

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 7th Day of Oct , 2005

Original Application No. 256 of 2004

Hon'ble Mr. M.K. Mishra, Member- A.

Bharat Mistry, S/o Late Janki Mistry,
R/o Bajrahi, P.O. Parsawan, Distt. Gaya.Applicant

Counsel for the applicant : - Sri S.K. Dey
Sri S.K. Mishra

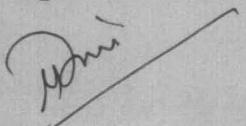
V E R S U S

1. Union of India through the G.M., E.C. Rly.,
Hajipur, Bihar.
2. The Divisional Rly. Manager, E.C. Rly.,
Mughalsarai, Distt. Varanasi.Respondents

Counsel for the respondent:- Sri K.P. Singh

O R D E R

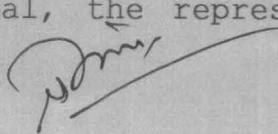
The applicant Sri Bharat Mistry, an employee of East Central Railway, filed this OA making the prayer to quash the impugned order dt. 06.01.2004 (Annexure A- 5) and to issue directions to the respondents to make payment of ✓ Rs.69,800/- ^W with interest @ 18 % per annum from the date of his retirement till the date of actual payment of the above amount. Vide letter 06.01.2004, which is the impugned order in this case, it has been alleged that the applicant was under occupation of quarter No. 122/C Type-I at Gaya in a unauthorized manner even after his transfer



from Gaya to Mughalsari on administrative grounds due to closer of Steam Loco Shed at Gaya alongwith other surplus staff. It was further alleged the above quarter was kept unauthorisedly under occupation by the applicant till 30.08.99. As per IREM, Railway servant can retain the quarter for 2 months on normal rent in case of transfer to new station. However, if the staff is declared surplus and transferred on redeployment, the retention of quarter may be permitted up to 2 year on normal rent. In the present case, the applicant had never applied for retention of quarter. He was therefore, advised to apply for retention of quarter so that post facto approval of the competent authority might be taken for retention for 2 years on normal rent from the date of transfer. It was also advised to the applicant that the damage rent would be recovered for the remaining period of unauthorised retention of Railway Quarter No. 122/C. Since no application for retention of quarter was submitted by the applicant, therefore , the recovery of damage rent for unauthorised retention for the period from 15.05.1992 to 30.08.1999 was ordered by the competent authority from the DCRG i,e, retiral benefits.

2. Briefly, the facts of the case are that vide order dt. 22.09.2003 passed in O.A No. 1130/2003 ,this Tribunal gave the direction to the respondent NO. 2 to decide the representation of the applicant dated 12.05.2003 by a reasoned and speaking order with in a period of three months from the date of communication of the order.

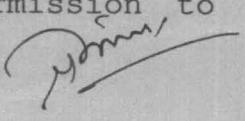
3. In the compliance of the above direction of the Tribunal, the representation of the applicant was decided



on 06.01.2004 with the finding that the damage rent should be recovered from his DCRG. In the second journey to this Tribunal the applicant challenged the order dt. 06.01.2004.

4. The applicant retired on 31.01.2003 from the Railway department. The retiral benefits consisting of DCRG was calculated at Rs. 1,20,384/- but he was only paid Rs. 50584/- and amount of Rs. 69,800/- was deducted as a damage rent without giving prior intimation to the applicant. It was also submitted that no notice intimating the applicant about his unauthorised occupation of quarter at Gaya was given by the respondents. The applicant vacated this quarter on 03.04.1999 vide his intimation date 03.04.1999. For this period, the normal rent was recovered from his pay by the competent authority . Therefore, recovery of damage rent for the period from 15.05.1992 to 30.08.1999 is arbitrary and illegal. At Mughalsarai, the applicant was neither provided any Rly. quarter nor he claimed any house rent . It was further submitted that the applicant was never served with notice to vacate the quarter at Gaya. It was also contended that under Rule 323 of the Railway Servants(Pension) Rule 1950, no recovery of damage rent is permissible . This finding is supported by the judgment of the Apex Court in UOI & Ors. Vs. Madan Mohan 2003 ATJ page 246.

5. In the CA the learned counsel for the respondents submitted that, as per existing rules, the Railway employee should obtain permission for retention of the quarter or he should hand over the Railway quarter to the proper authority. In the present case the applicant did not take permission to retain the Railway quarter at Gaya,



therefore, his period from 15.05.1992 to 30.08.1999 was treated as unauthorised occupation of the Railway Quarter . As per the record the applicant vacated the quarter on 30.08.1999 . The recovery of the normal rent was made from the salary up to 30.08.1999. It was further submitted by the respondents that the amount of Rs. 65,000/- was not deducted from the Gratuity but was kept for the purpose of recovery of damage rent. As per Railway Pension Rules para 16, the position is as under : -

"16. Adjustment and recovery of dues pertaining to Government or railway accommodation :- (1) The Directorate of Estate on receipt of intimation from the Head of Office under sub rule (1) or rule 98 regarding the issued of "No Demand Certificate" shall scrutinize it records and inform the Head of Office eight months before the date of retirement of the allottee, if any license fee is received by the Head of Office by the stipulated date, it shall be presumed that no license fee was recoverable from the allottee in respect of the period preceding eight months of his retirement.

(2) The Head of Office shall ensure that license fee for the next eight months, that is up to the date of retirement of the allottee is recovered every month from the pay and allowance of the allottee.

