**RESERVED**

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD**
**BENCH ALLAHABAD**
**(THIS THE 20th DAY OF December, 2016)**

**Present**
**HON'BLE MS. JASMINE AHMED, MEMBER (J)**

**Original Application No. 1578 OF 2005**
(U/S 19, Administrative Tribunal Act, 1985)

Ram Singh S/o late Shiv Charan, aged about 56 years, resident of Railway Quarter No. 188-A, Near Driver Running Room, Railway Colony, Meerpur Cantt, Kanpur.

.....Applicant

**VERSUS**

1. Union of India through the general manager, North Central Railway, Headquarters Office, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Allahabad.
3. The Senior Divisional Safety officer, north Central Railway, Allahabad.
4. The Station Superintendent, north Central Railway, Kanpur

.....Respondents

**Advocates for the Applicant:- Shri S.S. Sharma**

**Advocate for the Respondents:- Shri P.N. Rai**

**ORDER**

**DELIVERED BY**

**HON'BLE MS. JASMINE AHMED, MEMBER (J)**

By way of this original application filed under section 19 of the Administrative Tribunal's Act 1985 the applicant has prayed for the following reliefs:-

*(i) That the Hon'ble Tribunal may graciously be pleased to set aside/quash decision of the Divisional Railway*

*Manager, N.C. Railway, Allahabad, Respondent No. 2 as communicated to the applicant vide letter No. .T/Misc/Qr./2001/24 dated 26/27.09.2005 (Annexure-A-1, Compilation No. I) to the application, to the extent it deciding recovery of damage rent for the intervening period i.e., from 18.10.2001 to the date of receipt of judgement and order of this Hon'ble Tribunal dated 08.4.2005.*

*(ii) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to refund back the amount recovered from the salary of the applicant on account of 'Damage Rent' and 'Arrear of Rent' since Dec 2004 to till this month i.e., December, 2005 with payment of interest @ 12 % per annum from the date of recovery to the date of payment.*

*(iii) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to pay damages Rs. 25000/- or as decided by the Hon'ble Tribunal for dragging the applicant in infructuous litigations with mental torture and humiliation with his family members.*

*(iv) That the Hon'ble Tribunal may graciously be pleased to allow payment of heavy cost and legal expenses in favour of the applicant.*

*(v) That the Hon'ble Tribunal may graciously be pleased to pass any other order or direction as may deem fit and proper in the facts and circumstances of the case..*

2. This is the second round of litigation. The applicant preferred Original Application No. 1246 of 2004 before this Tribunal, challenging the Order dated 19.01.2004, by which the respondents rejected the representation of the applicant and directed the applicant to vacate the accommodation which as a consequence also involved payment of damage rent for the past period till the date of eviction.

When the matter was listed before this Tribunal, this Tribunal was pleased to grant status quo in favour of the applicant vide Order dated 02.12.2004 and the applicant was retained in his quarter allotted to him while he was in Kanpur.

3. The brief factual matrix of the case is that the applicant who is working as a Safaiwala with the respondents was transferred from Kanpur to Bamrauli vide Order dated 04.01.01. After being transferred from Kanpur to Bamrauli, the applicant preferred a representation for retaining the quarter, as he did not claim any quarter at Bamrauli, but when the request of the applicant was rejected by the respondents, the above said O.A. being O.A. no. 1246 of 2004 was preferred by the applicant before this Tribunal, wherein the main plea taken by the applicant was that the respondents have accommodated various employees prior to him in different categories to retain quarter on the event of their transfer from one place to another, however, the request of the applicant has not been considered by the respondents. In this regard, the applicant gave some examples, and the Court taking into consideration the examples given by the applicant and after hearing counsels for both the parties at length passed a detailed Order directing the respondents as under:-

> "*.....In view of the above the O.A. is allowed. It is declared that subject to the grounds for retention of Railway Quarter during the period the applicant was away from Kanpur being*

*either similar or identical to those on the basis of which the two non running staff as contained in annexure A-11 were granted relaxation of the rules for retention of the Railway Quarters, the applicant is also entitled for such retention of his accommodation and upon the same terms and conditions as imposed upon the other two. The DRM, is, therefore, advised to take necessary action in this regard and pass suitable orders accordingly……"*

4. In pursuance of this Order passed by this Tribunal in O.A. No. 1246 of 2004, the respondents have come out with Order dated 27.09.2005, which has been impugned in this O.A.

