper allotment order. The applicant was transferred from Varanasi Cantt. to Prayag on 16.01.1991 and again returned back at Varanasi Cantt. on 19.09.1992. He was not having any residential house, and he was permitted to retain the Railway quarter at Varanasi Cantt. for 8 months up to 16.09.1991. For a short term, the applicant was provided with Railway Quarter at Prayag, and on his returning back at Varanasi on 19.09.1992. He was allowed to continue in the same quarter, as is evident from the letter dated 03.02.1991 (annexure A-1). The applicant was never asked to vacate the railway quarter and the same was regularized in view of letter dated 03.02.1998. The rent was recovered at the rate of Rs.245/- per month from August 1991 and Rs.260/- per month from August 1997 for the said quarter. A representation was made by the applicant for regularization of the Railway quarter from April 1999 to 30th September 2000. But Rs.3000/- per month was recovered from the salary of the applicant in addition to Rs.260/- per month without serving any order. Applications were made against the recovery of damage rent and for regularization of the quarter dated 24.10.2000 and 10.05.2001. The Divisional Railway Manager, Northern Railway, Lucknow was directed by the General Manager, Northern Railway to dispose of the claim of the applicant as per rules. The D.C.R.G.-Rs.2,25,425/- was not paid to the applicant on his retirement arbitrarily and without affording any opportunity, sum of Rs.87,000/- was deducted from the D.C.R.G. The respondents admitted the delayed payment of D.C.R.G. When the rent was recovered from the applicant at the rate of Rs.245-260 per month

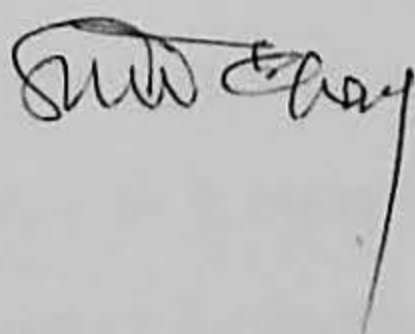
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from his salary, he cannot be held unauthorized occupant in the said quarter and no damage rent is liable to be recovered at the rate of Rs.3000/- per month from April 1999 and Rs.87,000/- from his D.C.R.G. Rs.4380/- was recovered as water charges and deducted from the D.C.R.G. The applicant vacated the Railway quarter on 28.09.2000 but vacation certificate was issued on 07.10.2000. The applicant is entitled for refund of the entire amount with interest.

3. The respondents contested the case and filed Counter Reply. In the Counter Reply, it has been admitted that the applicant while working as Chief Booking Supervisor, Varanasi was in occupation of the Railway Quarter No. T-39 A of A.E.N. Colony, Varanasi allotted vide allotment order. On 19.09.1992 he returned back through subsequent transfer order. In between, applicant did not vacate the railway quarter and instead moved an application to permit him to retain the same on the ground of sickness of his family members. The applicant initially was allowed to retain the railway quarter for two months, and thereafter extend six months' time from 16.03.1991 to 15.09.1991 on payment of special license fee i.e. double amount to the normal rent on the ground of education/medical of the family members. The Assistant Engineer, Varanasi vide letter dated 16.01.1992 submitted report that plinth area of the Railway Quarter is 74-75 square meter. As per rule, total damage rent of the Railway quarter is Rs.1,41,000/-, out of which Rs.54,000/- deducted from the salary bill of the applicant from April 1999 to 30.09.2000 i.e. in 18 months at the rate of Rs.3000/- per month



and remaining amount of Rs.87,000/- has been deducted from his D.C.R.G. After expiry of 8 months, applicant illegally remained in occupation of that railway quarter. It is stated that the applicant had been intimated to vacate the railway quarter within 10 days positively with a clear cut finding that if he failed, eviction proceeding will be initiated against him. Letter dated 28.08.1998 was received by the applicant on 26.09.1998. The occupation of the applicant was unauthorized since 16.09.1991 in case applicant returned back to his old place of posting within a stipulated period of completion of 12 months, then the quarter which he was retaining prior to his transfer is liable to be regularized in favour of the employee. In that circumstances, rent shall be charged as penal rent for the period of stay of out of station in excess of first two months and normal rent from the date of rejoining at the old station. The house remained un allotted from 29.09.2000 to 15.10.2000. The house was vacated on 28.09.2000 but the vacation certificate was issued on 16.10.2000. The representation of the applicant was considered by the General Manager, Northern Railway, New Delhi in accordance with the Rules, and the Appeal was also considered. It was held in the light of the Rules that it was not possible to regularize the Railway quarter in favour of the applicant. Thereafter, the respondents had to act according to Rules. It is stated that deduction had been made from the salary of the applicant in accordance with the Rules.



