

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 18th day of October 1995.

Original Application no. 261 of 1994.

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

Jawahar, S/o Sri Sukhdeo R/o 407/C, Smith Road Allahabad.

... Applicant.

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

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Mechanical Engineer, (C&W), Northern Railway, Allahabad.
3. The Coaching Depot Officer, Northern Railway, Allahabad.

... Respondents.

C/R Sri N.K. Shukla.

ORDER

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

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

The applicant seeks the following reliefs through this application:

- (1) Quashing of the order dated 14.1.94 passed by Coaching Depot Officer
- (2) Direction to the respondents to permit the respondent to stay in the quarter till the date of his superannuation.
- (3) Deduction of house rent at market rate should be quashed.
- (4) Direction to the respondents to refund the excess amount deducted from the pay of the applicant as house rent along with an interest of 18 per cent
- (5) Award of the cost of application.

This, in essence, we have to decide whether quashing of order dated 14.1.94 and deduction of house rent at market rate are called for and reliefs (2) and (4) are incidental to these decisions.

The facts as narrated in the application are that the applicant was appointed as kholaasi with effect from 4-2-63 and was promoted as fitter in 1980. He was allotted Railway Quarter No 407/C, Smith Road, Allahabad, by an order dated 10.4.76. The applicant was transferred from Allahabad to Kanpur on 16.12.80 and worked there till January, 1982, ^{when he was transferred back to Allahabad.} He was allotted no quarter in Kanpur and the family continued to reside in the Railway Quarter at Allahabad. The respondents have been deducting house rent at market rate from 1980 (16th December). He made representations against it. He received an order in the form of letter dated 14.1.94 passed by Coaching Depot Officer to the effect that the allotment of quarter has been cancelled with effect from 16.12.80 and that the applicant should vacate the quarter within fifteen days. The applicant received this order on 24.1.94 and made a representation against it on the same day but claims to have received no reply or order.

The arguments of Shri Sahib Buxi, learned counsel for the applicant and Shri N. K. Shukla, learned counsel for the respondents were heard. The learned counsel for the applicant relies on judgment in K. P. Srivastava v Union of India and others reported in 1994 Vol I UPLBEC Page 1 and another judgment reported in the same volume of the same journal on page 7 to stress the argument that an order of eviction without a show cause notice is arbitrary as principles of natural justice have not been followed.

The main issue of not giving

a show cause notice has been answered in counter affidavit by a statement that the applicant had been asked even prior to 14.1.94 to vacate the railway quarter. Earlier the respondents had mentioned in the counter affidavit that letter no RS/1/Dr-policy/93 dated 31.12.93 was issued to the applicant and letters dated 7-1-94 and 14-1-94 were only reminders. However, the applicants have not annexed a copy of letter dated 31-12-93 nor have they mentioned its contents in the counter affidavit. Letter dated 14-1-94 which is annexed by the applicant as Annexure A-1 to the O.A. makes no reference to any previous letter and is clearly an order of cancellation of allotment of the quarter. Under the circumstances, the statement of the respondents that the applicant was asked even prior to 14.1.94 to vacate the railway quarter is not backed up by any evidence.

As regards the question of rent, the applicant was being charged a rent of Rs 131 per month & has been shown by the applicant by annexing a copy of his pay slip as Annexure A-2 for the month of December, 1993. In a miscellaneous stay vacation application dated 21-11-94, the respondents have stated that they are charging 'damage rent' of Rs 309.94 after admitting that they were recovering rent at market rate of Rs 131 per month since December, 1990. They are also recovering arrears of Rs 100 per month. Thus it appears that an order of damage rent has been conveyed to the pay bill section to recover damage rent from a retrospective date without giving any intimation to the applicant. The charging of damage rent is clearly not warranted by the circumstances of the case.

It is clear from the facts of this case that the quarter is being used by the applicant for the residential purposes of self and family for the last about nineteen years. It is also clear that the applicant came into the possession of the quarter by virtue of its allotment in 1976. The applicant was posted to Kanpur for a little more than a year from December 1980 to January 1982. The applicant was in continuous possession of the quarter for twelve years after his return on posting to Allahabad. Cancellation of allotment of the quarter without

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any show cause notice is bad in law.

Therefore, the order of cancellation of allotment dated 14.1.94 is set aside. The respondents shall not charge any rent higher than Rs 131 per month without giving a notice about the enhancement of rent and the basis thereof to the applicant. Any amount charged in excess of Rs 131 per month shall be refunded to the applicant within three months of this order.

There shall be no order as to costs.


A.M.