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IN GHD CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH.

Dated: this the 17th day of July, 1995.

ORIGINAL APPLICATION NO.741/95.

Hon'ble Mr. S. Das Gupta.

Shri Raj Kumar Prasad Singh, son of Shri Jang Bahadur Prasad Singh, Resident of Railway Quarter No.734 A, New Central Colony, Moghalsarai.

APPLICANT.

By Deva Aharma, Advocate.

Versus

1. The Union of India, New Delhi, through the General Manager, Eastern Railway, Fairlie Place, Calcutta.
2. The Divisional Railway Manager, Eastern Railway, Moghalsarai.
3. The Senior Divisional Personnel Officer, Eastern Railway, Moghalsarai.

RESPONDENTS.

By Advocate Sri A.K. Gaur.

O R D E R.

By Hon'ble S. Das Gupta.

The applicant has approached this Tribunal seeking relief of a direction to the respondents to refund a sum of Rs.27317/- deducted from the D.C.R.G. of the applicant, together with an interest at the rate of Rs.24% per annum upto the date of payment.

2. The facts giving rise to this application lie within a short compass. The applicant stated that he was appointed as a cleaner in the Eastern Railway at Moghalsarai on 28.1.1952. Through successive promotions he reached the level of Driver Grade A on 18.3.1987. He retired as Driver Grade A with effect from 1.9.1991 while he was posted at Gaya Junction. It is stated that shortly before his retirement the applicant had received a notice dated 20.3.1991 intimating that his date of retirement being 31.7.1991, he should vacate

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the railway quarter in his possession. A copy of this notice is Annexure A-2. On the day after his retirement he was called to ~~receive~~ a cheque for his settlement dues in the office of the Divisional Railway Manager, Moghalsarai. He was handed over a cheque as well as pension payment authority dated 31.7.1991, which shows a recovery of Rs.27317/- from his D.C.R.G. together with a sum of Rs.1500/- as held back. A copy of the said pension payment authority is A-1. On the same day the applicant is stated to have given a representation to the Divisional Personnel Officer against the illegal recovery from his D.C.R.G. He also had personal interviews with his senior officers, including Divisional Railway Manager. A copy of the representation is Annexure A-3. This was followed by several representations but none succeeded to elicit any response. The applicant alleges that on enquiries made by him from different sources, he has come to know that the recovery of Rs.27317/- was made on account of damage rent charged for not vacating the quarter allotted to him on his transfer to Gaya on 18.3.1987. This has led the applicant to file this original application under Section 19 of the Administrative Tribunal Act, 1985 seeking the relief aforementioned.

3. The applicant's case is that on his transfer to Gaya Junction on 18.3.1987, he was never asked to vacate the quarter. He being in the category of essential staff, a non-pooled quarter was to be allotted to him at Gaya Junction and this was not done and he was permitted to occupy the railway quarter at Moghalsarai. He was never issued any notice to vacate the railway quarter at Moghalsarai after his transfer to Gaya nor the allotment was cancelled, as he was in authorised occupation of the quarter. No disciplinary action was also taken against him. The applicant says that in these circumstances, the recovery of Rs.27317/- from his D.C.R.G. without giving him a reasonable opportunity of being heard is violative of rules of natural justice. The applicant has asserted that the recovery of normal rent has regularly been made from his pay bill from the date of occupation of that quarter in the year 1958 till the date of his ~~vacation~~ on 15.7.1991.

