

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED: THIS THE 29th DAY OF OCTOBER, 1998

Coram ; Hon'ble Mr. S.L.Jain JM

ORIGINAL APPLICATION NO.1116 Of 1994

G. P. Mishra son of Late Radhey Sharan,
working as Assistant Engineer, Central Railway,
at Gwalior under Divl. Rail Manager, Jhansi.

- - - - - Applicant

C/A Shri H.P.Pandey
Shri A.D.Prakash

Versus

1. Union of India through the
General Manager, Central Railway,
G.M.'s office, Bombay VT.

2. Divisional Railway Manager,
DRM's office, Jhansi.

- - - - - Respondents

C/R Shri A.K.Gaur

ORDER

By Hon'ble Mr. S. L. Jain JM

This is an application filed under section 19 of the Administrative Tribunals Act, 1985 to quash the order dated 27.10.1993 passed by the Divisional Railway Manager (P) Jhansi for recovery of damage rent of Rs.42,375/-, to refund all the amount already recovered as damage rent from applicant's wages since November, 1993 with interest at market rate alongwith cost of the litigation.

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2. There is no dispute between the parties in respect of the facts that the applicant was posted as Inspector of Works (Special Works) at Banda station from 22.7.1998 and was enjoined to supervise of interlocking works in Banda-Manikpur section at different stations. The applicant applied to his Controlling Officer-Assistant Engineer, Mahoba and Divisional Engineer (East) Jhansi for railway residential accommodation at Banda out of two newly constructed quarters meant for Engineering staff vide application dated 14.9.1988 marked as annexure no.A-3, the Assistant Engineer, Mahoba vide letter dated 19.10.1988 wrote to the Chairman Housing Committee, Banda to allot one quarter out of the two newly constructed quarters to the applicant vide annexure no.A-4, the Assistant Engineer, Mahoba alongwith Divisional Engineer (East) Jhansi decided to accord permission for occupation of one of the two newly constructed quarters meant for Engineering staff as per sanction dated 18.8.1986 advising the Divisional Railway Manager, Jhansi accordingly by their letter dated 28.10.1988 vide Annexure no.A-2 and the applicant in pursuance of the order of the Assistant Engineer, Mahoba, occupied the railway quarter no.RB-II(DS/FF/561B) from 31.10.1988 after taking charge duly from the Inspector of Works Banda. The rent of the quarter assessed which is the maximum rent, was recovered from the applicant's wages w.e.f. November, 1988 and the applicant was not paid any house allowance thereafter as per rules. The applicant continued to live in the said quarter w.e.f 31.10.1988 to 14.9.1993 along with his family. In November, 1992, he was promoted and transferred to Bombay, hence he submitted an application for retention

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of quarter at Banda vide application dated 5.12.1992. The applicant was transferred from Bombay to Jhansi Division and posted at Gwalior in May 1993 as Assistant Engineer, Gwalior. From the applicant's wages of Dec'93, an amount of Rs.848/- was deducted as house rent recovery without any pre-information to him. On enquiry being made, it was found that the Division Railway Manager (P) vide his letter dated 3.1.1994 has ordered that recovery of Rs.42,375/- is to be made in instalments from the applicant's wages as his occupation of the railway quarter was treated to be unauthorised marked as annexure no.A-6. The applicant submitted an application dated 4.1.1994 to the Divisional Railway Manager(P) clarifying the circumstances and the authority for the quarter with a request to stay recovery from his wages, the matter was dealt with by the D.R.M.(P) and the applicant also replied vide letter dated 12.5.1994 but no reply was received from the D.R.M.(P) and the recoveries continued. The applicant represented the matter before the General Manager vide his letter dated 31.5.1994 for suspension of recovery. Vide letter 16.6.1994 the D.R.M.(P), Jhansi took the view that Housing Committee has not allotted the quarter, applicant's occupation of the quarter was considered unauthorised. The applicant vacated the quarter in July'93.

