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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 19th day of October 1995.

Original Application no. 259 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member.

Jai Karan, S/o Sri Sheetal Rao 571/L, Lalit Nagar, Allahabad

... Applicant.

C/A Sri A. Dwivedi, Sri S. Dwivedi.

Versus

1. Union of India through the General Manager, Northern Railway, Allahabad.
2. The Divisional Mechanical Engineer, (Carriage & Wagon), Northern Railway, Allahabad.
3. The Coaching Depot Officer, Northern Railway, Allahabad.

... Respondents.

C/R. Sri Shailender.

O R D E R

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant seeks following reliefs:-

i. Quashing of the order dated 07.01.94 passed by Coaching Depot Officer.

ii. Direction to respondent to allow the applicant to reside in the railway quarter no. 571/L, Lalit Nagar, Allahabad, till the age of supernuation.

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iii. Direct the respondent to pay back excess amount deducted from his pay as house rent at the market rent as also interest @ 18 % at that amount.

iv. Award the cost of the application.

2. The facts of the case as narrated in the application are that father of the applicant was working on the post of Jamadar under S.H.I., and was allotted Railway Quarter No. 571/L, Lalit Nagar, Allahabad. The applicant got appointed to the post of Safaiwala w.e.f. 10.08.67 and was working under C.T.X.R., Northern Railway, Allahabad. He made application to the Assistant Engineer, Northern Railway, for getting permission for residing in quarter no. 571/L Lalit Nagar Allahabad, with his father in whose name the said quarter was allotted. This permission was granted by the Assistant Engineer vide letter dated 19.03.81 and the applicant was permitted to share the accommodation from 31.12.80 in the quarter occupied by his father Sri Sheetal. The quarter was allotted to the applicant after the retirement of his father and the applicant continues to reside in the quarter from 31.12.80 onwards. Thereafter, the applicant was promoted to the post of fitter in 1985 and transferred to Kanpur but his family continue to stay in the same quarter at Allahabad. The applicant was not allotted any quarter while in Kanpur. The applicant was transferred back to Allahabad in 1986.

The respondents started deducting rent at market rate w.e.f. 16.04.85 from the pay of the applicant. He claims to have made several representations against such deduction and prayed for refund of excess amount. The applicant was served a notice/order dated 07.01.94 passed by Coaching Depot Officer on

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18.01.94 by which applicant was directed to vacate the said quarter within 15 days.

3. The arguement of Sri Satish Dwivedi, learned counsel for the applicant and Sri Shailedra learned counsel for the respondents have been heard. The learned counsel for the applicant cited judgement of this bench of the Tribunal in Kamla Prasad Srivastava versus Union of India and others delivered on 04.05.93 and in Awadhash Kumar versus Union of India and others decided on 30.08.93. These judgements have been reported in (1994) 1 U.P.L.B.E.C (Trib) at pages 1 and 7 respectively.

4. The main ground in asking for the first relief of quashing the order of cancellation of allotment of the quarter in question is that no show cause notice was given before passing of the order of cancellation. The applicant, therefore, did not get any opportunity to have his ^{say} ~~say~~ in the matter. The two judgements cited by the learned counsel for the applicant and mentioned in the previous paragraph following other judgements on the issue of this bench and other benches of the Tribunal lay down that even though the letter of Railway Board may provide for deemed termination automatically on expiry of permitted/permissible period, unauthorised possession will not commence unless allotment is cancelled by giving a notice to the employee and intimating to him after consideration of his reply that the allotment has been cancelled and his possession from then on will be treated as unauthorised. It is clear from the reply of the respondents that no procedure

of this type has been adopted in this case and the respondents are relying upon the deemed termination clause from claiming unauthorised possession upto 06.01.94. The impugned order dated 07.01.94 is unilaterally made without giving a show cause notice to the applicant which is quite clear from its language and no claim to the contrary has been made in the counter reply. In addition the order suffers from another arbitrary feature of cancellation of allotment retrospectively with effect from 16.04.85. The order can not be sustained.

5. As regards the levy of market rate of rent from 21.08.85, the applicant has claimed to have made several representations on the issue to the respondents but he has not produced copy of even one such representations before he sent his representation against the impugned order dated 14.01.94. The applicant has acquiesced in paying rent at market rate and since the rent is Rs. 116.50 out of his emoluments of Rs. 2395, it amounts to about 5%.

6. Since the market rate is charged here is for the period beyond two months of the date of transfer and the applicant has confirmed to pay this rent from April 1985 onwards. The market rate does not exceed 10% of the emoluments of the applicant, there is no justification of granting relief no. III asked for by the applicant especially as the applicant did not ask for continuation of allotment and reduction of rent on return from Kanpur.

7. The applicant has asked for retention of quite quarter upto the date of his superannuation. It is clear

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that such a relief can not be granted as it relates to continued occupation of the quarter in future. It would be wrong to preempt the occupation of the quarter in future till the date of his Superannuation ~~as~~ several contingencies can occur in the meanwhile including transfer of the ^{transaction} applicant by the Railway Authorities according to law for recovering the possession of the quarter.

8. In effect the applicant is held entitled only to relief no. 1. The application ~~is~~ partly succeeds.

10. There shall be no order as to costs.


Member-A

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