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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 591 of 1986 (T)

P.N.Dutta Plaintiff

Versus

Union of India Defendant

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

Suit No. 1790 of 1983 P.N. Dutta Versus

Union of India has been received on transfer under Section 29 of the Central Administrative Tribunals Act XIII of 1985. The plaintiff case is that he was working as PWI/Aishbagh upto 8.2.74 and was in occupation of Railway Quarter No.F/1-B at Aishbagh. He was promoted as Asstt. Engineer Construction on 9.2.74 and was posted at different places in connection with work under the construction Organisation under frequent transfer orders - 8 stations in a short span of two years. He worked in the construction organisation till 25.11.75 and continued to retain the quarter at Aishbagh. He was also charged normal rent regularly, but on 1.9.81 he was issued a letter for recovery of Rs.3926/- as penal rent from 1.11.74 to 2.6.76. He vacated the quarter on 1.6.76. According to the plaintiff he had paid rent regularly, his tenancy was never terminated and therefore this impugned order was illegal and he has prayed for setting it aside.

2. The facts of the case are not in dispute. The defendants have however said in their written statement

12/2

- 2 -

that allotment of quarters to staff at a station stands automatically cancelled from the date he ceases to hold a working post on that station and is transferred to another station and though a reference was made to the Railway Board on 26.5.75 the benefit of retention did not get extended by the issuance of that letter. The recommendation made was never accepted by the Railway Board. Since the plaintiff failed to vacate the quarters he is liable to pay penal rent. On the non-vacation of quarters eviction proceedings were also started against him. There has been no discrimination, and the plaintiff has no case in his favour.

38/

3. We have heard the learned counsel for both parties. There has been correspondence between the North Eastern Railway administration and the Railway Board on the subject of retention of quarters, beyond two months, at old station of posting, by the staff of open line who come on transfer to the Construction Organisation. This correspondence is not under dispute. Both parties have filed copies of this correspondence (11 Ga, 33 Ga). Board's this letter of 11.11.74 in response to a reference from N.E. Railway of 12.9.74 gave permission for retention to such staff who were working on the M.G. Line upto 31.10.74 or till the temporary accommodation became available whichever is earlier. On 20.5.75 General Manager N.E. Railway made yet another reference to the Railway Board (13 Ga) asking for confirmation that the sanction given by the Board in their letter of 11.11.74 which was current upto 31.10.74 would apply to all staff who came on transfer to the Construction Organisation and not to only the staff of M.G. Line. This

(M/3)

- 3 -

letter further wanted sanction to be extended upto 31.10.75 as enough quarters could not be made available to accommodate all staff and open line organisation was also not in a position to give more quarters. Simultaneously the staff was also suitably advised of this position warning them that no further extension beyond 31.10.75 would be given (14 Ga, 39 Ga). In 1980 i.e. after about 5 years of the issue of the letter referred to, the Chief Engineer Construction advised all staff that even after constantly pursuing the case with the Railway Board in the matter of retention of quarters upto 31.10.75, the sanction of the Board could not be had (40 Ga). Since Board's sanction was upto 31.10.74 and only in respect of staff posted on M.G. Line and since retention without proper sanction was against rule, necessary penal rent should be recovered along-with arrears. This was inspite of the matter being under consideration of the Railway Board (20 Ga) as the letter of 30.11.1979 from the Board to General Manager, N.E. Railway shows.

36/

4. The plaintiff was transferred to the Construction Organisation on 9.2.74. A letter dated 28.4.75 was issued to him telling him that he was in unauthorised occupation with effect from 5.4.74 and since he has not vacated the quarter recovery at market rent will be made against him. He was also asked to pay at the rate of Rs. 200/- p.m. w.e.f. 5.4.74 (12 Ga). This letter was issued by the Divisional Supdt. as he must be controlling the quarter occupied by the plaintiff.

