

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 8th day of Oct 2010

Original Application No. 976 of 2005

Hon'ble Mr. S.N. Shukla, Member (A)

S. Kumar Saxena, J.E./1/M.W./SEE
Under Dy. C.S.T.E./M.W.) GKP unit
At present at Sonepur under D.R.M./SEE/E.C. Rly. Hajipur Division.
..... Applicant.

By Advocate: Sri R. N. Sinha
Sri M.K. Upadhyay

V E R S U S

1. Union of India through the General Manager, N.E. Rly/Gorakhpur.
2. Chief Personnel Officer N.E. Rly Gorakhpur.
3. C.S.T.E./N.E. Rly/Gorakhpur.
..... Respondents.

By Advocate: Shri P. Mathur

O R D E R

This OA has been filed seeking the following reliefs:-

"It is therefore most respectfully prayed that this Hon'ble Tribunal may be pleased to:-

- i. Issue an order a direction directing the respondents to quash the order of charging the damaged rent as mentioned in Annexure A-1 to this petition issued by the respondents No.2.
- ii. Issue an order or direction directing the respondents not to treat the quarter as unauthorized occupation in question from 01.06.01 to 24.08.2002 as all the complications were created by the respondents No.4 in this case.
- iii. Issue an order or direction directing the respondents to refund the rest and further deducted amount to the applicant with interest or as the court may deem fit."

2. Briefly stated the facts as pleaded are that the applicant was directed to join duty on 07.09.2000 at Sonepur from Gorakhpur vide order dated 14.6.2001 of the superior authorities. He applied for

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retention of the family quarters at Gorakhpur till the end of schooling session 2000-2001 to Dy.CSTE/MW/N.E. Rly/Gorakhpur (hereinafter called respondent no.4). The respondent no.4 granted permission for retention of the house for two months on normal rent. Thereafter on several occasions the applicant kept asking for further retention of the house vide applications dated 18.12.2000, 8.1.2001, 12,5,2001, 25,7,2001 and 22,8,2001. Vide letter dated 18.2.2002 the authority asked the applicant to submit documentary evidence regarding the educational status of the son and the illness of the daughter which was duly submitted. On 30.04.2002 the applicant submitted a representation to the Director (Electrical) Railway Board New Delhi to consider the case of the applicant for retention of the accommodation at Gorakhpur. No reply was received.

3. On 03.05.2002 a copy of letter dated 01.05.2001 from the office of respondent no.4 was received by the applicant being in the nature of recovery of damage rent for unauthorized retention of the house at Gorakhpur w.e.f. 01.06.2001 onwards. The recovery started from the month of April 2001 onwards. It is submitted that vide letter dated 23.7.2002 the applicant made a request for the allotment of the accommodation in question to someone else so that it can be handed over. Fresh allotment to a new allottee was made on 23.08.2002 and the accommodation was handed over to the new allottee Shri Tapan Kumar Bhomik on 24.08.2002.

4. OA No.1140/02 was filed before this Bench which was decided with directions to decide the representation of the applicant dated 30.04.2002. As a consequence of the OA and subsequent contempt proceedings the recovery of damage rent was stayed and the



deducted amount of Rs.9205 was refunded. Subsequently an order dated 08.06.2005 has been issued for recovery of Rs.52,571 from the pay and allowances of the applicant as a damage rent for the same quarter from 01.06.2001 to 24.08.2002. This is the order impugned in this OA at Annexure A-1. One representation was made in this regard (Annexure A-9) which remains undecided and hence an OA was filed before this Bench which was decided by the following observations of the Bench:-

"K. That in para 6 of the order dated 04.10.2002 it has been mentioned that 'The controversy in this case has been complicated by the respondents themselves by issuing a letter dated 18.02.2002. The authority i.e. respondent No.4 on one hand has passed the impugned order of 10.04.01 while on the other he has given an indication by letter

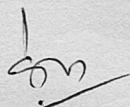
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dt. 18.02.02 (annexure-4) that the case for the retention of the quarter by the applicant on account of his daughter illness and education of children was under consideration. The best course open for the respondent no.4 was to have rejected such a request and intimated the applicant that he is being charged damage rent. Such a dated 18.02.02 letter is bound to create confusion. The applicant has filed representation on 30.04.02 addressed to Director (Electrical) Railway Board New Delhi with a copy to the General Manager, North Eastern Railway, Gorakhpur. The interest of justice shall better be served, if the representation of the applicant is decided by the respondent no.1 in the light of above observation within a specified time'.