3. The applicant's case in brief is that he was at no state of time during the occupation of the said quarter for about 5 years informed about the defective occupation either by the Chairman, Housing Committee, Banda or by the Divisional Railway Manager(P) Jhansi, no proceedings were initiated under the provision of section 4 and 5 of the public premises (Eviction of unauthorised occupants) Act 1971 to declare the applicant as unauthorised occupant by the State Officer, Jhansi or by the

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Divisional Railway Manager (P) Jhansi, even no notice was ever served on the applicant to show cause in this respect. The D.R.M.(P) Jhansi failed to consider that the Housing Committee never during 5 years of occupation served any letter on the applicant nor the D.R.M.(P) Jhansi ever objected about the allotment and normal assessed rent was recovered and he was never asked to vacate the said quarter. After vacation of the said quarter, the respondents' action without giving any opportunity was against fair play and inequitable as he had occupied the quarter after receiving the order of the Controlling Officer and took charge from the custodian I.O.W (Banda) in a proper manner. The act^{ion}/of the respondents is against section 3 of public premises (eviction of unauthorised occupants) Act, 1971 as he was never advised earlier to vacate the quarter or he would be liable to pay the damage rent. The General Manager has also not issued any letter regarding the recovery proposed to be effected. Omission on the part of the respondents for an indefinite period cannot hold responsible the applicant and therefore, recovery is bad in law. Hence this O.A. for the above said reliefs.

4. The respondents contested the claim and denied the said allegations and alleged that as the applicant is posted as Assistant Engineer, Gwalior, the cause of action giving rise to the present O.A. arose on 27.10.1993 when the impugned notice was issued to the applicant when he was working in Gwalior, hence O.A. is not maintainable before this Tribunal for want of territorial jurisdiction. The applicant has made representation on 12.5.1994 to which he did not receive any reply, applicant filed the O.A. on 12.9.1994 after a period of 4 months, hence application^{is}/premature and deserves to be rejected

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The applicant while being posted at Banda was a member of the Housing Committee and Housing Incharge holding the keys of two quarters, which were newly constructed and misusing his official position/capacity, illegally occupied the quarter which was in the pool of Carriage and Wagon. He could also avoided issuance of notices at appropriate time and initiation of proceedings against him misusing his official capacities. His representation dated 31.5.1994 being under consideration of the appropriate authority, the present O.A. is misconcieved. The applicant did not apply to the Controlling Officer that is to say Area Officer Banda (Chairman, Housing Board). Assistant Engineer, Mahoba is not the Controlling Officer as alleged. Application dated 14.9.1988 (annexure no.A-3) is not an application from the applicant to the Controlling Officer or the Assistant Engineer, Mahoba for allotment of a residential accomodation. Shri J.D.Mishra, the then Assistant Engineer Mahoba and the applicant herein are relatives and they jointly fabricated documents to give colour to the present case. Documents contained in annexure no.A-2 and A-3 are are so manufactured. Annexure no.A-2 cannot be taken as valid order of allotment of residential accomodation. The Chairman, Housing Committee, Banda never replied which gives to show that no allotment was made by the Chairman Housing Committee, Banda. The fact remains that the applicant who was holding the keys of the said quarter, illegally occupied the quarter abusing his official position. The applicant and Inspector of Works are one and the same, hence taking over charge from himself does not arise. The applicant did not submit any application on 5.12.1992 and no order for retention of quarter was ever passed. The applicant being a Member of the Housing Committee prrvented the notices from the Housing Committee. Proceedings under public premises (Eviction of unauthorised

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occupants) Act 1971 are initiated against unauthorised occupants, who are not in the employment and in case of employees of railways, proceedings to recover the damage rent and disciplinary action are only initiated. Notice under Public Premises (Eviction of unauthorised occupants) Act 1971 was not issued as it is a long drawn process and the same is not an effective and efficacious remedy. The competent authority considered the representation of the applicant and rightly disposed of the same vide letter dated 16.6.1994. The competent authority could not waive the recovery of the rent. Even after vacation of the quarter recovery can be made.