(3) Where the Directorate of Estate intimates the amount of license fee recoverable in respect of the period mentioned in sub rule (1), the Head of Office shall ensure that outstanding license fee is recovered in installments from the current pay and allowances of the allottee and where the entire amount is not recovered from the pay and allowances, the balance shall be recovered out of the gratuity before its payment is authorized.

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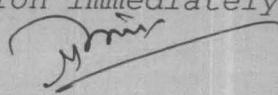
(4) The Directorate of Estate shall also inform the Head of Office the amount of license fee for the retention of Government accommodation for the permissible period of four months beyond the date of retirement of the allottee. The Head of Office shall adjust the amount of that license fee from the amount of the gratuity together with the unrecovered license fee, if any, mentioned in sub rule (3).

(5) If in any particular case, it is not possible for the Directorate of Estate to determine the out standing license fee, that Directorate shall inform the Head of Office that 10% of the gratuity or one thousand rupees, whichever is less, may be withheld pending receipt of further information.

(6) The recovery of license fee for the occupation of the Government accommodation beyond the permissible period of four months after the date of retirement, if allottee shall be the responsibility of the Directorate of Estate. Any amount becoming due on account of license fee for retention of Government accommodation beyond four months after retirement and remaining unpaid license fee may be recovered by the Directorate of Estate through the concerned Accounts Officer from the dearness relief without the consent of the pensioner. In such cases no dearness relief should be disbursed until full recovery of such dues have been made.

NOTE: For the purpose of this rule, the license fee shall also include any other charges payable by the allottee for any damage or loss caused by him to the accommodation or its fittings.

(7) A Railway servant shall vacate the railway accommodation immediately after his retirement."



6. In the Rejoinder the arguments as referred to in OA are reiterated.

7. I have heard learned counsel for the parties and also perused the material available on record.

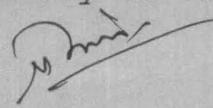
8. The provisions of paragraph 1711 of Indian Railway Establishment Manual reads as under: -

"(a) The rent charged to a railway servant in respect of quarters supplied should not exceed 10 percent of his/her monthly emoluments irrespective of the scales of pay allotted.

(b) Notwithstanding anything contained in sub para(a), Railway Administration may, by general or special order, provide for charging a rent in excess of 10 percent of the emoluments from a railway servant-

- (i) who is not required or permitted to reside on duty at the station at which the residence is supplied to him, or
- (ii) who, at his own request, is supplied with accommodation which exceeds that which is appropriate to his status, or
- (iii) who is permitted to sublet the residence supplied to him, or
- (iv) who sublets without permissions the residence supplied to him, or
- (v) who does not vacate the residence after the cancellation of the allotment.

NOTE: Rent will be recovered from such railway servants who sublet their quarters without permission of the competent authority at the rate of 7 $\frac{1}{2}$ percent of the



total outlay of the quarter including the cost of land."

9. Further the Railway Administration vide its letter dated 17.12.1983 and 15.01.1990 issued consolidated instructions in pursuant to the provisions of para 1711 (b) of IREM.

10. In the case of Ram Poojan Vs. U.O.I and another (1996) 34 ATC 434 (FB), the Full Bench held as under : -

"(a)in the event of a railway employee in occupation of a railway accommodation, 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 unauthorised and penal/damage rent can be levied;

(b) retention of accommodation beyond the permissible period would be deemed to be unauthorised occupation and there would be automatic cancellation of allotment and penal rent/damages can be levied according to the rates prescribed from time to time in the Railway Boards circular.

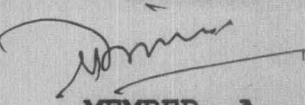
It would be open to the Railway authorities to recover penal/damage rent by deducting the same from the salary of the railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Resort of proceedings under the said Act is only an alternative procedure which does not debar recovery as per Railway Board's circulars."

11. The case quoted with regard to the above issue, reference to the decision of the Apex Court in case of U.O.I Vs. Madan Mohan Prasad in Civil Appeal No. 4832/99 decided on 28.02.2002 is not applicable in this case, which relates to the occupation of the quarter after retirement. Therefore, the Full Bench decision of this Tribunal (Supra) is applicable in the case of the applicant.

12. ^{Open} However, the observations made by the Apex Court in the case of Ram Dayal Rai Vs. Jharkhand State Electricity Board and Ors (2005) (3) SCC 501 in para 17 of the order are worth consideration by the respondents. The respondents are, therefore directed to decide the case of the applicant afresh in the light of the following observations of the Apex Court in the above case, which are as under : -

"17. We are, therefore, of the opinion that the impugned order does call for interference by this Court and modification of the same in order to meet the ends of justice. The occupation of the quarters after 01.11.1999 is illegal. When a question was put, the learned counsel appearing for the appellant submitted that he was paying the monthly rent of Rs. 25. Justice would be amply met if we direct the appellant to pay a sum of Rs. 500 per month for the entire period of illegal occupation (from 01.11.1999 to 06.01.2000). The balance of convenience and the *prima facie* case is also in favour of the appellant. If the pensioner's benefit is cut at 5% out of the total amount of pension payable to the appellant, the appellant will suffer an irreparable loss and injury since, after retirement, the pensionary benefit is the only amount available to eke out a livelihood for the retired employees of the Government."

12. Keeping in view the above discussion, the O.A is disposed of accordingly with no order as to costs.



MEMBER- A.