5. Learned counsel for the applicant contends that it is a settled principle of rules and law that normally Class-IV employees should not be transferred, as Class-IV employees get meager amount of salary by which maintaining two establishment at two different places will cause hardship to them. On the basis of this principle, rules have been framed time and again that generally, if any unavoidable circumstances have not occurred, Class-IV employees should not be transferred from one place to another.

6. Learned counsel for the applicant also took the plea that he is a S.C. candidate, hence he should not be transferred. Learned counsel for the applicant further stated that the applicant was transferred from Kanpur to Bamrauli vide Order dated 04.01.2001 and again came back from Kanpur to Bamrauli on 17.03.2003. After coming back, the applicant again preferred a representation with request to regularise

his quarter and to adjust the rate. It is the contention of the learned counsel for the applicant that the applicant was never allotted any quarter in Bamrauli, on the other hand, the respondents were deducting his H.R.A. for retaining his quarter at Kanpur and electric charge was also taken from him. At the same time, they were deducting a normal rate from him as he was retaining the quarter at Kanpur.

7. Learned counsel for the applicant also states that as per Railways Board's Circular (Pg No. 82 of the Paper Book) retention of Railway Quarter on Transfer, Deputation and Retirement etc, the respondents can very well allow the applicant to retain the quarter, otherwise, if they do not allow retention of quarter as per this guidelines, the respondents should take immediate action and cancel the allotment of quarter and initiate eviction proceeding and charge damage rent for the over stay under Public Premises (Unauthorised Occupants Act, 1971), which was never done by the respondents in the case of the applicant.

8. Learned counsel for the applicant states that the applicant has preferred a detailed representation for accommodating him in Kanpur, but without taking into consideration any plea raised by the applicant in his representation, the respondents have passed impugned Order which is unjust, arbitrary and discriminatory, as in various cases, the

respondents themselves have accommodated other employees in regard to the retention of quarter on the event of their transfer. Accordingly, learned counsel for the applicant stated that the respondents have discriminated against him.

9. Learned counsel for the respondents vehemently opposed the contention raised by the counsel for the applicant and stated that nothing irregular, illegal or arbitrary has been done by the respondents to the applicant, as whatever action taken by the respondents is as per the rules existing with the Railways.

10. Learned counsel for the respondents drew my attention to para 7, page no. 9 of his counter affidavit and stated that it is wrong on the part of the applicant to state that he was not allotted quarter at Bamrauli, instead, he never applied for allocation of quarter at Bamrauli. He also stated that it is also not the case that the applicant's case has not been considered by the authority. After due consideration the quarter was regularized in his name, only the damage rent has been ordered to be recovered as the same was also recovered from the pay of the persons with whom the applicant has claimed parity in the matter of quarter regularization. Hence, there is no irregularity, illegality on the part of the respondents and in this regard he has also stated that the recovery of damage rent is being done as per extant rules and regulations and the applicant can very well ascertain this

fact from the pay bill section and it is wrong on his part to say that he has not been given the details of such recovery. He also contended that the applicant is liable to pay damage rent as per extant rules, and it is the difference between the actual rent paid by him and the damage rent payable by him which has been recovered from him. He also contended that the applicant is/was at liberty to ask the details of the damage rent recovered from him from the concerned office for his satisfaction. Learned counsel for the respondents has also my attention page no. 13 of supplementary counter affidavit filed by him, wherein, he has shown that the deduction was also done by the respondents in the case of one Mr. Manoj Kumar and no discrimination has been caused to the applicant by deducting the damage rent from his salary. He also stated that in the event of over stay, the applicant is bound to pay damage rent and that is what the Railways have very legally deducted from the salary of the applicant. Hence, there is nothing irregular, illegal or arbitrary action done on behalf of the respondents.

11. Heard the rival contention and perused the documents on record.

12. It is seen from the pleadings that while deciding the O.A. on 08.04.2005, this Tribunal in its operative para no.9 stated and given findings as under:-

> ***"9. In view of the above the O.A. is allowed. It is declared that subject to the grounds for retention of Railway Quarter during the period the applicant was away from Kanpur being*** **either similar or identical to those on the basis of which the two non running staff as contained in Annexure A-11 were granted relaxation of the rules for retention of railway quarters, the applicant is also entitled for such retention on his accommodation and upon the same terms and conditions as imposed upon the other two. The D.R.M., is, therefore, advised to take necessary action in this regard and pass suitable orders accordingly."**