5. It is, therefore, clear that the North Eastern

12/12

- 4 -

Railway's letter of 1980 regarding non receipt of sanction of the Board inspite of repeated references was premature. The Board on 30.11.1979 had the matter still under consideration and had asked for some further information and a confirmation that the work was over and there would be no proposal for extension beyond 31.10.1975. The matter should have been pursued and concluded as the Board's letter does not give any indication of their intention to outright reject the proposal of extension of permission upto 31.10.1975. The learned counsel for defendant has also not brought to our notice the final position in this regard. We are not aware if the Board have taken any final view in the matter.

38/

5. It has not been disputed that the Construction Organisation had difficulty in accommodating staff. The construction work continues and the close by populated areas or towns cannot provide accommodation to the staff who may get posted there temporarily for short durations. The plaintiff had postings at six different stations and the period at each station did not exceed a few months except at Barabanki where he remained for about a year. For such small durations it will be physically impossible to get any accommodation. It was in keeping with all these factors that the Railway Board was approached to permit retention of quarters at normal rent upto 31.10.75. These difficulties were genuine otherwise the Construction Organisation would not have sought relief for all similarly placed staff.

6. We are left with no doubt that the plaintiff had the implied approval of the Chief Engineer (Construction) to continue in the occupation of the quarters. This is

further supported by the fact that at no stage the deductions from his salary for the house rent were more than normal rent. The last para of the letter of 26.5.75 makes it amply clear that beyond 31.10.75 staff who did not vacate the quarters would be liable to pay 'penal rent'. The plaintiff has in his letter, against the notice given by the Estate Officer agreed to pay penal rent beyond 31.10.75 (16 Ga). The letter of General Manager (Engr) dated 27.4.78 also supports ^{the Plaintiff's} ~~own~~ view. This letter is addressed to Divisional Supdt. and spells out that the facility for retention of quarters has also been given to the plaintiff. Therefore, the plaintiff retained the quarters under a well founded impression that his case would get regularised as the administration was siezed of the problem and itself agitating the matter. He had retained it in good faith and the administration kept on recovering only the normal rent from him, thus legalizing the retention in the face of the inherent right that they could have exercised to charge him penal rent if he was considered in unauthorised occupation in accordance with the extant rules.

31 ✓

7. The plaintiff stayed with the construction organization upto 30.9.1975. He then went on leave before getting reverted to the post of PWI which he took over on 26.11.75 at Varanasi. According to Board's instructions No.E(G) 78RN-44 dated 20.5.78 the plaintiff could retain ³¹ a quarters when he proceeded on leave after getting his transfer orders, for two months. He took up the new assignment on 26.11.75 after having been on leave from 30.9.75 to 26.11.75 i.e. within this stipulated two months period on the presumption that he got his transfer orders simultaneous to his release from Construction Organization on 30.9.75.

A2
A/6

- 6 -

After 26.11.75 he was in unauthorized occupation of the quarter for which no permission was available to him. He could have been charged penal rent for the two months beyond this but he had not sought for any permission and, therefore, he cannot now get protection under the relevant clause on this point. The administration would be well within their right to charge him Market Rent if they so decide.

31
8. The plaintiff's case is clearly a case where in spite of the fact that the plaintiff was not given proper sanction for retention of quarter, the administration allowed him to continue in occupation on the expectation that Board's sanction will be forthcoming. A dead line of 31.10.75 was fixed in this back ground only. It permitted the plaintiff to believe that this may come through and he acted on such belief. The plea of estoppel raised by the plaintiff is thus well founded and in view of these circumstances the doctrine of estoppel becomes applicable.

3/ Suit
9. In the result we allow the ~~petition~~ in part. The recovery of Market rent from 1.11.74 is bad in law and orders imposing it dated 1.9.81 are quashed. The administration would be at liberty to decide about the recovery for the unauthorised retention beyond 26.11.75 till the time he vacated the quarter. There are no order as to costs.

V.C.

A.M.

RKM

Dated the 10th Nov., 1986.