

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1088 of 1993

S.K.Mishra Applicants.

Versus

Union of India & ors. Respondents.

Hon'ble Mr. S.Das Gupta, Member-Administrative.

In this O.A. No: 1088 of 1993, the applicant has prayed for issue of a direction setting aside the recovery being effected by the respondents from the salary of the applicant in realisation of penal rent and also direct the respondents to refund the amount which was already deducted from the salary of the applicant by way of penal/damage rent.

2. Briefly stated, the facts of the case are that the applicant while he was posted at Indara Junction, was allotted Qr. No. T/15. The applicant was subsequently transferred to Chhapra and joined his new station of posting in March, 1990. The respondents started recovering an amount of Rs. 750/- per month as penal rent from the salary of the applicant and Rs. 569.25P per month as arrear of penal rent from his salary. Such recovery of penal rent has been started without formally cancelling the allotment order in the name of the applicant.

3. The case of the applicant is that the Qr. No. T/15 which was allotted to him at Indara Junction was not cancelled by the competent authority and no eviction proceedings were initiated against him and as such the question of realisation of penal rent would not arise in this case. It has

been contended by the applicant that according to para 1711(V) of Railway Establishment Manual Vol. II, if the railway servant does not vacate the residence after cancellation of allotment, the penal rent can be charged. In the absence of such an order of cancellation of allotment, the respondents are not entitled to charge any penal rent.

4. The respondent's contention is that according to the Railway Board's letter No. E(G) 85/QR/1/9 dtd. 15.1.1990 (Annexure C-3), a Railway employee on expiry of the permissible/permitted period, the allotment of Qr. in the name of the employee at the old station will be deemed to have been terminated automatically and the retention of Qr. after expiry of the permissible period will be treated as unauthorised, the employee being required to pay damage rate of rent for the period of unauthorised occupation. The respondents contend that since the applicant did not obtain any permission to retain the Qr. at Indara Junction, the occupation of the same is irregular right from 4.3.1990 that is the date following the date the applicant is transferred to Chhapra. According to the respondents, the fact of unauthorised occupation came to the notice of the authorities only during Audit Inspection in the month of February, 1992 and thus the order for realisation of rent for unauthorised occupation was issued on 27.8.1992.

5. The facts of the instant case are substantially similar to the facts of the case in the O.A. No: 1004/92, Awadhesh Kumar Vs. Union of India & others which was decided in favour of the applicant

by the judgement and order of this Tribunal dated 30th August, 1993. It was held in that case that the action by the respondents in recovering penal rent from the petitioner was irregular, therefore, the order and process of recovery of penal rent from the salary of the petitioner was quashed and the respondents were directed to refund the amount which was deducted from his salary by way of penal rent.

6. The facts of the instant case being substantially similar, the decision in the O.A. No: 1004/92, Awadhesh Kumar Vs. Union of India & ors. is applicable to the applicant. Petition is therefore allowed. The order and process of the recovery of the penal rent from the salary of the applicant are hereby quashed and set aside and the respondents are directed to refund the amount which was deducted from the salary of the applicant by way of penal rent. The respondents are however, ^{be} free to take further action with regard to cancellation or otherwise of the allotment of the Quarter No. T/15 in accordance with the existing Rules on the subject keeping in view the provisions contained in para 1171 (V) of the Indian Railway Establishment Manual Vol.II.

7. There will be no order as to costs.

Member-Administrative
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Allahabad Dated: 2.11.1993
/jw/