

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No.750 of 2004

Allahabad this the 12th day of December, 2005

Hon'ble Mr. A.K. Bhatnagar, Member (J)

Prem Kumar Shukla Aged about 48 years, Son of Sri Surya Dev Shukla R/o Working as Head Parcel Clerk, North Central Railway, Mirzapur. Permanent R/o Village Karammar, P.O. Karammar, District Ballia.

Applicant

By Advocate Shri **Awadhesh Rai**

Versus

1. Union of India through its General Manager, North Central Railway, at Allahabad.
2. Divisional Rail Manager, North Central Railway, Allahabad.
3. Senior Divisional Commercial Manager, North Central Railway, Allahabad.
4. Station Superintendent, Fatehpur, North Central Railway, Fatehpur.

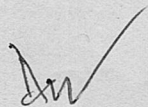
Respondents

By Advocate Shri **A.K. Gaur**

O R D E R

By **Hon'ble Mr. A.K Bhatnagar, Member (J)**

By this O.A. the applicant has prayed for quashing the impugned orders dated 16.01.2004(annexure-1) and 28.02.2004(annexure-2). He has further sought for a



direction to restrain the amount of Rs.1391/-, which is deducted from the salary of the applicant in March 2004.

2. The brief facts giving rise to this O.A. ^{as per applicant} are that while working as Head Booking Clerk, North Central Railway Station, Fatehpur, he was allotted railway quarter no.65 A Type II. Thereafter, he was transferred from Fatehpur to Tundla vide Order No.940/E/EC/5/Prashasnik/Sthanantarn on 27.02.2002 on administrative grounds and he was spared on 05.03.2002 by the Station Superintendent, Fatehpur. The applicant did not join his duties at Tundla and on his request, earlier transfer order dated 27.02.2002 was cancelled and he was again transferred to Mirzapur vide letter dated 08.11.2002. The applicant, thereafter, resumed his duties on 06.12.2002 as Head Parcel Clerk at Mirzapur. The applicant received a letter dated 16.01.2004 from respondent no.4 regarding cancellation of allotted quarter no.65 A Type II from the date of spare. It was also mentioned therein that "you are advised to vacate the above quarter within 15 days i.e. 31.01.2004, after which the damage rent will be deducted and process of disciplinary action will be taken". As per applicant, he could not manage to hire a quarter in Mirzapur in such a short time and ultimately he vacated the premises on 26.02.2004 in compliance of the letter dated 16.01.2004. The applicant has filed this O.A. challenging the Order dated 16.01.2004 and 28.02.2004 by which a recovery of damage rent on unauthorised occupation of Railway Quarter No.65 A Type II at Fatehpur was issued and in pursuance to this order, a recovery of Rs.1391/- per month was started from the salary of the applicant w.e.f. March 2004. In the pay slip of the applicant, filed as annexure A-4, Rs.1391/- has been shown to be recovered as a deduction from the salary of the applicant.

3. Pressing the grounds mentioned in paragraph no.5(I) ~~(II)~~ and ^{as per applicant} (VII), counsel for the applicant submitted that no notice was ever issued to the applicant before 16.01.2004 for vacating the premises. Learned counsel further submitted that as per letter dated 16.01.2004, the

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applicant was asked to vacate the premises within a period of 15 days i.e. upto 31.01.2004 and after the same, damage rent should have been deducted but the respondents have started charging the damage rent from the date of spare i.e. 05.03.2002, which is not justified. Learned counsel further submitted that no quarter was allotted to him at his transferred place i.e. Mirzapur so that he could shift his family there. Learned counsel finally submitted that the action of the respondents charging the damage rent from the date of spare i.e. 05.03.2002 is not legally tenable as he has vacated the quarter on 26.02.2004, after receiving the letter dated 16.01.2004. Therefore, ~~if~~ any damage rent is to be recovered, it should have been from the crucial date, shown in annexure-1 i.e. 31.01.2004.

4. On the other hand, learned counsel for the respondents filed counter affidavit, resisting the claim of the applicant and placed reliance on paragraph no.5, 10, 12 and 14 of the counter affidavit. Learned counsel for the respondents submitted that the applicant has unauthorisedly retained the railway quarter from 05.03.2002 to 26.02.2004, as such a notice/letter dated 28.02.2004 was issued by the Station Superintendent Fatehpur to recover a sum of Rs.1,11,256.27 from the applicant as damage rent. Learned counsel further pointed out that the applicant was spared from Fatehpur on 05.03.2002, therefore, the allotment of railway quarter was automatically cancelled and if he ^{wanted} ~~wanted~~ to retain the quarter, he should have applied for the same. He further submitted that it was specifically mentioned in the letter dated 16.01.2004 to vacate the railway quarter allotted to him at Fatehpur by 31.01.2004 failing which damage rent will be recovered from him and when the applicant vacated the quarter on 26.02.2004 then the recovery of damage rent was initiated after calculation of damage rent. Therefore, the action taken by the respondents are justified and the department has committed no illegality by passing the necessary orders.

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5. Heard the learned counsel for the parties and perused the record.

6. It has been clearly admitted by the respondents in paragraph no.7 of the counter affidavit that the applicant inspite of being spared from Fatehpur, did not join his duties to Tundla and on his request earlier transfer order dated 27.02.2002 was cancelled and he was transferred to Mirzapur in place of Tundla vide letter dated 08.11.2002. It is not understood that as to why the date of spare of the applicant has been taken into consideration as 05.03.2002 while the earlier transfer order passed on 27.02.2002 was cancelled, which clearly established the fact that spare order also vanished along with cancellation of the said order. The second order dated 08.11.2002 was issued for transferring the applicant to Mirzapur and he was spared on 05.12.2002, as admitted in paragraph no.15 of the counter affidavit by the respondents, then he should be deemed to be spared after 08.11.2002 because the earlier transfer order when cancelled, did not exist any more. Therefore, it is observed that the action of the respondents for charging the damage rent from 05.03.2002 seems to be on wrong footing as in paragraph no.15 of the counter affidavit, it has been clearly mentioned that the applicant was spared on 05.12.2002 from Fatehpur.

7. Under the facts and circumstances and in view of the discussion made above, the O.A. is allowed to the extent that the impugned orders dated 16.01.2004 (annexure-1) and 28.02.2004 (annexure-2) are quashed and set aside. However, a liberty is given to the respondents to pass fresh orders as per rules keeping in view the observation made above. The interim order passed on 28.07.2004 also stand merged with this order. No order as to cost.


Member (J)

/M.M./