4. I have heard Mr. S.K. Dey, Advocate for the applicant and Mr. Prashant Mathur, Advocate for the respondents and perused the entire facts of the case.

5. Undisputedly, applicant was posted as Chief Parcel Supervisor, Varanasi Cantt. While the applicant was posted at Varanasi Cantt., Railway Quarter No. T-39 A, A.E.N. Colony, Varanasi Cantt. was allotted to him. It is also an admitted fact that the applicant was transferred from Varanasi Cantt. to Prayag on 16.01.1991, and again he was retransferred to Varanasi Cantt. on 16.09.1992. It is also an admitted fact that on the application of the applicant, 2 months time was extended for retention of the railway quarter at Varanasi, and thereafter six months was also extended for retention of the Railway quarter. It is alleged by the respondents that after expiry of 8 months, possession of the applicant was of unauthorized occupant. It has also been alleged that even after transfer from Prayag to Varanasi Cantt., automatically allotment shall not stand regularized. In that circumstance, fresh claim of the applicant will be considered. Prior to allotting the accommodation to the applicant, applicant's claim for railway quarter shall be considered and on his turn, railway quarter shall be allotted to him. It will not be presumed and deemed that as applicant ^{had} ~~was~~ returned back at Varanasi Cantt. on 19.09.1992, it means that applicant's possession was regularized and in that circumstances, he will be liable to pay the rent on normal rent. The respondents are entitled to recover the damage rent after expiry of 8 months from 16.01.1991 and that damage rent at the rate of Rs.3000/- was rightly deducted from

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salary of the applicant and after his retirement, the amount was deducted from D.C.R.G. of the applicant.

6. In this context, learned counsel for the respondents argued that the Full Bench Judgment of the CAT is most relevant in this connection. It has been reported in (1996) 34 *Administrative Tribunals Case 434 (FB) Ram Poojan vs. Union of India and another*. I have perused the contents of this Judgment of the Full Bench of CAT. Certain questions were referred to the Full Bench for adjudication and the questions were replied in the Full Bench Judgment as follows: -

41. *In the light of the discussion hereinabove, our answer to the two questions formulated for our consideration in the reference order is as follows:*

(a) *In respect of a railway employee in occupation of a railway accommodation, in our considered opinion, no specific order canceling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorized and penal/damage rent can be levied.*

(b) *Our answer is that retention of the accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorized occupation and there would be an automatic cancellation of an allotment and penal rent/damages can be levied according to the rates prescribed from time to time in the Railway Board's circular."*

On the strength of this Judgment of Full Bench of the CAT, Allahabad, learned counsel for the respondents argued that the applicant was in occupation of railway accommodation without any specific order, and that no order is required regarding cancellation of allotment of accommodation on expiry of permissible/permitted period of retention of quarter on transfer, retirement or otherwise, if necessary and further retention of the accommodation by the railway servant would be unauthorized and penal/damage rent can be levied.

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7. Learned counsel for the respondents also cited a letter dated 20.05.1971 of the Railway department, and on the strength of this letter argued that if an employee transferred to another station returns back to his old place of posting within stipulated date of completion i.e. within 12 months, then the quarter which he was retaining prior to his transfer is liable to be regularized in favour of the employee with effect from the date of rejoining by the employee on the same station after charging the penal rent for the period of stay of out of station in excess of first two months and normal rent from the date of rejoining at the old station. In view of this letter, annexure R-II, the applicant was retransferred at Varanasi Cantt., after expiry of 12 months hence applicant is not entitled to the benefit of the Railway letter dated 20.05.1971, and in view of Full Bench Judgment of the CAT Allahabad Bench, the respondents are fully within their rights to recover the damage rent.

