

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 185 of 1993

Bhagwati Prasad

... Petitioner

Versus

Union of India and Ors

... Respondents

CORAM:

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

HON'BLE MISS. USHA SEN, MEMBER (A)

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition filed Under Section 19 of the Administrative Tribunals Act 1985, the petitioner has sought a declaration that the recovery of for Rs. 717.50 per month from the wages of the petitioner as penal rent is illegal and a direction to the respondents to refund to the petitioner the recovery already made so far from him.

2. The facts giving rise to this petition, briefly stated, are as follows

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The petitioner is employed as Fitter in the Northern Railway and he was posted at Mughalsarai where he was allotted railway quarter No. 4-C in the year 1979 and since then, the said quarter has been in occupation of the petitioner and his family members. On 30.8.1989 the petitioner was transferred from Mughalsarai to Tundla and after about a years on 3.9.1990, the petitioner was transferred back to Mughalsarai where he is living in the same Railway quarter along with his family members.

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3. It is not disputed that the petitioner was being charged a normal rent of the said quarter at the rate of Rs.31/- per month and the same was being deducted from his salary for all this period up to August, 1992. But, thereafter, the respondents began to deduct Rs.717.50 per month in addition to Rs.31/- from the pay of the petitioner without intimating any reason to the petitioner. The petitioner made a representation dated 23.11.92 (Annexure A-2, to the petition) to the D.R.M. Northern Railway, Allahabad against the recovery of penal rate and despatched the same by regd. post vide registration receipts No. 61 and 62 (Annexure A-4 to the petition). As the petitioner did not get any response, he filed this petition complaining that the recovery of Rs.717.50p. without giving any notice to him is illegal, arbitrary and against the principle of natural justice.

4. It is the submission of the learned counsel for the petitioner that the allotment of the railway quarter No. 4-C to the petitioner at Mughalsarai in the year 1979 was not cancelled till date and even after his transfer from Mughalsarai to Tundla on 30.8.1989, the said quarter continued to be in the occupation of the petitioner and his family members without any objection from the respondents and the petitioner was again transferred to Mughalsarai on 3.9.90 and he is continuing to live in the same railway quarter along with his family members. In the circumstances, it is the contention of the learned counsel for the petitioner that there being no order of cancellation of the original

order of allotment of the said railway which was initially made in favour of the petitioner and no notice having been given to the petitioner prior to making the recovery at the rate of Rs.717.50p. per month from his pay, the deduction made from the pay of the petitioner is unwarranted, illegal and arbitrary, being in violation of the principles of natural justice.

5. Accordingly to the respondents, the reason for recovery as disclosed in para 6 of the Counter is that it was pointed out in Audit report of CTPD/RSO/MGS checked in June 1991 page 6 that damage charges of quarter in ~~an~~ unauthorised occupation of the petitioner **will** be recovered and hence, the recovery was started. The learned counsel for the respondents has sought to justify the charging of damages from the petitioner for his continued occupation after he was transferred from Mughalsarai to Tundla on 3.9.1990 on the ground that according to the Railway Board's letter dated 15.1.1990, the allotment of the quarter in the name of the employee at the old station will be deemed to have been terminated automatically and retention of quarter by the employee after expiry of permissible period will be treated as unauthorised and during the period of unauthorised occupation, the employee should be required to pay damages rate of rent in respect of the railway quarter. It has also been stated in the counter that after the re-transfer of the petitioner from Tundla to Mughalsarai, the quarter in question has not been regularised in his name and that the petitioner never applied for regularisation of the quarter and therefore he is still living unauthorisedly in the said railway

quarter. It has also been urged that the railway Board's letter has the force of law and is binding on the petitioner.

6. Having heard the learned counsel for the parties and having given our careful consideration to the arguments advanced, we are of the opinion that recovery of rent at penal rate cannot be justified in respect of the railway quarter occupied by the employee in pursuance of order of allotment unless either the order of allotment is cancelled by a subsequent order or the petitioner is put to notice by assigning reason why penal rent is sought to be recovered from him. We are of the view that the instructions issued by the Railway Board is not comparable with the statute law so as to raise a presumption of knowledge of law on the part of the railway employee. Moreover, it appears from what is stated in the counter that the matter of his continued occupation of railway quarter at Mughalsarai during the period of about one year when the petitioner was posted at Tundla before his re-transfer to Mughalsarai, could be regularised on a representation by the petitioner and as such, it was all the more necessary that the petitioner should have been put to notice for either regularisation of his continued occupation of the quarter or if the respondents so decided, for charging him penal rent. In any event in fairness to the railway employee he should have been given option by notice either to retain or not to

retain the quarter on penal rate of rent before imposing penal rent. The recovery for the past period on the assumption that the occupation of the railway quarter had become unauthorised on account of his transfer, without giving him prior notice in that regard is illegal and arbitrary being in violation of the principles of natural justice.

7. Accordingly, this petition is allowed. The recovery of penal rate of rent charged to the petitioner so far, is held to be illegal and we direct the respondents to make a refund to the petitioner of the amount recovered from him as the damages rate of rent in respect of the railway quarter in question. There shall be no order as to costs.

Usha Sen
Member(A)

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Vice Chairman

Dated: 31-3-'94

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