But the respondents (D.R.M.) have passed impugned order dated 26/27.09.2005 which does not reflect at all that while passing this order any discussion or any consideration has taken place by the respondents in regard to the categorical direction given by this Tribunal in O.A. No. 1246 of 2004, categorically stating to consider the case of the applicant in the light of the decisions in regard to two non running staffs as contained in Annexure A-11, who were granted relaxation of the rules for retention of the railway quarters. In the judgment passed in O.A. No 1246 of 2004, it is seen that the Court was of the view that the applicant is also entitled for such retention of his accommodation and upon the same terms and conditions and the D.R.M. was only advised to take necessary action in that regard and pass suitable orders accordingly, but in no way while passing the impugned order, it can be said that the D.R.M. has taken into consideration anything as per the direction given in the O.A. 1246 of 2004. Without mentioning-comparing the case of the applicant with those two employees mentioned categorically in the order in O.A. No.

1246 of 2004, the respondents have come into conclusion and passed the impugned order 27.09.2005 in a prejudicial way. Wherein in O.A. 1246 of 2004, direction was given to treat the case in hand in a similar scale which has been done in the case of two non running staffs, but the impugned order does not say anything about considering the case the applicant with those two, but straightway without giving/granting any relaxation passed the order for recovery of rent from the applicant. The respondents have through the impugned order directed to recover the rent from the applicant during the intervening period till the date of receipt of the copy of the order/judgement in O.A. no. 1246 of 2004 as per the extant rules and normal rent to be charged from the date of receipt of the Court's order. Accordingly, the counsel for the applicant states that the respondents have deducted the rent from his salary amounting to total recovery of 87,550/- which is completely against and in the teeth of the order passed by this Tribunal in O.A. No. 1246 of 2004.

14. The counsel for the respondents opposes the contentions raised by the counsel for the applicant and stated that it is not the case that the respondents have not deducted for over staying unauthorisedly in government accommodation from other employees. In this regard the counsel for the respondents, drew my attention to the supplementary affidavit filed by him, in which Annexure SCA-1 wherein, in case of one Shri Manoj Kumar, the regularization of the quarter was not done

after his transfer to another place and he also drew my attention to page no. 13 of the supplementary affidavit and pointed out that the deduction has been taken place in the case of Mr. Manoj Kumar as per extant rules. Hence, the respondents have not done any discrimination towards the applicant by passing the order of deduction or deducting from the salary and the applicant has been given same treatment at par with other employees.

15. It is undisputedly to be agreed that while passing the Order dated 08.04.2005 in O.A. no. 1246 of 2005, the Court took a categorical view which is quoted below:-

> *"……8. I have heard the counsel for the parties, persued the pleadings and also through the relevant records promptly produced by the respondents and gave my anxious consideration to the case. From the perusal of the records produced, it is seen that the respondents had, on 14.06.2001 advised the applicant that he would have to pay normal rent till 17.04.2001 and thereafter double the normal rent up to October 2001 and should vacate the accommodation on 18.10.2001. However, no subsequent correspondence took place either in October 2001 when the quarter was sought to be vacated or immediately thereafter and it was only as late as in November 2003 in the wake of applicant's own representation for regularization, that the matter was once again resurrected. Thus, the department cannot absolve itself of its responsibility in not taking prompt action at the relevant point of time i.e., October 2001. ( In this regard the counsel for the applicant invited my attention to order 30.11.2000 (page 68 of the O.A.) wherein it was provided, " for all occupations beyond the permitted period immediate action should be taken to cancel the allotment declared the occupation as unauthorized and initiates eviction proceedings charging damage rent for over stay). Further, by virtue of the fact that they had received the normal rent during these periods, by conduct, the respondents have impliedly accepted the request of the applicant for retention of accommodation. While this is one of the grounds in favour of the applicant, more solid ground for the applicant to state his claim for*

*retention of accommodation by relaxation of rules rests upon his contention that in a number of cases that authorities have relaxed the rules as contained in Annexure A-11 and the applicant has been subjected to hostile discrimination. In fact, it was to ascertain the actual position in regard to this ground, that the relevant records were called for and a perusal of same shows that apart from the running staff, even clerks and helper Khalasi have been given the concession of retention of accommodation beyond one year when they were posted out and again transferred back. Whatever good grounds are available for such concession to these non running staff, if the same are available in the case of the applicant too, then there is no reason as to why the same concession be not extended to the applicant. It cannot be case of the respondents that in the other two cases the concession given was by oversight. If it were so, the moment they had realized the mistake, on perusing annexure A-11, they would have taken remedial action by putting such persons to notice for recovery of penal rent. This not being so, it can be safely presumed that in granting the relaxation to the non running staff, it was a conscious decision taken by the D.R.M. As such, in order to main equality before law, the applicant is also entitled to such a concession subject to the condition that the good grounds available in the other two cases are equally available in regard to the case of the applicant as well. Of course, since such relaxation can be granted only by the D.R.M. it was purely for the D.R.M. to consider the case of the applicant judiciously with a view to maintaining equality amongst similarly situated persons..."*