8. Learned counsel for the applicant argued that instead of directly deducting the damage rent from salary of the applicant, and from the DCRG on his retirement, the respondents ought to have served a notice to the applicant but surprisingly no notice was served to the applicant prior to making deduction and on return, the respondents started deduction of damage rent from the salary of the applicant. It is stated that on his transfer back to Varanasi Cantt. w.e.f 19.09.1992, he had been paying the normal rent and the normal rent was deducted from his salary w.e.f. 19.09.1992, and as the applicant had been transferred back at Varanasi hence the possession ought to have been regularized of the Railway

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quarter. It is wrong to allege that as the applicant was not transferred back at Varanasi Railway station within a period of 12 months from the order of transfer earlier, hence damage rent was recovered and as applicant did not return at Prayag Railway Station hence his possession was not regularized and that it was illegal act on the part of the respondents. Learned counsel for the applicant cited a Judgment of Hon'ble Apex Court, which is most relevant. The Hon'ble Apex Court in the case of *Union of India and others vs. Madan Mohan Prasad 2003 (1) Administrative Total Judgments pg. 246* held as under: -

".....The relevant rule applicable so far as the respondent is concerned is rule 323 which is available in the manual of Railway Pension Rules, 1950. It is made clear therein that claim against the railway servant may be on account of three circumstances;

"(a) losses (including short collection in freight charges shortage in stores) caused to the government as a result of negligence or fraud on the part of the railways servant while he was in service;

(b) other government dues such as overpayment on account of pay and allowances, or admitted and obvious dues such as house rent, post office, life insurance prima, outstanding advance etc;

(c) non-government dues."

3. It cannot be said that the case put forth on behalf of the appellants can be brought in any one of these categories. The claim made on behalf of the appellants is not only to collect normal house rent but also penal damages, in addition. That is not within the scope of rule 323 at all. What is contemplated therein is 'admitted' and 'obvious' dues apart from the fact that determination has to be made in such a matter. It is also permissible under relevant rules to waive the same in appropriate cases. In that view of the matter, it cannot be said that such due is either 'admitted' or 'obvious'. Hence, we do not think that the view taken by the tribunal calls for any interference. However, it is made clear that while the appellants have to disburse the DCRG to the respondent the normal house rent, inclusive of electricity and water charges, which are 'admitted' or 'obvious' dues can be deducted out of the same, if still due."

In view of the Judgment of Hon'ble Apex Court, learned counsel for the applicant argued that payment of penal damages is neither admitted nor obvious dues apart from the fact that determination has to be made in such a matter. It is also

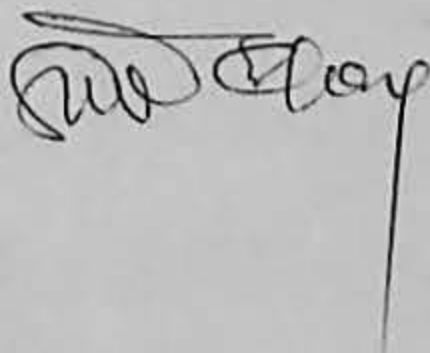
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permissible to waive the same in appropriate cases. As applicant was retransferred at Varanasi Cantt. Railway Station, hence the matter of the applicant ought to have been considered sympathetically, and it was too harsh on the part of the respondents to recover the damage rent from the salary as well as from the amount payable as DCRG on his retirement. The respondents continued to deduct the penal rent from the salary of the applicant even during the tenure of his posting at Varanasi Cantt. Learned counsel for the applicant argued that in case an employee failed to vacate the accommodation, allotted to him, then proceeding must be initiated against him under the Public Premises Act, and in the present matter proceedings were not initiated against the applicant in accordance with the provisions of the Public Premises Act. In this regard, learned counsel for the applicant cited R.B.E. No. 208/2000, dated 30.09.2000, para-(d), which is relevant, is quoted as under: -

"(d) In the case of transferred Railway employee holding earmarked accommodation, he/she may be permitted to retain the accommodation for a period of two months only on payment of normal rent. During this period of two months, if the employee concerned requests for further retention in terms of (a) above, an alternative accommodation not higher than Type V should be allotted in his/her favour for the balance period of six months on payment of special licence fee. No relaxations beyond the permitted/permissible limits will, however, be allowed on any ground whatsoever. Therefore, no requests or representations on this score shall be entertained. For all occupations beyond the permitted period, immediate action should be taken to cancel the allotment declare the occupation as unauthorized and initiate eviction proceedings charging damage rent for the over stay."

In view of the aforesaid R.B.E., the respondents ought to have initiate proceeding against the applicant.

