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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 229 of 1993

Suraj Prasad

.... Petitioner

Versus

Union of India and Ors

.... Respondents

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

(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 prayed for setting aside the recovery proceedings for realisation of penal rent from the salary of the applicant and also ^{for} ~~for~~ refund ^{of} ~~of~~ the amount already deducted from his salary by way of penal rent.

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

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The petitioner was appointed as Ticket Collector on 22.8.87 and was posted at Bhatni. He was promoted as Senior T.C. at Bhatni in the month of January 1990 and thereafter on 1.6.90 he was transferred from Bhatni to Gorakhpur(East) as T.T.E where he ^{has} ~~is~~ continued to work as T.T.E.

3. The petitioner was allotted a railway quarter No. T.E-34-A, Type-II at Bhatni in December 1989 and the said allotment has not been cancelled. But the respondents

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have started recovery from the salary of the petitioner Rs. 968/- per month as penal rent i.e. damage rate of rent and Rs. 858/- as arrears of penal rent (vide Annexure I to the petition). The petitioner has stated that according to Para 1711(5) of the Indian Railway Establishment Manual Vol-II, if a railway servant does not vacate the railway quarter after cancellation of allotment the penal rent can be charged, which means that without cancellation of the allotment penal rent cannot be charged.

4. The respondents in their Counter reply have stated that the petitioner was transferred on 1.6.90 from Bhatni to Gorakhpur as T.T.E and after the said transfer the petitioner was required to vacate the quarter allotted to him at the old station Bhatni. The petitioner's continued occupation of the quarter at Bhatni was without authority for which he was liable to be charged penal rent. It has been further stated in the reply that as per Railway Board's letter dated 15.1.90 (Annexure 1 to the ~~Counter~~), ~~the allotment~~ and an employee after transfer can retain an accommodation at the former station of posting for a period of two months on payment of normal rent and the retention of the quarter may be extended for a period of six months on payment of special licence fee and that ^{on} expiry of the permissible/permitted period, the allotment of the quarter in the name of the employee at the old station will be deemed to have been terminated automatically and the retention of the quarter after expiry of the permissible period will be treated as unauthorised. Therefore, there is no need of giving

any notice for charging the penal rent.

5. Thus the controversy in short, is whether or not the cancellation of the order of allotment or a notice to the petitioner is a condition precedent for charging ^{or damage rate of} rent.

6. Learned counsel for the petitioner has submitted that charging the damage rate of rent straight-way without cancellation of the order of allotment in respect of the railway quarter in question or even otherwise giving a notice to the petitioner before actually charging the damage rate of rent amounts to violation of principles of natural justice since the petitioner is deprived of an opportunity to have say in the matter or to exercise option to retain or vacate the quarter.

7. The learned counsel for the petitioner has cited two decisions of this Tribunal in support of his submission namely O.A. No. 1004 of 1992 Awdhesh Kumar Vs. Union of India and Ors, decided on 30.8.93 and O.A. No. 556 of 1992 Mangala Prasad Srivastava Vs. Union of India and Ors, decided on 4.5.93.

8. The learned counsel for the respondents has submitted that the letter (Annexure I) issued by the Railway Board provides for deemed termination of the order of allotment after expiry of the permissible/ permitted period of occupation of the quarter at the old station where-after the retention of quarter has to be treated as unauthorised. Learned counsel further

argued that this provision ~~must be presumed to know~~^{Rw} in the Railway Board's letter is binding law on an employee and that there is presumption that the employee knows the law and as such no notice before charging damage rate of rent is required to be given to the employee and it is also not necessary to make any specific order for cancellation of allotment.

9. Having heard learned counsel for the parties, I am of the opinion that although the instructions in the letters issued by the Railway Board are binding both on the Railway Administration as well as the Railway employees, such instructions cannot be equated with statutory law, knowledge of which could be presumed on the part of the employee. Therefore it is only in keeping with the principles of natural justice that the employee should be specifically told that the order of allotment of the quarter in his occupation has been cancelled and that he shall be charged damage rate of rent in respect of the railway quarter from the date of cancellation of the order. The recovery of damage rate of rent without specific notice of cancellation of the order of allotment ^{to the petitioner is not} ~~is~~ sustainable in law, ~~it~~ being in violation of principles of natural justice. The recovery of penal rent i.e. damage rate of rent ~~is~~^{as} hereby set aside and the respondents are directed to refund to the petitioner the recovered amount of damage rate of rent and only charge from him rent at the rate he was being charged prior to imposition of damage rate of rent.

10. This petition is accordingly allowed without ~~any~~ no order as to costs.

Dated: Dec: 17th 1993

R. K. Varma
Vice Chairman