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4. The respondents have filed a counter affidavit. They have not denied that a recovery of Rs.27317/- was made only at the time of settlement of retiral benefits. It is the case of the respondents that on his transfer to Gaya the applicant did not vacate the quarter allotted to him at Moghalsarai nor did he apply to retain the quarter at Moghalsarai as per rules. It is also alleged that the applicant did not apply for a quarter at Gaya Station. It was for this reason that damage rent was recovered from his retiral benefits. However, on consideration of his representation it was found that an excess amount of Rs.7785/- have been recovered and the same was refunded by a pay order No.651717 dated 30.5.1992. The withheld amount of Rs.1500/- is also stated to have been refunded after deducting Rs.191/- as electricity charges. The respondents have asserted that on transfer from Moghalsarai to Gaya the applicant was bound to vacate this quarter unless he was permitted to retain the same. They have further stated that it is not necessary that on transfer an employee will be asked to vacate a quarter or that his allotment will have to be cancelled. It is a part and ^{parcel} ~~partial~~ of his service condition and duty to vacate the railway quarter on transfer ^{or} ~~to~~ take permission of the competent authority to retain the same. Since no permission was taken by the applicant to retain the quarter at Moghalsarai nor did he vacate the quarter on his transfer, damage rent had to be realised from his retiral benefits.

5. The applicant has filed a rejoinder affidavit denying the contentions of the respondents that a sum of Rs.7785/- out of the damage rent recovered has been refunded to him. It is contended that as no non-pooled quarter was offered to him for allotment at Gaya, it was clearly implied that the applicant had permission to occupy the quarter at Moghalsarai in terms of the circular dated 14.11.1990 issued by the D.R.M. Eastern Railway Moghalsarai (Annexure RAI). The rest of the contentions in the rejoinder affidavit are reiteration of the contentions made in the original application.

6. I have heard the learned counsels of both the

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parties and have carefully perused the records.

7. The facts which are not in dispute are that the applicant was validly allotted the quarter while he was posted at Mughalsarai, which he did not vacate on his transfer to Gaya on 18.3.1987. No notice was given to the applicant to vacate the quarter nor was the allotment cancelled by any specific order. The applicant came to know of the recovery of damage rent from his D.C.R.G. only after he retired from his service more than four years after his transfer to Gaya. The question which follows squarely for decision is whether in such circumstances the respondents had a right to recover damage rent from the retiral benefits of the applicant. During the course of arguments, Sri Deva Sharma, Counsel for the applicant pointed out that in terms of para 1711(b)(v), an order of cancellation is necessary before rent in excess of 10% of the emolument can be charged from a railway servant. Since no such cancellation order was issued, the respondents could not have recovered any damage rent from the applicant. The learned counsel also sought reliance on the decisions in the following cases:-

- (1) The State of Punjab v. Iqbal Singh(1976).
- (2) SCC 1 Bhagwan Shukla v. Union of India AIR (1994) SC 2480.
- (3) R Kapoor v. Director of Industries(Painting & Publica-
tion) Income Tax - Jt 1954 (6) SC 354.
- (4) Awadhesh Kumar V. Union of India (1994)(1)UPLBEC
- (5) Dr. Sagarika Das v. State of Orissa (1994)(3) CAT AISLJ 339.
- (6) P.K. Kutty v. Union of India -(1994) 28 ATC 86, 622.

8. I have carefully gone through the decisions cited before me. The decisions in the cases of Awadhesh Kumar turn on the controversy as to whether any penal rent can be charged from a railway employee without cancelling the allotment. The view taken by a Bench of this Tribunal was that an order of cancellation of the allotment must precede charging of penal rent. If this view is to be followed, the applicant's case would be fully covered and he would be entitled to

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relief prayed for, since undeniably no order cancelling the allotment of quarter at Moghalsarai was passed by the respondents. I have, however, seen that there are several other decisions wherein contrary view has been taken. A Bench of this Tribunal of which I was a Member took a view in the Original Application No 178/93 decided on 18.1.1995 that a positive act of cancellation of the allotment is not necessary before charging penal rent. In this regard the view taken by Calcutta Bench in ^{Shaukat} ~~Sunder~~ v. Union of India reported in (1994) 26 ATC 278 was followed while ~~the~~ ^{the} decision in Awadhesh Kumar case was ~~idiffered~~ ^{from} ~~order~~. There are several other decisions of several other Benches of the Tribunal which have taken divergent views of this controversy. It is not necessary to state ⁱⁿ details ~~any~~ of such decisions. It is sufficient to say that there is no convergence of decisions on this controversy and, therefore, I proceed to examine the case of the present applicant on the basis of the other grounds pleaded:

9. The main ground taken by the applicant is that the recovery was made from the D.C.R.G. after he retired from service without giving him an opportunity and thus the recovery itself was arbitrary and illegal, and ~~is~~ violative of natural justice. I find that in the case of R.Kapoor, a Principal Bench of the Administrative Tribunal had held in D.A.No.399/1987 that D.C.R.G. of the applicant could not be withheld merely because the employee had not vacated the allotted premises during the course of his employment. In SLP the Supreme Court did not set aside the order of the Tribunal but allowed interest @ 18 % which the Tribunal had refused to grant as a part of the relief.

10. In the case of Iqbal Singh, the Supreme Court held inter alia that a cut in superannuation pension or death-cum-gratuity imposed without affording any opportunity of defence to the party is improper. Although Iqbal Singh's case differs from the case before me on facts, the ratio in Iqbal Singh's case, which is ^{derived} ~~weighted~~ from the principle of natural justice embodied in the maxim of Audi Alteram Partem will have applicability to the case before me.

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11. Of the other cases cited, the case of Bhagwan Shukla relates to an order by which the basic pay of the applicant was reduced with retrospective effect. The decision in this case would have no applicability to the case before me.

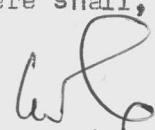
12. In the case of Dr. Sagarika Das the Bhuvaneshwar Bench of the Tribunal held an order to charge penal rent as unlawful since the relevant rules provided only for standard rent or leasing fee and did not mention penal rent. Since the rules under which the present applicant is governed do provide for charging of penal damage rent ⁱⁿ ~~under~~ specific instances, the ratio of Dr. Sagarika Das case cannot be made applicable to this case.

13. In the case of PK Kutty the view taken by the Bombay Bench of the Tribunal is that the recovery of damage rent cannot be made without taking resort to the Public Premises (Eviction and Unauthorised) Act, 1971. This view, to my knowledge has not been followed by any other Bench.

14. As I have already pointed out, the views of various Benches as to whether the order of allotment has to be cancelled before charging penal rent, are widely divergent and it is, therefore, a fit matter for reference to full Bench for an authoritative pronouncement on the controversy. I do not propose to apply any of the decisions of the cases ~~ukd~~ before me. I also do not propose to follow the ratio in PK Kutty's case, as this view has not been followed by other Benches. The ratio decidendi of the case of Iqbal Singh is however fully applicable to the case before me. Admittedly, the applicant was never told that any damage rent was due from him as long as he was in service. For the first time he came to know that he is liable to pay such damage rent was when the recovery was shown in the pension payment order. The respondents have not denied that throughout the period after his transfer to Gaya until his retirement normal rent has been recovered from his salary regularly. The action of the respondents in recovering an amount of Rs. 2731/- from his D.C.R.G. after his retirement, therefore, appears to me to be illegal.

to me a highly arbitrary action. Even if the applicant was liable to pay damage rent, it was the duty of the respondents to give an opportunity of ^{hearing} evidence to the applicant before the recovery was made from the retiral benefits. As this was admittedly, not done, the action of the respondents militates against the principles of natural justice enshrined in the maxim of Audi Alteram Partem.

15. In view of the foregoing I hold that the recovery of damage rent from the D.C.R.B. of the applicant is wholly untenable. I, therefore, direct that the said amount of Rs.27317/- be refunded forthwith and in any case not later than 3 months from the date of communication of this order together with interest at the rate of 12% per annum from the date of his retirement till the date of actual payment thereof. The respondents have stated that they have refunded an amount of Rs.7785/-, which was denied by the applicant. In case the applicant subsequently received this amount, only the balance after adjustment of Rs.7785/- shall be payable and that is with the interest on the sum of Rs.7785/- shall be payable ^{by him interest as specified} after the period from the date of retirement of the applicant till the date it was actually paid. There shall, however, be no orders as to cost.


Member (A).