Learned counsel for the applicant also cited a Judgment of Hon'ble High Court of Bombay-N.C. *Sharma vs. Union of India &*



Ors. A.T. Full Bench Judgments 2002-2003 page 212. Relevant portion of the Judgment is reproduced as under: -

"In the instant case, in our view, merely addressing the letters as noted above, would not by any stretch of imagination mean compliance with the principles of natural justice. There is nothing in the order dated 31st October 1996, which would indicate that prior opportunity was given to the petitioner before adjustments were made from the terminal dues/benefits admissible to him. In this view of the matter, the conclusion of the Tribunal that opportunity was given or that there was no dispute about the dues is contrary to the material placed on record and wholly erroneous. It is difficult to agree with the conclusion of Tribunal on this aspect."

In view of the Judgment of Hon'ble High Court of Bombay also prior opportunity should be afforded to the applicant prior to making deduction of damage rent.

9. It has been argued by learned counsel for the applicant that no prior notice was given to the applicant. Learned counsel for the applicant ~~cited~~ ², in this connection, cited Judgment of Hon'ble Apex Court reported in 2005 SCC (L&S) page 117 *Chandra Prakash Jain vs. Principal/DIG, Police Training College-II, Moradabad and another*, relevant portion of the Judgment reads as under: -

"4. Considering the facts and circumstances of the case, we are of the view that the appellant is liable to pay three times the standard rent of the residential quarters in his occupation during the period of overstay beyond four months from the date of retirement. The standard rent will be calculated taking into account the last basic pay drawn by the appellant before retirement. This exercise will be completed within three months from today and the surplus amount, if any, deducted from the retiral benefits of the appellant, will be paid to him together with interest @ 12% PA from the date of deduction till payment."

In view of the Judgment of Hon'ble Supreme Court, in case an employee is retired from the service and he overstayed in the House, the rent is to be deducted 3 times the standard rent during the period of over stay beyond four months from the date

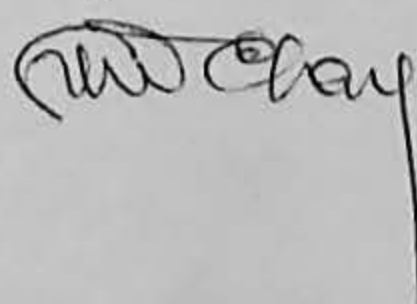
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of retirement. Hence, at the most three times of the standard rent could have been deducted.

10. Learned counsel for the applicant also cited the Judgment of Hon'ble High Court of Allahabad reported in *ATJ 2005 (1) page 516 Smt. Marjaddi vs. Central Administrative Tribunal, Allahabad and others*, wherein it is held that the damages for unauthorized occupation cannot be recovered from the gratuity and DCRG, and moreover the recovery should be made in accordance with the procedure established under the law through proper channel.

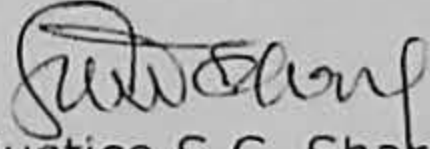
11. Hence, in view of the aforesaid Judgments, out right the respondents are not entitled to make the deduction of damage rent. Learned counsel for the applicant also cited the Judgment of Hon'ble High Court of Allahabad pronounced in *Civil Misc. Writ Petition No. 41323 of 2008 Union of India and Others vs. Jagdish Narain Tiwari and others* and Judgment of *Central Administrative Tribunal, Allahabad Bench in O.A. No. 1030 of 2005 J.N. Tiwari vs. Union of India and others*. In all the Judgments, it has been held that deduction cannot be made without affording an opportunity to the employee and moreover deduction cannot be made from the amount of D.C.R.G.

12. After considering all the facts and circumstances of the case, and the law cited above, I am of the opinion that the respondents can be said to have acted illegally in making arbitrary deduction from the salary and DCRG of the applicant. It can be said that it is devoid of any force of law or rather it is arbitrary.



Half amount had been deducted from the salary as well as from the DCRG of the applicant. The respondents ought to have considered the application of the applicant for regularization of his possession on transfer back to Varanasi Cantt. Moreover, the amount could have been waived considering the circumstances of the case. O.A. deserves to be allowed.

13. O.A. is allowed with cost, and the order dated 03.08.2004 (annexure A-7) is quashed. The respondents are directed to refund Rs.87,000/- recovered from the DCRG and Rs.54,000/- deducted from the salary of the applicant with interest at the rate of 9% per annum to the applicant. However, during the period of occupancy of the railway quarter by the applicant, three times of the normal rent shall be recovered from the applicant.


{Justice S.C. Sharma}
Member - J

/M.M/