16. The bare reading of these paras, clearly shows that record was called for by this Court and the Court was satisfied that the case of the applicant is similarly situated with the examples given in annexure A-11 in O.A. no. 1246 of 2004 and taking into consideration that case of the applicant is on the same footing the Court observed that the applicant is also entitled for such a concession to maintain equality amongst the similarly situated persons. But, the impugned Order passed by the respondents does not show/reflect anything that while passing the impugned order, the respondents have at all taken into

consideration the case of the applicant along with other employees. The order is very mechanical and not at all detailed and reasoned or speaking. The order does not show that at all any comparison was made by the respondents in regard to the applicant's case vis a vis other employees case mentioned in the judgement/ order in O.A. no. 1246 of 2004. It is also categorically observed in the judgment passed in O.A. no. 1246 of 2004 that if any action to be taken by the respondents, it would have been in the year 2001 itself, but the respondents have never taken any action against the applicant until and unless the applicant preferred a representation for regularization of the quarter. It is also a case where the respondents have not given the HRA to the applicant for the entire period when he was transferred out to Kanpur and also charged electricity charge from him, which reflects that the respondents have not declared the occupation of the quarter of the applicant as unauthorized occupation. The counsel for the applicant has relied his case on various judgments passed by various High Courts and Hon'ble Apex Court and stated that recovery of penal rent for unauthorized occupation of government accommodation, amount of penal rent can be recovered by institution of proceedings under Section 7 of P.P. (Eviction of Unauthorised Occupant) Act if the premises partake the character of public premises and in case of a doubt about the occupancy and the character of the premises, civil suit is the other remedy. In this regard he has placed his reliance on the judgement passed **Hon'ble Bombay High Court**

**in Writ petition no. 3120 of 2002 decided on 10.2.2004, in the case of N.C. Sharma vs Union of India and Others**, wherein it is categorically held that railway pension rules, 1950--Rule-323-Penal Rent-Recovery of penal rent on account of non vacation of Govt accommodation after permissible period of retention , such recovery is not permissible under Rule-323, Payment towards penal rent is neither "admitted" nor "obvious", dues apart from the fact that determination has to be made in such a matter. The judgement also states that before recovery of amount towards penal rent prior opportunity has to be given before affecting recovery otherwise recovery of penal rent violates the principal of natural justice and not sustainable in the eyes of law.

17. In this case it is clearly seen that the respondents have passed the order of recovery without awarding any opportunity to the applicant and straightway started deducting and already deducted the amount from his salary. Taking into consideration the contentions categorically mentioned in O.A. No. 1246 of 2004 passed by this Tribunal on 08.04.2005, giving categorical direction to D.R.M to treat the case of the applicant in the light of other employees who were given concession, but the respondents have failed to do so, as the impugned order does not reflect anything about any discussion/consideration of the case of the applicant vis-a-vis other employees. It is settled proposition of law that if nothing is contained

in the impugned order afterwards that cannot be supplemented by way of filing of counter affidavit or supplementary counter affidavit. Accordingly, the impugned Order dated 27.09.2005 completely lacks in the parameter of the judgement passed by the Hon'ble Apex Court in the case of M.S. Gill. Hence, the impugned order passed by the respondents is straightway in the teeth of the judgment of Hon'ble Apex Court, hence cannot be sustained. Accordingly, the impugned order 27.09.2005 is quashed and set aside. As the case is pretty old, pertaining to the year 2001, and the impugned order is dated 27.09.2005, it is of no use remanding the case to the respondents for reconsideration, hence the respondents are directed to treat the applicant equally with the employees (Annexure A-11 of O.A. No. 1246 of 2004) and to extend the same benefit to the applicant and thereafter, to settle the amount (due normal rent for the entire period) and to refund back the excess amount already deducted from him within three months from the date of receipt of certified copy of this Order. Accordingly, with the above said direction, the O.A. is allowed.

**[Jasmine Ahmed]**
**Member – J**

/Arun/