

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 01st day of APRIL 2005.

Original Application NO. 517 of 2004.

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Sunil Kumar Mishra, S/o Sri R.B. Mishra,
R/o Vill Paharipur, Post Office Maryadapur,
Distt : Azamgarh (New Mau).
Employed as Claim Tracer,
Deputy Chief Commercial Supdt. Office (Claim),
Northern Railway, Station Building,
VARANASI.

.....Applicant

By Adv : Sri A.P. Srivastava

V E R S U S

1. Union of India through Chairman,
Railway Board, Rail Bhawan,
NEW DELHI.
2. General Manager Vigilance,
North Central Railway,
ALLAHABAD.
3. Chief Commercial Manager,
North Central Railway, Head Office,
ALLAHABAD.

...Respondents.

By Adv : Sri A.K. Pandey

O R D E R

By K.B.S. Rajan, JM

Recovery of a sum of Rs. 2,24,207/- as damage
charges for the alleged unauthorized occupation "for
about two years" by the applicant is under challenge
in this OA.



2. The applicant working as Senior Commercial Inspector N.C. Rly, Allahabad has been in possession of Quarter No. E-3B, AEN Colony, Varanasi. Provision exists vide Railway Board Circular dated 2.9.2002 that employees posted at newly created Railway Zone are allowed to retain their quarter allotted to them prior to such creation of new zone. The applicant, availing of the above provisions, requested, vide representation dated 11.11.2003 for retention of his Railway Quarter referred to above and by order dated 3.12.2003 the Railways had certified that the applicant's name has been registered for allotment of Railway Quarter at NCR.

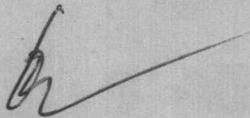
3. By order dated 12.12.2003, which according to the applicants appears to have been issued on the alleged information of the General Manager vigilance, the respondents have sought to recover stupendous amount of Rs. 2,24,207/- as damage charges in respect of the aforesaid quarter. This recovery order was without any notice much less an opportunity and the least a personal hearing. In fact, according to the applicant, the order was not even properly served upon the applicant and he was, as late as on 22.4.2004 informed of the aforesaid recovery. The applicant had submitted their representation to the respondents requesting them not to recover any amount. However, no reply was given to the applicant and a sum of Rs. 2875/- was

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deducted from the salary of the applicant towards the aforesaid recovery. Hence, this OA.

4. The respondents have filed a short counter followed by a detailed counter, wherein they have stated that the General Manager Vigilance, Northern Railway, Baroda House, New Delhi, conducted the vigilance raid as well as enquiry proceedings and found the applicant being in unauthorized possession of the Railway Quarter for 'about two years'. It is also stated in the counter that the applicant was wrongly allotted the Railway Quarter at Varanasi and the earlier allotment was cancelled for the reason that the said quarter was not in the pool of the Senior Divisional Operating Manager and the cancellation order was dated 30.2.1994. However, the applicant did not vacate the said accommodation. It has also been stated that the applicant was on deputation from 4.10.2001 to 28.5.2002 to the D.R.T. Allahabad and again from 11.12.2002 to 16.4.2003 he was posted as Assistant Registrar at Patna in D.R.T. In between he worked in the parent department i.e. the Railways. The damage charges is stated to be for the latest period i.e. from October, 2001 to April, 2003.

5. According to the respondents as the applicant did not vacate the accommodation when he was away from the Railway, he was subjected himself to the

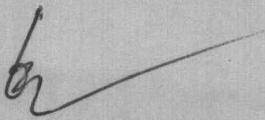
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liability of paying the damage charges for the period of unauthorized occupation.

6. Arguments have been heard, documents perused and we have given our anxious consideration. The counsel for the applicant vehemently argued that realization of damage charges from the applicant is illegal on various grounds including the following:-

- a. The applicant's stay out side the Railways was only for a period of seven months initially and after a break of 8 months it was again for a period of 4 months only. Provision exists for continuance of the same accommodation if the employee returns to his previous place of posting after a temporary transfer of 4 months or above. In this case, as initially within 7 months the applicant had been back and similarly on the second occasion he has been back after 4 months no damage charges can be realized.
- b. No notice has been issued to him regarding the recovery and it is trite law that notice shall have to be issued before taking any action which will entail civil consequences.
- c. Normally, the procedure to be adopted is by invoking the provisions of public premises (Eviction of Unauthorized Occupants) Act 1971 which was not followed in this case. In this regard, the applicant relies upon the judgment of the Kolkata Bench of the CAT in OA No. 1106 of 1996 R.P. Mondal Vs. U.O.I. & Ors 2001 (2) ATJ 600.

7. There is full substance in the arguments on behalf of the applicant. Vide Railway Board Circular No. E (G) 74/Qr 1-3 of 21.9.1976, in



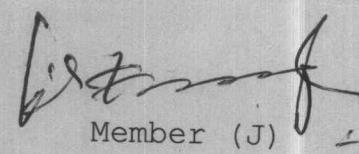
case of temporary transfer for period upto 4 months or more the transferred staff may be permitted to retain quarters for whole period of transfer on normal rent. In the instant case the applicant had been posted on deputation (which can be treated as transfer) and his period of deputation on the first occasion was only 7 months where after, he joined the Railway and served for 8 months before proceeding again on deputation which lasted just 4 months. As such there is absolutely no reason as to why the applicant should not be given the benefit of this Rule. The respondents have not only discriminated the applicant but also have taken into account even that period which the applicant spent in his own Railway Department in between the two spells of deputation. Further no notice was given to the applicant before resorting to recovery of damage rent. And lastly, the respondents have not resorted to invoking the provisions of eviction of (Unauthorized Occupants) Act 1971 as held by the Tribunal vide the case of R.P. Mondal (Supra).

8. In view of the above we have absolutely no hesitation to arrive at the conclusion that the order impugned being bad in law, cannot be legally sustained. Accordingly, the OA is allowed; the impugned orders dated 12.12.2003 and 15.4.2004 are hereby quashed and set aside. The

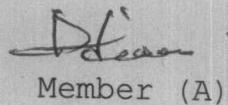
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respondents are directed not to make any recovery towards the damage charges in respect of Quarter No. E-3B, AEN Colony, Varanasi from the applicant and any recovery so far made shall be refunded within a period of three months from the date of communication of this order.

9. Under the facts and circumstance there is no order as to costs.



Member (J)



Member (A)

/pc/