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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1974 of 1987.

(O.S. No. 824 of 1984)

Om Prakash II .... Plaintiff-Applicant.

Versus

Union of India & others .... Defendant-Respondents.

Hon'ble Justice K. Nath, V.C.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This Original Suit No. 824 of 1984 originally filed on 18.10.1984 in the court of Munsif (West), Allahabad by Sri Om Prakash II, Driver Grade 'B', against the (1) Union of India through the General Manager, Northern Railway, New Delhi, (2) Divisional Railway Manager, & (3) Divisional Electrical Engineer, Northern Railway, Allahabad, has been received on transfer to this Tribunal under the provisions of Section 29 of the Administrative Tribunals Act,1975.

2. The facts of the case, in brief, are that the plaintiff, Sri Om Prakash II, was appointed on 24.6.1950 with the Northern Railway and he was allotted Railway quarters at Kanpur in the year 1965 and since then till the filing of the present suit the plaintiff and his family members have been residing therein. It is stated that the normal rent for the said Railway quarter was Rs.21.64P. per month. The plaintiff was transferred to Tundla from Kanpur in August,1976 and then re-transferred back to Kanpur after about 11 months on 6.7.1977. The plaintiff avers that even when he was away at Tundla on transfer, his family members were residing at Kanpur and paying the same old rent. In July,1982, however, the respondents deducted a sum of Rs.357/- and from August,1982 onwards they had started deducting Rs.257/- per month as the rent. This is the grievance of the plaintiff. According to the plaintiff,

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such deduction of abnormally high rent is illegal, because the allotment of the quarter to him was never cancelled and no notice was issued to him before recovering the higher rent. In the plaint, the prayer is for issue of a permanent injunction from deducting ~~Rs.257/-~~ Rs.257/- per month and to deduct only Rs.21.64 P. per month.

3. In the written statement, it is stated that Rs.21.64 P. is not a permanent rent, but has been raised from time to time. The respondents have pointed out that when the plaintiff was transferred from Kanpur to Tundla, he was duty bound to vacate the quarters and hand over vacant possession to the Railway Administration, which he did not do, nor did he seek any permission for the retention of the quarters from the competent authority. Hence, the occupation of the quarters by the plaintiff had become unauthorised. The unauthorised occupation came to notice during audit and action was taken according to Rules to recover the sums referred to by the plaintiff, as "outsider rent". It is contended that there was no necessity to serve any notice and there was no need to issue any specific order of cancellation of allotment. The transfer ipso facto means cancellation of allotment, subject to the Rules. It is further stated by the respondents that a lenient view was taken to deduct only market rent and the respondents did not take any disciplinary action for the misconduct of the plaintiff. The written statement also contains certain formal objections which need not detain us here.

4. In the rejoinder affidavit the plaintiff has merely reiterated his original contentions, except for the statement in para 6 thereof that as per the provisions in the Railway Establishment Manual, the outsider rent of the quarters is four times the normal rent of the quarters in case of unauthorised occupation.

5. The case was heard when Sri P.K. Kashyap, learned counsel for the plaintiff, and Sri G.P. Agarwal, learned counsel for the respondents, advanced their arguments. We have very carefully

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considered the records of the case and the arguments.

6. As stated earlier, the prayer in the plaint is for issue of a permanent injunction against deduction of the market rent. The ground on which this prayer has been made is that the allotment of the quarter was never cancelled specifically by any order, and that no notice was given of such cancellation and the proposal to charge market rent. The respondents' contention is that there was no necessity to formally cancel the allotment on the transfer of the plaintiff from Kanpur to Tundla, and that under the Rules, the allotment was automatically cancelled on transfer, subject to the Rules, and there is no need for any notice to be issued.

7. We find force in the above contention of the respondents. Chapter XVII of the Indian Railway Establishment Manual (IREM) deals with various matters regarding recovery of rent in respect of Railway quarters allotted to Railway servants. A perusal of these Rules generally makes it abundantly clear that the Railway quarters are intended solely for the occupation of Railway servants/ in the particular places of their duty. The provision of quarters is directly linked to and dependent on the performance of the duty by the Government servants at a particular place where the quarters are situated. There is no question of the Railways providing quarters on rent to Railway servants on a permanent basis irrespective of the place of duty of such servants. Keeping the above basic principle in view, the various rules provide for the charging of the appropriate rent in various circumstances. Para 1713(a) provides the principle for charging normal rents. Para 1713(b) empowers the Railway Administration to issue general or special orders providing for charging of rent in excess of normal rent in various circumstances, mentioned therein. The first circumstance mentioned is where a Railway servant is not required or permitted to reside on duty at the station at which the residence is supplied to him. Paras 1732 and 1733 prescribe the conditions and powers of the Railway

