

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 6th DAY of JANUARY 1998

Original Application No.691 of 1992

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR.S.DAS GUPTA,Member(A)

Vinay Bahadur Singh, s/o Jagdish
Singh, R/o Qr. No.L/129 C, railway
Colony, Ballia.

.. .. Applicant

Versus

1. The Union of India, through General
Manager(P), N.E. Railway, gorakhpur
2. Divisional Rail Manager(Yan)
N.E. railway, Varanasi.
3. Loco Foreman, Loco Shed,
N.E. railway, Ballia

.. .. Respondents

O R D E R(Reserved)

JUSTICE B.C.SAKSENA,V.C.

The applicant through this OA challenges the legality and ~~authority~~ ^{validity} of deduction of amount as penal rent and damages from the salary as directed by order dated 27.11.91 passed by the D.R.M Varanasi. The applicant has further prayed that the deduction which has already been made from the salary of the applicant as penal/damage rent be refunded and the normal charges be deducted till the occupation of Railway quarter at Ballia.

2. To appreciate the controversy involved in the OA it would be relevant to indicate certain facts. The applicant while posted and working as Head clerk at Ballia under Chief Training Examiner N.E. Railway was allotted a railway quarter which had been vacated by one B.P. Srivastava Senior TXR. the applicant occupied the said quarter on 23.8.74. The applicant thereafter was transferred from Ballia to Mau Loco Shed vide office order dated 8/12.1.1988 . The applicant's case is that he resumed his duty on 14.11.1988 at Mau loco Shed as he was sick from 16.3.1988 to 13.11.1988. 1 p2

Subsequently by a transfer order dated 11.8.89 the applicant was transferred from Mau to Ballia. The applicant's case is that while he was transferred from Ballia to Mau he was not given any transfer allowance. He was neither served any notice for cancellation of ^{allotment of} the railway quarter nor he was served with any notice to vacate his allotted quarter. he further claims that he was not given any residential facility at Mau and as such the family members resided at Ballia in the allotted quarter. The applicant further states that he continued to pay normal rent from the date of occupation of the allotted railway quarter till February 1992 and he was never informed and served with any notice that he is being treated as unauthorised occupant of the railway quarter in which he is residing.

3. The respondents in their counter affidavit have stated that the applicant instead of proceeding to Mau on transfer, he preferred to go on sick leave w.e.f. 16.3.1988 to 13.11.1988. They have stated that the applicant had been served with a notice dated 16.3.89 for vacating the quarter at Ballia followed by two reminders dated 10.4.91 and 27.11.91. By the said notices the applicant was informed that ^{if} he failed to vacate the quarter he would be liable to pay penal rent and damages which shall be recovered from his salary in accordance with the rules. The respondents in their counter affidavit has also stated that ~~if~~ the applicant did not vacate the quarter in dispute viz qr.No.L/12-B Type II at Ballia and submitted his representation for permission to retain the said quarter on the ground that his son is studying at Ballia. The respondents have stated that the said representation did not find favour and permission to retain the said quarter was disallowed. They therefore justified the order for recovery of penal/damage rent passed on 27.1.91. The respondents have indicated that the applicant vacated the quarter in dispute on 1.6.92. The respondents have also indicated that the

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applicant was relieved from Ballia to enable him to join at Loco Shed Mau. The relevant record and his name was sent at Loco shed on 29.6.88 and accordingly his name was struck off from the roll of CTR Ballia. The respondents have not disputed that the applicant was transferred back to Ballia on his request on 22.8.89. Their further case is that the applicant never applied for allotment of accommodation at Mau

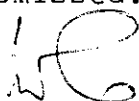
4. The respondents have stated that in view of the decision of the General Manager(P) Gorakhpur dated 25.6.90 ^{which} ~~was~~ clearly stipulated that quarter at the original station shall not be regularised by any authority. The respondents have filed copies of three notices sent to him.

5. The applicant virtually admits the said notices. Since in para 14 of his rejoinder he states that none of the notices annexed with the written statement discloses cancellation of the allotment order. The main burden ~~of~~ the claim of the applicant is that the allotment order has not been cancelled and therefore no penal rent/damage rent could have been charged. The learned counsel for the applicant however conceded that in view of the Full Bench decision in Ram Pujan Vs. union of India and Ors reported in 1996(1) ATJ 54 ~~is that~~ this plea is no longer tenable.

6. The learned counsel further conceded that the other pleas to the effect that no notice for vacation of the quarter had been given nor any notice was given to the applicant informing him that he would be treated as unauthorised occupant and would be liable to pay penal rent are not tenable in view of the aforesaid ^{proposition of law laid down by} ~~cases of the~~ ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ ~~Supreme Court~~ in Ram Pujan's case(Supra).

7. Though the applicant has not categorically stated that he had been granted sick leave from 16.3.88 to 13.11.88 after the order for his transfer to Mau had been passed. The only averment is that " the applicant resumed his duty on 14.11.88

at Loco Shed as he was sick from 16.3.88 to 13.11.88. The respondents in para 4 of their counter have stated that the applicant instead of proceeding to Mau on transfer he preferred to go on sick leave w.e.f. 16.3.88 to 13.11.88. After this averment they have indicated that the relevant record of the applicant was sent to Loco Shed on 29.6.88 and accordingly his name was struck off from the roll of CTXR, Ballia. They have stated that the petitioner joined at Loco Shed Mau on 14.11.88. The recovery of damage and penal rent is indicated from 29.6.88. Evidently from the date the record was transmitted to the loco shed Mai and his name was struck off from the roll of CTXR, Ballia. The pleadings of the parties however leave a grey area. It is not clear whether for the period the applicant states that he was sick, he had submitted any application for grant of leave or not. The penal rent has been charged from 29.6.88 and damage rent from 1.4.89. The pleas taken by the applicant that there was no cancellation of the allotment order nor he was provided with any residential accommodation at Mau, the transfer place are no longer tenable in view of the Full bench decision in Ram poojan's case(Supra), The OA consequently fails and is dismissed. parties to bear their own costs.


MEMBER(A)


VICE CHAIRMAN

Dated: January 6th, 1998

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