Para-7 "The O.A. is finally disposed off with direction to the Director (Electrical) Railway Board, New Delhi to decide the representation dt.30.04.02 of the applicant by a reasoned and speaking order within a period of three months from the date of communication of this order. The applicant to file the copy of his representation dated 30.04.02 along with the order of this Tribunal within four weeks."

The speaking order of the General Manager North Eastern Railway in respect to the courts directions read as under:-

"Since the employee was allotted retention of the quarter on the ground of children education put to the end of academic session, further retention on the same ground is



not admissible as per rules and hence the request made cannot be accepted.”

5. It is submitted on behalf of the applicant that the representation has not been decided in the light of the observations made by this court in OA No.1140/2002 and also that the order violates the principles of natural justice as no show cause notice was issued to the applicant who now stands retired.

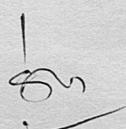
6. In support of the applicant's case the learned counsel relied upon Central Administrative Tribunal Madras Bench decision in the case of **A.R. BalaKrishnan Vs. Union of India and Another, (1993)**

24 Administrative Tribunals Cases 324 held as under:-

“Natural Justice-Show cause notice-Its contents indicating that there was a direction to recover penal rent from the applicant for his alleged unauthorized occupation of government accommodation and rent was actually recovered thereafter-Held, invalid because opportunity of representation was not given to the applicant with open mind.

Government Residential Accommodation-Retention after transfer-Grounds-Currency of academic session-Applicant relieved on transfer on 18.3.1990-At the new station of his posting, applicant diligently pursuing his case for allotment of government accommodation-The accommodation becoming available in October 1990 only-Applicant not disturbing his children at old station during middle of academic session-Government however regularizing accommodation at old station for two months from the date of transfer i.e. upto 17.5.1990 and charging penal rent for the remaining period-Held, applicant entitled to retention of accommodation on normal rent up to end of current academic session i.e. up to April 1991.”

7. Learned counsel for the respondents on the other hand relied upon the extent rules in this regard i.e. **Railway Quarter Allotment Rules (Revised Edition) 2000 (Annexure SCA-1)**. The relevant rules read as under:-



“1. Permanent transfer:-

- (i) A Railway servant on transfer from one station to another, which necessitates change of residence, may be permitted to retain the Railway accommodation at the former station of posting for a period of 2 months on payment of normal rent. On request by the employee on educational or sickness account of self or his family member, the period of retention of Railway accommodation may be extended for a further period of 6 months on payment of double the assessed rent or double the normal rent or 10% of the emoluments whichever is the highest. Further extension beyond the aforesaid period may be granted on educational ground only to cover the current academic session.
- (ii) RETENTION OF RAILWAY QUARTERS BY THE RAILWAY AUDIT STAFF:- The Railway Audit staff on transfer away from Railway concerned may be permitted to retain the Railway quarter for a period of two months on payment of normal rent.
- (iii) PERIOD OF APPRENTICESHIP:-A serving employee who is selected as a apprentice either departmentally or through the RSC may be allowed to retain the railways quarters at the station from where he/ she proceeds on training during the period of his/ her apprenticeship.

Note:-

1. All transfer should be treated as permanent unless indicated specifically, as temporary.
2. In case of sickness a member of family means husband or wife and child/ children excluding dependent relative on production of requisite medical certificate from the recognized medical attendant.
3. Current academic session refers to the annual Examination and not till the results are announced. On production of proper certificate from the organized institutions for regular course only and not any part time course.
4. The permissible period for retention of quarters on the ground of sickness and education will run concurrently and not in separate spells.”

