

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED THE 30TH DAY OF ^{June} JULY 1998

CORAM: HON'BLE MR. S.L.JAIN, J.M.

ORIGINAL APPLICATION NO.153 OF 1994

A.K.Srivastava, aged about 50 years son of Sri Ganauri Prasad R/o Quarter No.123 Dairy Colony, Gorakhpur, working as A.P.O. (2000 - 3500) in N.E.Railway, Borakhpur.

C/A Shri Bashisth Tiwari, Adv. Applicant.

Versus

1. Union of India through the General Manager, N.E.Railway, Gorakhpur.
2. Chief Personnel Officer, N.E.Railway, Gorakhpur.

C/R Shri A.V.Srivastava, Adv. Respondents

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the Administrative Tribunals Act 1985 for the following reliefs:

- (a) An order or direction setting aside recovery proceedings against the applicant for realising damages/penal rent.
- (b) An order or direction commanding the respondents to pay withheld amount of salary either deducted by way of panel rent or by fixing wrong pay of the applicant vide order dated 21st March 1990 with 12% interest thereon.

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2. Regarding fixation of wrong pay of the applicant vide order dated 21.3.90, it is to be mentioned that Central Administrative Tribunal (Procedure) Rules 1987 makes it clear in Rule 10 that "an application shall be based upon single ^{Cause} ~~power~~ of action and may ^{Seek} ~~be~~ one or more relief provided that they ^{are} ~~are~~ consequential to one another."

Keeping in view the said provision, if I examine the application in paras 10,11,12,13,14,15,16,17,18,19,20, 21,22,and 23, this relief arises out of independent cause of action. Probably this is the reason that during the course of arguments both the parties have not urged ^{before} this Tribunal for the said relief.

3. There is no dispute between the parties in respect of the following facts:

- (i) That quarter no.95-B Type II dairy colony, Gorakhpur was allotted to the applicant in the year 1982.
- (ii) The applicant was transferred by order dated 25.1.90 from Gorakhpur to Samastipur and he joined at Samastipur on 12.2.90-
- (iii) The applicant had vacated the aforesaid quarter on 22.11.91 for which he was paying Rs.61-35 as a normal rent. The respondents have charged panel rent and started recovery proceedings from the pay of the applicant amounting to Rs.250/- per month from July 1993 by the panel rent and decided to recover Rs.22,262-70 by charging Rs.1600/- per month penal rent for so called unauthorised occupation.

4. The applicant's case, in brief, is that the allotment order which was in his favour for the said quarter was not cancelled and before starting recovery proceedings, no

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notice whatsoever may be, was given which is violative of principles of natural justice and is liable to be set aside. One Suraj Prasad had filed a case before this Tribunal and vide order dated 25.2.93 this Tribunal was pleased to stay deduction from the salary. Hence this application for the above said relief no.1 and consequential relief as mentioned in first part of relief no.2.

5. The respondents have denied the said allegations and stated that it was not necessary for ~~that~~ ^{them} to cancel the said allotment order, no principles of natural justice have been violated and prayed for dismissal of the O.A. with costs.

6. Annexure-2 letter from the office of the General Manager Gorakhpur dated 7.1.91 no.Va/575/4/Bhag-1 clearly mentions that the applicant was permitted to occupy the said quarter from 26.1.90 to 25.3.90 at the ordinary rent and again from 26.1.90 to 25.9.90 at double the rate.

7. Before proceeding further I would like to mention that in the above said order it has been a clerical mistake for the reason that on the one hand the applicant was allowed to stay in the said quarter till 25.3.90 at the ~~penal~~ ^{ordinary} rent and on the other hand he was asked to pay double the rent even from 26.1.90 to 25.9.90. Further there has been again a clerical mistake for the reason that the applicant was transferred vide order dated 25.1.90 but was ~~not~~ ^{he} relieved not on 26.1.90 but on 12.2.90.

8. According to the applicant he has joined Samastipur on 12.2.90 while according to the respondents he has joined Samastipur on 13.2.90 ~~on 13.2.90~~ on being spared from Gorakhpur on 12.2.90 (para-7 of the C.A.). Thus the date of the applicant's joining Samastipur is on 13.2.90 and he was relieved on 12.2.90.

Suraj

9. When a person is transferred, it is not the transfer order which automatically relieves the applicant from his post. It is the act of superior officer who relieves the transferred government servant from his post for being joined at the new station. When the transfer personnel himself is entitled to be relieved, when he hands over the charge. By mentioning the ^{above} said fact ^I ~~or~~ intend to make it clear that mere transfer order does not relieve the applicant but it is the act of himself ^{or} ~~from~~ his superiors to relieve him from the said post. Hence mere transfer order does not authorise the respondents to charge the penal rent ~~or~~ to ^{say} ~~stay~~ that the applicant was ^{an} unauthorised possession of the same quarter since the date of transfer order.

10. Permissible period of occupation and permitted period of occupation both are different facts particularly when the transferred employee is not permitted to continue the occupation for the permissible period.

11. The applicant was entitled to be permitted not from 26.1.90 but from 13.2.90. Hence Annexure R.A.II, There has been a clerical mistake or a mistake by not examining the rules in proper direction. It is the choice of the employer to permit the transferred employee to continue the occupation but the said choice is restricted by permissible limit. There is no allegation in this behalf on the side of the applicant that the said decision was arbitrary, irregular or illegal.

12. The only ground which is mentioned in para 4.4 is that the allotment order was not cancelled and in para 4.6 no notice whatsoever was given for recovery proceedings. Regarding the first contention that there was no cancellation of the allotment order, there is a pronouncement of our own Full

Bench reported in (1996) 34 Administrative Tribunals Cases 434 (FB) Ram Poojan v. Union of India and another in which on a reference it has been held that no specific order cancelling the allotment [✓] of application on expiry of the permissible/permitted period of retention of the quarter on retirement, transfer or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damaged rent can be levied. It has been further held ~~that~~ ^{that} in the said judgment, there would be an automatic cancellation of an allotment and penal rent/damages can be levied according to the rates prescribed from time to time in Railway Board's Circular. The said judgment is full answer [✓] to the grounds mentioned by the applicant in para 4.4 and 4.6 of his application.

13. In view of the Full Bench judgment referred ^{to} ~~to~~ above ^{any} other law contrary to it cannot be applied. ()

14. On admitted facts the applicant has vacated the aforesaid quarter on 22.11.91 while he was permitted to occupy the said quarter upto 25.9.90. Hence the respondents are entitled to recover the penal rent from 26.9.90 to 22.11.91 and from 13.4.90 to 25.9.90 at double the rate and from 13.2.90 to 12.4.90 at the ordinary rate.

15. In the result, the O.A. is partly allowed and the order passed by the respondents is modified to the extent mentioned below:

(i) Respondents are entitled and applicant is liable -

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- (a) to pay ordinary rent ~~upto~~^{from} 13.2.90 to 12.4.90,
- (b) to pay double the rent from 13.4.90 to 25.9.90.
- (c) to pay the penal rent from 26.9.90 to ^{Corrected} 22.11.91 ~~22.11.90~~

16. The calculation made on the aforesaid basis be recovered after giving an adjustment to the amount already recovered from July 1993 till now. Looking to the facts and circumstances it is ordered that both the parties shall bear their own costs.

P. J. M.?

MEMBER (J)

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