5. In rejoinder affidavit, it is stated by the applicant that he is neither a Member of the Housing Committee nor he was a Depot Incharge. Inspector of Works maintains the Depot and he is the Depot Incharge at Banda whereas the applicant was Inspector of Works (Spl. Works) which was a special post. He was never holding the key of the quarter and there was no question of misusing his official capacity and he was working under the subordination of the Assistant Engineer, Mahoba. His representations dated 4.1.1994, 12.5.1994 and 31.5.1994 were not disposed of. As the recoveries of the damage rent was made from the applicant's wage from November, 1993 as such the applicant has not other alternative except to file this O.A. before this Tribunal and the application is not premature. It is further stated that the Assistant Engineer Mahoba is the Controlling Officer of I.O.W. (Special Works) Mahoba and not the Area Officer Banda. He was relieved on transfer by the Assistant Engineer, Mahoba. Shri J.D. Mishra is not the relative of the applicant and no letter or document are fabricated by them. Post of Inspector of Works and the post of Inspector of Works (special Works

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are different posts. Application for retention of the quarter was forwarded to the competent authority through proper channel stating therein that the daughter of the applicant was studying at Banda and as such he was entitled to retain the quarter for 8 months vide letter dated 4/5-5-1994. The applicant was asked to submit letter of Assistant Engineer, Mahoba which he did, but no enquiry was made.

"Section 20(1) of the Administrative Tribunals Act, 1985 is as under:

A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed for all the remedies available to him under the relevant service rules as to redressal of grievances."

6- The work ordinarily incorporated in the said provision is an exception to section 20(2) (B) of the Act. The applicant has filed this O.A. on 21.07.1994. It is true that reply from the General Manager (P) in respect of the representation of the applicant dated 31.05.1994 was not received, the matter was pending for only less than 2 months and the applicant moved this Tribunal. Thus the application is certainly filed before expiry of 6 months but as the recoveries was being made, there was no other alternative for the applicant to seek the remedy, hence the case comes not under the category of ordinarily but is otherwise, hence the O.A. is tenable. Central Administrative Tribunal (Procedure rules 1987) Rule 6 deals with the place of filing the application. An application can be filed (1) where the applicant is posted for the time being. (2) the cause of action wholly in part or otherwise arisen. Certainly the applicant was not posted within the jurisdiction of this Tribunal as his place of

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posting was at Gwalior which is not under the jurisdiction of this Tribunal, hence the applicant's case is not covered by the first provision but his case is covered by the latter clause- the cause of action wholly or in part has arisen.

7. The expression of the cause of action wholly or in part has arisen is similar to that occurring in Article 226(2) of the Constitution and in section 20(c) of CPC. The expression "Cause of action" means every fact which may be necessary for the applicant to prove, being traversed in order to support his right in the judgment. It refers to the bundle of facts in legal proceedings. In the present case, the quarter for which the applicant is said to have been in unauthorised occupation is situated at Mahoba which is in Manikpur Junction within the territorial jurisdiction of this Tribunal. Further the orders said to have been passed for occupation, non payment of house rent allowance, recovery of normal rent, all were passed only at Mahoba, within the territorial jurisdiction of this Tribunal, hence it is hereby held that the Tribunal has jurisdiction to decide the matter in dispute even though, regarding the recovery which is just a part of cause of action, was served at Gwalior. As cause of action partly has arisen within the territorial jurisdiction of this Tribunal in view of rule 6 of Central Administrative Tribunals (Procedure) Rules 1987, this Tribunal has the jurisdiction.

8. Annexure A-2 dated 28.10.1988 is said to have been passed by the Assistant Engineer, Mahoba by which permission was accorded to the applicant to reside in quarter no. RB-2.

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9. The applicant has requested vide annexure A-3 to I.O.W.^{Sp1.}(Works) for allotment of a quarter on 14.9.1988. On 19.10.1988, a message was sent by the Assistant Engineer, Mahoba to the Chairman, Housing Committee, Banda. On perusal of the whole record, I find no allotment order in favour of the applicant regarding the disputed quarter by the Controlling Officer, Jhansi to say Area Officer, Banda, Chairman Housing Board to whom even a request was made vide annexure A-4 on 19.10.1988 ~~xx xxxxxxxx~~. This fact lends me to conclude that the Assistant Engineer, Mahoba is not the competent authority to allot the residential quarter to the applicant.

