

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH

ALLAHABAD

DATED: THIS THE 2nd DAY OF JULY 1997

Coram : Single Member bench of Hon'ble Mr. T.L.Verma JM

ORIGINAL APPLICATION NO.289/94

1. Tashauwar Khan, Fitter, 338/L-Varanasi.
2. Dilip Kumar, ETM, 409/B- Varanasi
3. Enamul Haque, C/Checker, 404/B-Varanasi

-----Applicants

C/A Shri N. A. Khan

Versus

1. Union of India through Ministry of Railways, Rail Bhawan, New Delhi.
2. Baristh Mandal Karmik Adhikari (Sr.Divl. Personnel Officer)
Vetan Vitran Anubhag, Eastern Railway,
Mughalsarai.
3. Manda l Yantrik Abhiyanta (Shakti),
Eastern Railway, Mughalsarai.
4. Karlaya Superintendent/Samanya
D. R. M., Mughalsarai.-----

-----Respondents

Shri Prashant Mathur.

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ORDER

By Hon'ble Mr. T. L. Verma JM

This application under section 19 of the Administrative Tribunal Act, 1995 has been filed for

for quashing the order dated 17.12.1993, whereby order for recovery of damage rent from the salary of the applicants has been passed.

2. The admitted facts of the case are that the applicants were transferred from Mughalsarai to Gaya on 22.5.1988, 12.4.1990 and 6.2.1986. They did not vacate the quarters allotted to them while they were posted at Mughalsarai even after their transfer to Gaya. They were, however, subsequently re-transferred to Mughalsarai w.e.f. 13.5.1992. It is alleged that the respondents assessed penal rent for their unauthorised occupation of the quarters at Mughalsarai, while they remain posted at Gaya and recovered the same from their salary.

3. The grievance of the applicants is that though the penal rent had been recovered from their pay, the respondents by impugned order have ordered for recovery of damage rent also, for the aforesaid periods, from the applicants. The applicants contend that this has been done without giving any opportunity to them to show cause against such recovery, hence is against the principles of natural justice.

4. The respondents have contested the claim of the applicants. In the counter affidavit filed on their behalf, while admitting that penal rent has been realised from the applicants, it has been averred that recovery of damage rent has been ordered in terms of the Railway Board's direction dated 21.9.1988 contained in annexure CA-3.

5. I have heard the learned counsel for the parties and also perused the records.

6. From the averments made in the counter affidavit, it is clear that the applicants were not given any notice before arriving at a decision to charge damage rent from the applicants. It is settled law that Executive orders having civil consequences should abid the principles of natural justice. The impugned order whereby recovery of damage rent from the salary of the applicants has been ordered does visit the applicant with the civil consequences. The respondents should, therefore, have given notice to the applicants for showing cause as to why such recovery be not made before passing the impugned order.

7. In this connection, it may also be mentioned that the applicants have filed copy of order dated 14.9.1992 (annexure A-4) A perusal of this order indicates that the possession of one Enamul Haque applicant no. 3 has been regularised w.e.f. 13.5.1992. From this annexure, it would also appear that the penal rent that was being recovered from his salary was also ordered to be stopped. Similar orders are stated to have been passed in respect of the applicants no. 1 and 2 also. This fact has not been disputed by the respondents in the counter affidavit filed on their behalf. It is implicit in this order that the respondents had earlier taken decision to charge penal rent only for the unauthorised possession of the quarters by the applicants and accordingly made recoveries from their salary. In this view of the matter also it was incumbent upon the respondents to have given notice to the applicants to show cause as to why damage rent may not be charged from them. This admittedly has not been done.

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8. In the facts and circumstances discussed above, the impugned order dated 17.12.1993 passed in violation of the principles of natural justice cannot be sustained and the same is accordingly quashed. It will, however, be open to the respondents to pass fresh order in the matter after giving proper notice to the applicants if so advised, in accordance with the rules. Recovery of damage rent if any, made from the salary of the applicants shall be refunded to them within a period of 3 months from the date of communication of this order. There will be no order as to costs.

J. H. W. M. A.

MEMBER (JUDICIAL)

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