

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNALs  
ALLAHABAD BENCH  
ALLAHABAD

Allahabad this the 22<sup>nd</sup> day of August 2000

Original Application no. 1281 of 1992.

Hon'ble Mr. S.K.I. Naqvi, Member-J  
Hon'ble Mr. M.P. Singh, Member-A

Anil Pandey, S/o Sri K.B. Pandey,  
R/o No. D/156 F Vijai Nagar, Sector 11  
GHAZIABAD.

...Applicant

C/A Sri M.K. Updhayaya

VERSUS

1. The Union of India,  
through the Secretary, Ministry of Railways  
Rail Bhawan,  
NEW DELHI.
2. The General Manager,  
Northern Railway,  
Baroda House  
New Delhi.
3. The Sr. Divisional Electrical Engineer,  
  
Elec, Loco Shed,  
Northern Railway,  
Ghaziabad.

... Respondents

C/Rs Sri P. Mathur

Sen

Hon'ble Mr. S.K.I. Nagvi, Member-J

While posted at Kanpur in respondents establishment, Shri Anil Pandey, was allotted a residence i.e. quarter no. 443, Fazalganj Colony, Kanpur for the tenure of his posting at Kanpur. Vide order dated 22.08.89, the applicant was transferred from Kanpur to Ghaziabad, but he did not vacate the quarter at Kanpur and kept it in his possession, for which the respondents ordered to charge penal & damage rent for unauthorised occupations against which the applicant preferred a representation which has been rejected vide annexure A-1 dated 27.08.92. The applicant has come up before the Tribunal impugning this order dated 27.08.92 mainly on the ground that the act of the respondents in charging penal rent and damage rent is against the law in this regard and the order also suffers for having been passed without affording opportunity to the applicant of being heard. The applicant has also assailed the action of the respondents on the ground that no specific order has been passed holding the applicant to be unauthorised occupants as provided under section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

2. The respondents have contested the case and have filed CA with the mention that the applicant unauthorisedly occupied the quarter at Fazalganj, Kanpur, even after his transfer from Kanpur to Ghaziabad. It has also been pleaded that as per Railway Board letter dated 15.01.1990, there is no need to pass specific order to cancel the allotment, which automatically stands cancelled beyond the permissible/permitted period to retain the same.

3. Heard learned counsel for the rival contesting parties and perused the record.

*Saw*



4. It is not in dispute that the applicant was allotted quarter no. 443 B, Fazal gang, Kanpur, during his posting at Kanpur. It is also not in dispute that the applicant was transferred from Kanpur to Ghaziabad vide order dated 22.08.89. This fact has also not been disputed amongst the parties that even after his transfer the applicant kept in his occupation the quarter allotted to him at Kanpur. The only controversy remains as to whether the respondents are entitled to recover the penal rent/damage rent from the applicant in lieu of his unauthorised occupation of the Railway Quarter. Under the ratio, as provided in Shangrila Food Products LTD and others versus Life Insurance Corporation of India and others (1996) 5 SCC 54. <sup>referred by ld counsel for applicant,</sup> Under the Public Premises (Eviction of Unauthorised Occupants) Act, unless the occupant is first adjudged as an unauthorised occupant, his liability to pay damage does not arise. We find that this shelter is not available to the applicant in the present case where the controversy is not that of action under Public Premises Act, but in the present matter the respondents have proceeded under the rule for Railway Employees and this point has been thrashed in detail in (1996) 34 ATC 434 (FB), Ram Poojan Versus U.O.I. & Others in which it has been held that in the matter of Railway Accommodation for further retention after the expiry of permissible/permitted period of retention, it would be deemed to be unauthorised occupation for which no specific order cancelling allotment is necessary and the penal rent can be recovered without resorting to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, and in these matters the provision under I.R.E.M. and the direction under Railway Board's letter will apply.


S. K. S.

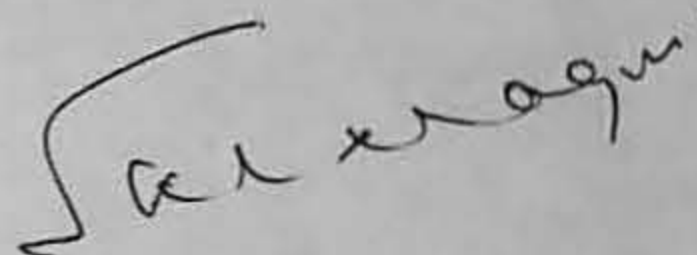
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5. With the above position, in view, the relief sought for in the OA cannot be provided. The OA is dismissed accordingly.

6. There shall be no order as to costs.

  
Member-A

  
Member-J

/pc/