10. It is true as not controverted that the applicant was not paid the house rent allowance during his stay at Banda.

11. It is also true as not controverted that normal rent was deducted in respect of the said quarter from the wage bills of the applicant during his stay at Banda.

12. There is no controversy between the parties in respect of the fact that action for a long time that is to say since November, 1988 to November, 1993 was not taken against the applicant for unauthorised occupation-for recovery of the damage rent or for vacation of the said quarter.

13. The fact of not taking action for possession of the quarter unauthorisedly and recovery of damage rent does not give applicant any right in his favour.

14. Inaction of the authorities at Banda does not mean that there was a waiver from the competent authority. Waiver is a contractual act and is an

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agreement to release or not to assert a right as held by the apex court of the land reported in AIR 1959 SC 149 Bisheshwar Nath V/s Commissioner of Incometax.

15. What to say of an inaction but even an agreement to waive illegally is void on the ground of public policy and is unenforceable as held by the apex court of the land in AIR 1959 SC 689 Wamin Srinivas Kinny V/s Rohitlal Bhagwan Das.

16. To relieve the applicant on transfer for Bombay by the Assistant Engineer, Mahoba may mean that he was the Controlling Officer for the applicant but the Controlling Officer and an authority to allot the accommodation are different authorities and hence such an agreement holds no water.

17. The learned counsel for the applicant relied on 1987(3) All India Service Law Journal 306 Nilkant Shah V/s Union of India & others argued that as the applicant was not responsible for inaction of the respondents, no recovery could be made. I do not agree with the said authority cited. Matter of fixation of pay was for consideration and the applicant was no instrument to fix his own pay, Hence after a lapse of long period, when fixation was sought to be corrected, the said direction was laid down. Hence the said authority is of no assistance to the applicant.

18. The learned counsel for the applicant relied on the rules for ^{retention of} the railway quarter by railway employees in the event of transfer, certainly there is a provision in rule II & III that in the event of transfer during mid school/college academic session, the permission to be granted by the competent authority for retention of the railway quarter in terms of item I above will be subject to his production of necessary certificate from

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the concerned School/College authority. There is an averment from the side of the applicant vide annexure A-5 that the applicant had applied for retention of quarter. On persual of the said annexure, I do not find any certificate was enclosed alongwith the said annexure. Furthermore, an application for retention, until sanctioned by the competent authority is of no help to the applicant. Even submission of the said application is disputed by the respondents.

19. It is not necessary for the respondents to proceed under Public Premises (Eviction of unauthorised occupants) Act 1971 against the employees while in service. Action can be taken departmentally.

20. It was not necessary for the D.R.M.(P) Jhansi to enquire into the matter as the authority which sanctioned the occupation of the quarter by the applicant was not competent to sanction the same.

21. It is true that the General Manager is competent to waive recovery of the rent exceeding more than a year in respect of non-gazetted railway servants. It is his entire discretion and if he has not exercised the discretion in favour of the applicant, who was in unauthorised occupation, giving no notice to the applicant as alleged by the applicant, it cannot be interfered by this Tribunal.

22. An illegal act continued for 5 years or so, if not condoned, it cannot be said that it was a case of not exercising discretion properly.

23. In the result, the applicant has failed to establish his grievance, hence the present O.A. is liable to be dismissed and is dismissed with the following observations :-

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(a) Respondents to check from their records whether house rent allowance was not paid to the applicant and if they find that no house rent allowance was paid to the applicant, it be calculated for the period of occupation of the quarter, an adjustment of the said amount be given to the applicant, if not given so far and the normal rent recovered be also adjusted if not adjusted so far. After doing so, the damage rent what-so-ever is due can be recovered in instalments.

24. O.A. is dismissed with the above direction with the costs amounting to Rs.650/- (Legal practitioner fee Rs.500/- plus 150/- other expenses) payable by the applicant to the respondents within 3 months from the receipt of this order.

J. S. J.
Member (J)

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