Authorities for allowing retention of quarters on transfer to another Railway or office. It is observed that these paras provide for grant of permission to Railway servants who have been transferred from one station to another, to retain Railway residences at the old station for a period not exceeding two months. It is amply clear that if a Government servant on transfer decides to retain quarters at the old place for any reason, he must apply for permission to do so to the General Manager or his delegate. The burden is on the Railway servant on transfer. There is no provision for any cancellation of allotment, or for issue of any notice to such Railway servants if they default in vacating the quarters or in seeking permission from the competent authority. These provisions stand to reason and we cannot uphold the logic of the plaintiff that, irrespective of his transfer, he should have been issued a notice for either vacating the accommodation or for charging of market rent.

8. A similar issue came before this Tribunal for consideration in TA No.957 of 1986, Union of India & another v. Rajendra, decided on 14.12.1987 by a Bench of this Tribunal. Paras 8 and 9, extracted below, are self-explanatory :-

> "8. The Railway rules on occuption of accommodation after transfer are also elaborate and clear. Market rent is charged for retention of quarter without proper authority beyond permissible periods. Water charges and electricity charges have to be at normal rates (Railway Board's letters No.F(X)-1-72/RN/3/1 of 27.4.1972 and 27.9.1976). Railway servants temporarily transferred to another station for period not exceeding 4 months can be permitted to retain their quarter at the original station. In such cases normal rent is charged. In 1983 Railway Board consolidated the instructions regarding retention of quarters (Board's letter No.E(G)83 RN2-6 of 17.12.1983) on permanent transfer. According to these upto 2 months retention is allowed on normal rent, 6 months more can be allowed on request for certain reasons at double the normal rent or double

of assessed rent or 10% of emoluments whichever is more. The transfer order has, however, to say whether the transfer is permanent or temporary. On retirement upto 2 months on normal rent is allowed, this is followed by another 6 months on double the rent. But what is important is that the employee must seek permission. It is not that he can take umbrage on the plea that since he has not been given a notice he can retain the house as long as he wants. The rules on retention are specific and clear and no notice is required to be issued if one chooses to continue retention beyond permissible periods. Of course eviction proceedings can be started but in such cases no rent is normally charged.

9. The rules being elaborate and clear, the respondent has not submitted copies of any requests made by him for the retention of quarter at Allahabad when he got transferred to Chunar and then again to Kanpur. He could have retained the house if the transfer to Chunar indicated that it was a temporary transfer. He remained at Chunar from 15.6.1966 to 4.12.1966, i.e. nearly six months. He could not retain his quarter at Allahabad beyond two months on normal rent. Beyond that obviously he has not sought permission and, therefore, he was in unauthorised occupation of the same. Again on his transfer to Kanpur on 26.12.1968 he could retain it on normal rent for two months. He has on this occasion too not requested for retention. Thus he is responsible for the market rent that should have been charged under the circumstances for unauthorised occupation beyond permissible period. His plea that he should have been charged only normal rent cannot be accepted."

9. In the circumstances stated above, the prayer in the plaint is not allowable and is to be rejected.

10. As indicated earlier in this judgment, there is a reference to the charging of market rent only to the extent of four times the normal rent, in the rejoinder affidavit, and this was also emphasised by the learned counsel for the plaintiff during the hearing. He also submitted a copy of letter No.F(X)I-72/RB/1, dated 23.9.1976 showing under the caption "(1) Market Rent" for B1 and B2 class cities, "4 times the pooled assessed rent, or 10% of the emoluments,

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whichever is higher." These orders are of 1976. Para 8 of the judgment, extracted above, refers to a still later order of 1983. We have already referred to the averments of the respondents that the normal rent has not been static, but has been increasing from time to time. In these circumstances, it does not appear to be probable that the correct market rent to be charged from the plaintiff was 4 times of Rs.21.64 P. The salary particulars are also not available to compute the alternative of 10% of the emoluments. Hence, we are not in a position to pass any order or give any direction in regard to the correct amount of market rent that was due to be charged from the plaintiff, even if this is legally permissible in view of the restricted prayer in the plaint. We may, however, observe that if the plaintiff feels that there was any arithmetical error in calculating the correct market rent in accordance with the extant Rules, the right course for him was and is to represent to the competent authorities for correction and adjustment. He may still do so and if he does so within a reasonable period, say, two months from the date of receipt of a certified copy of this judgment, the respondents may do well to consider and correct error, if any, and give appropriate relief to the plaintiff, say, within three months from the date of receipt of such representation, in accordance with the extant Rules.

11. With the above observations, we dismiss the suit without passing any order as to costs.

MEMBER (A). VICE-CHAIRMAN.

Dated: September 7 ,1990.

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