Railway Boards instructions for the quantum of rent to be charged for the period accommodation is allowed to be retained is laid down at the annexures placed at Annexure CA-3 and 4 being letters dated 15.01.1990 and 21.09.1989. Another relevant circular in this regard is placed at Annexure CA-6 and reads as under:-

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"Sub: Regularization of period of unauthorized retention of Railway accommodation.

Individual cases of regularization of period of unauthorized retention of Railway Accommodation are often forwarded by different divisions/HQ. In one such cases/the reference was made to Railway Board for regularization. In reply to this letter, the guidelines received from Boards reads as under:-

"Regularization of unauthorized retention of the officer would require relaxation of extent instruction in favour of an individual which is not permissible in terms of the judgment dated 5/12/2001 of Hon'ble High Court of Delhi directing the Ministry of Railway to strictly follow the rules and guidelines in regard to allotment/retention of Railway quarter and not allow any relaxation in individual cases."

It is therefore requested that rules and guidelines in regard to allotment/retention of Railway quarter may be followed strictly without any relaxation in individual cases. These guidelines may also be circulated to all pool holders of Railway quarters in your department/division."

Learned counsel for the respondents also placed reliance on

Full Bench Decision of Principal Bench of this Tribunal in **Ram**

Poojan Vs. Union of India and Another, (1996) 34

Administrative Tribunals Cases 434 (FB). The Full Bench of this Tribunal held as under:-

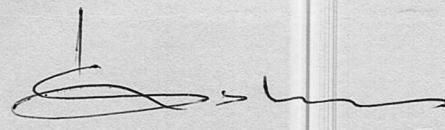
"Government Accommodation-Railway employee-Further retention of accommodation after the expiry of permissible/ permitted period of retention-Held, would be deemed to be unauthorized-No specific order canceling allotment necessary-Penal rent can be recovered from salary without resorting to proceedings under Public Premises (Eviction of Unauthorized Occupants) Act, 1971- Indian Railway Establishment Manual, Para 1711(b)- Railway Board's letters dated 17.12.1983 and 15.1.1990 prevail over the provisions of Para 1711 of IREM-Public Premises (Eviction of Unauthorized Occupants) Act, Sec.7."

8. Heard counsel for the parties and perused the material on record. From the perusal of relevant dates as reproduced in this order it appears reasonably certain that the retention of the accommodation has been allowed till the end of the academic session ending on 31.05.2001. Damage rent has been directed to be charged thereafter. Till the time the applicant handed over possession of the house to the new allottee.

[Signature]

9. The ratio laid down by the Madras Bench of this Tribunal as relied upon by the counsel for the applicant is not been applicable in this regard since the applicant had been given an opportunity for representing his case and the authority has passed a speaking order in response to the directions of this Tribunal in OA No.1140 of 2002. In so far as the application's argument that the representation was not made in the light of the Tribunal observations it would suffice to say that those observations were not in the nature of directions and in any event the order of the authorities for permitting the retention of Government Accommodation has to be as per the extent rules and cannot go beyond that. The extent rules have already been reproduced above. The applicant did enjoy the benefit of retention of the Government accommodation till the academic session ending as on 31.05.2001. Thereafter the damage rent has been ordered to be charged as per rules particularly the position as clarified by the Railway Board instructions circulated vide letter dated 19.10.2006 placed as Annexure CA-6 following the decision of Hon'ble High Court of Delhi. No fault therefore can be found in the impugned order in orders charging of the damage rent as concerned. However, the ends of justice demands that the recovery of the rent should be restricted till 23.07.2002, the date on which the applicant requested the authorities to allot house to someone else so that the possession can be handed over.

10. With these directions the OA is partly allowed. No Costs.



Member-A

/ns/