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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 8th day of November 1994.

Original Application No. 483 of 1994.

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

P.K. Pandey Driver (grade B) (Diesel) Loco Foreman
Railway Chopan, R/O Quarter. No. 61/B Railway
Colony. Chopan.

..... Applicant

C/A Shri Anand Kumar

Versus

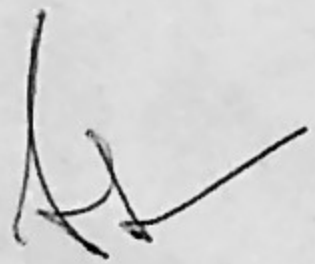
1. Union of India through General Manager Eastern Railway, Calcutta.
2. Senior Divisional Mechanical Engineer, Eastern Railway Dhanbad.
3. Divisional Mechanical Engineer, Eastern Railway, Chopan.
4. Loco Foreman, Eastern Railway, Chopan.

..... Respondents.

C/R Shri G.P. Agarwal

ORDER

Hon'ble Mr. S. Dayal, Member (A)

 This application under section 19 of the Administrative Tribunal Act, 1985, seeks the relief of quashing of order of recovery of Rs. 1175 as damage rent from the ^{monthly} salary of the applicant, of refund of amount already recovered and the cost of the application.

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2. The first ground on which relief is sought is that recovery of penal rent had already been made once from 08.04.77 to 21.05.84 along with the amount of electric bill of quarter no. E. 3C type 1. This quarter which was allotted to the applicant was mutually exchanged by him with the quarter of Shri Raja Ram and an application was made on 08.04.77 by both but the applicant was sent off duty on 08.04.77 and AME Chopan put him back on duty by his order dated 26.07.77 but advised issuance of charge sheet for major penalty. The applicant was served with a charge sheet for major penalty and the respondents have admitted that the charge sheet was served for unauthorised occupation of quarter no 61 B and for recovery of penal rent. The applicant was suspended during the pendency of enquiry vide letter dated 27.07.78. The quarter -61-B type II was allotted as per and the applicant was asked to occupy quarter no E 3D type I. The enquiry was concluded without service of enquiry report or award of punishment. The applicant was awarded quarter no 61/B vide letter dated 21.05.84 @ Rs. 55 per month. The electric bill of quarter in E 3C Type I was also recovered for the applicant's salary. The applicant received a notice dated 27.01.93 from the Foreman, Eastern Railway, Chopan, by which the applicant was asked to remove the sub tenant to which the applicant sent a reply on 28.01.93 that he had not sub-let the quarter. All of a sudden recovery of Rs. 1175 was made from the salary of February, 1994, as damage rent. The applicant represented on 17.03.94, but the applicant

received no order regarding damage rent nor has he received a reply. He has said that damage rent cannot be recovered without initiating a proceeding under Public Premises (**Eviction** of Unauthorised Occupants) Act, 1971. Lastly, the recovery of damage rent a second time amounts to double jeopardy.

3. The history of the exchange of type I quarter with a type II quarter, departmental enquiry and recovery of **penal rent** made in the past is not relevant to issues raised by this application. It is said that penal rent cannot be charged without initiating proceedings under the Public Premises Act. This argument has no merit because action of eviction under Public Premises Act, 1971 and the charging of penal rent under departmental instructions are two separate actions independent of one another.


4. The claim that the applicant had already made payment of **penal rent** in the past and, therefore, penal rent could not have been levied a second time has no merit. The recovery of penal rent from 1977 to 1984 in the past was for a different instance of sub letting and raising the claim for its refund now or that no penal rent can be charged for a subsequent act of sub-letting has no validity.

5. However, paragraph 18 of the reply makes it clear that the subletting was terminated after receipt of notice by the applicant in January, 1993 and the recovery of the applicant for another case subletting by the applicant detected in January, 1994. The

respondents admits that no show cause notice was given to the applicant after **di** discovery of another sub-letting by the applicant. Such an action **becomes** **contrary** to **the** rules of natural justice for which a fresh notice should have issued and after considering the reply of the applicant should the order of penal rent have been passed. The recovery of penal rent is, therefore, not valid.

6. The recovery of penal rent is set aside as **imposed** without giving an opportunity of hearing to the applicant. The amount of Rs. 3125 recovered as penal rent from the applicant's salary bills for Jaunary, February and March are directed to be refunded to the applicant within three months .

7. There shall be no order as to costs.


(S. Dayal)
Member 'A'

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