

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 178 of 1993

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

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

THIS THE .... 18<sup>th</sup> DAY OF JANUARY, 1995

Dinesh Chandra Srivastava, Bridge  
Inspector Grade-II, son of Shri C.S.  
Srivastava, posted at Allahabad  
R/o Mohalla Nihalpur, Allahabad.

..... Applicant

BY ADVOCATE SHRI BASHIST TIWARI

Vs.

1. Union of India through the General Manager,  
Northern Railway, Baroda House, New Delhi
2. Senior Civil Engineer, Bridge Line-1, N. Railway  
Lajpat Nager, New Delhi
3. Chief Bridge Engineer, N. Railway, New Delhi.

BY ADVOCATE SHRI A.K. GAUR ..... Respondents

ORDER (RESERVED)

JUSTICE B.C. SAKSENA, V.C.

The brief facts are that the applicant while working at Kanpur was allotted Quarter No. 8/12-A, Nirala Nagar, Kanpur. He was transferred from Kanpur to Allahabad on 29.6.1990. The applicant vacated the quarter at Kanpur on 31.7.1991. By a letter dated 11.11.92 the Senior Civil Engineer had called upon the applicant to show cause as to why the penal rent may not be recovered from the salary of the applicant for the period he retained the said railway quarter.

2. It is alleged that the respondents started recovery of the rent from the salary of the applicant. The action

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has been filed  
of the respondents ~~was~~ challenged as illegal under the provisions of Para 1711(b)(v) of the Railway Establishment Manual and Rule 18(iv)(a) of the Railway Servants Discipline and Appeal Rules.

3. A counter affidavit was filed on behalf of the respondents to which the applicant has not filed any rejoinder.

4. We have heard the learned counsels for the parties.

5. In the written statement it is indicated that after his transfer from Kanpur the applicant retained the quarter for the period 29.6.90 to 31.7.91. The respondent's case is that he did not apply for retention of the railway quarter after his transfer and thus the retention of the quarter was unauthorised and necessary orders for charging damage rent and also payment of arrears for excess due to retention of house rent w.e.f. 1.7.87 were issued. A show cause notice was issued and it is averred that no reply within the specific period was received from the applicant and therefore a recovery at the rate of Rs.650/- per month in instalments was started from the regular salary bills from November 1992 onwards and the applicant was informed about the same also.

6. The learned counsel for the applicant in support of his plea has placed reliance on a decision of the then Vice Chairman rendered in O.A. No. 1004 of 1992 on 30.8.1993 Awdhesh Kumar Vs. Union of India and Ors. The view taken in the said case was that the Railway Board's letter dated 15.1.90 cannot be put to use for imposing penal rent for earlier period viz 6.11.1988 to 15.1.1990. The decision is therefore unhelpful.

7. Reliance was also placed on two Division Bench decisions in which the view taken was that since no cancellation order of the allotment was issued, the question of eviction and penal rent does not arise.

8. The learned counsel also placed reliance on a decision by one of us viz Administrative Member rendered in O.A. 1088/93 S.K. Misra Vs. Union of India and Ors on 2.11.93. The said decision also proceeded on the basis of the view taken in Awdhesh Kumar Vs. Union of India and Ors.

9. Shri A.K. Gaur, learned counsel for the respondents on the contrary invited our attention to a Division Bench decision of the Calcutta Bench of the Tribunal 'Shanker and Ors Vs. Union of India and Ors reported in (1994) 26 A.T.C page 278. The Division Bench considered the very same plea that until and unless the allotment order is cancelled in respect of applicant <sup>in</sup> whose favour there was a valid allotment order, the respondents cannot recover any damage rent from him and the Division Bench considered the provision of Rule 1711 of the Indian Railway Establishment Manual. The Division Bench held that the said rule provides that the rent charged from a railway servant in respect to a quarter allotted should not exceed 10% of his monthly emoluments irrespective of his scale of pay allotted. It was further noted that under Rule 1711(b) the ~~g~~ circumstances in which the Railway Administration may, by general or special order, provide for charging rent in excess of 10% of the emoluments and one such condition is that the railway servant does not vacate the quarter after the cancellation of the allotment. It was held that Rule 1711 is the normal rule regarding recovery of rent chargeable from railway servant but the Railway Board has issued separate instructions regarding payment to be made

when a railway servant is in unauthorised occupation of a railway accommodation. In this respect Railway Board's letter dated 23.9.76 was taken note of. It was further noted that the charging of damages had been ~~provided~~ by <sup>order</sup> ~~annexed~~ <sup>by</sup> dated 1.4.89 and by subsequent order issued in June 1991 ~~by~~ <sup>Railway Board for</sup> and it was therefore held that when a railway servant occupies the railway accommodation unauthorisedly i.e. to say without any valid order of allotment then all these Railway Board's letter making provision for charging of damages are attracted to such cases and provision of Rule 1711 of the Indian Railway Establishment Manual are not attracted.

10. The Division Bench further in its order considered the plea that unless the allotment is formally cancelled, the allotment cannot be unauthorised. On this aspect of the matter after referring to a Railway Board's circular dated 15.1.1990 the Division Bench took the view that as soon as the railway servant is transferred from his place of posting where he has been provided with a railway accommodation he has the right to retain the accommodation for two months after his transfer and as soon as the said period of two months is over and there is no further order of extension from the Competent Authority he will be treated to be <sup>in</sup> unauthorised occupation of accommodation and he is liable to pay such damages for use of accommodation. This is also characterised by the Railway as outsider rent or damage rent or penal rent.

11. In the two decisions on which reliance placed by the learned counsel for the applicant, the provisions of various Railway Board's letter had not been considered, and thus the applicant cannot draw much support from the said decisions. We are in respectful agreement with the view taken by the Division Bench of Calcutta Bench of the

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C.A.T in 'Shanker and Ors. Vs. Union of India and Ors' that retention after the employee had been transferred and posted elsewhere, is unauthorised and damages of penal rent can be charged. Cancellation of the allotment in the circumstances, is not necessary. After transfer if no extension of the allotment is sought, the retention becomes unauthorised.

12. In the present case, the respondents have categorically stated that the applicant did not seek extension of the allotment after his transfer and the said averment has not been controverted since no rejoinder has been filed.

13. In view of the discussion hereinabove, we do not find any merit in the O.A. It is accordingly dismissed, The interim order is vacated.

WR  
Member(A)

*B.S. Dakhne*

Vice Chairman

Dated January 18th, 1995

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