Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 16th day of January 1998.

Original Application no. 379 of 1995.

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

Prithavi Pal Prasad, S/o Shri Khun Khun Prasad, r/o House no. 332-B Calcutta Railway Colony, N.E. Rly., Gorakhpur.

... Applicant

C/A Shri B. Tiwari

Versus

1. Union of India through General Manager, N.E. Rly., Gorakhpur.

2. Divisional Railway Manager (Commercial) N.E. Rly., Varanasi.

3. Chatriay Adhikari CTC N.E. Rly., Gorakhpur.

... Respondents.

C/R Shri P. Mathur.

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 the relief of setting aside of order of the respondents dated 18.07.94 directing the charging of damage rent from 16.04.91 to 31.01.94 and order

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dated 08.11.94 of the respondents charging damage rent of Rs.945/- per month. It has been stated in this order that the total damage rent for 35.5.months amountimg to Rs.31657.50 @ Rs.945/- per month out of which damage rent @ Rs.40/- per month for 13 months amounting to Rs.520/- and Rs.732/- for 25 months amounting to Rs.18300/- fro April, 1991 to May 1994 had already been recovered. Thus the Rs.12837.50 was to be recovered in 30 months in instalments of Rs.300/- each.

3. The applicant has mentioned that the applicant was alloted quarter no.332 B, Baulia Colony, Gorakhpur by the Chairman Housing Committee by order dated 15.05.82. The applicant was transferred from Gorakhpur to Varanasi in 1990, from Varanasi to Siwan in April, 1991 and from Siwan back to Gorakhpur by order dated 10.01.94. The applicant was not alloted any quarter while he was at Varanasi and Siwan. He was informed by letter of D.R.M., Varanasi dated 20.5.94 that recovery of damage rent would be stopped only if quarter was alloted in his favour. The quarter was alloted to the applicant on 24.05.94. The order dated 15.11.94 annexed by the applicant to his Original Application shows that Rs.18300/- have been recovered as damage rent May 1992 to May 1994 @ Rs.732/- permonth. The applicant has stated that the allotment of his quarter was not cancelled and that no notice was issued to him nor was he heard before damage rent was ordered to be recovered as per law laid down in Mangal Prasad Vs. Union of India and Kamla Prasad Vs. Union of India, damage rent cannot be charged and any damage rent if charged should be refunded.

4. Arguments of Shri B. Tiwari learned counsel for the applicant and Shri P. Mathur, learned counsel for the respondents were heard. Pleadings on record have been perused.

5. The first ground on which the applicant has assailed the order of damage rent is that the allotment in his case was not cancelled. It is stated by the applicant that he was transferred out of Gorakhpur in 1990 and remained posted in Varanasi and Siwan up to January, 1994. The matter regarding cancellation of allotment of quarter on transfer has been settled in Full Bench Judgment of Ram Poojan Vs. Union of India and another(1996) 34 A.I.C. 434(Full Bench). The allotment is deemed to have been cancelled on expiry of 2 months after the date of transfer unless the respondents have granted any extension. The respondents have treated the unauthorised occupency of the quarter from 16.4.91. There is no claim by the applicant that detention of quarter was permitted by the respondents up to any da-te beyond this. Hence the applicant is liable to pay damage rent based on the extant orders of Railway Board.

6. The applicant has claimed that no notice was given to him and he was not given any opportunity to represent against order of charging damage rent. The respondents have claimed that the applicant was issued the notice dated 18.7.94 which is said to be annexed as annexure C.A.-2 to the counter-affidavit. Annexure C.A.-2 is not a communi-cation from the respondents to the applicant on 18.7.94 but annexure C A.-3 is such a communication in which it has simply been intimated to the office preparing pay bill of the applicant that the quarter no.232 B Type II was under unauthorised occupation from 16.4.91 to 31.1.94 and that damage rent should be recovered for this period. It is not a show cause notice but simply an order of recovery of damage rent. It is admitted by the respondents in theri order dated 15.11.94 referred to earlier that they had recovered Rs.18300/- from May 1992 to May 1994 as rent. The respondents.

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have themselves admitted that the rent of quarter was Rs.40/- per month upto 31.3.90 and Rs.50/- per month from 01.4.90 onwards. Under the circumstances the recovery of Rs.745/- per month should have not been only by way of simple rent of the quarter byt was clearly recovered by way of damage rent. The respondents enhanced the damage rent from Rs.732/- per month to Rs.945/- per month. The basis of this enhancement is stated to be circular of Railway Board dated 21.9.89 in which Rs.15/- per square-metre was fixed as damage rent of quarter from type IV. It is not explained as to why Rs.732/- per month was being charged at first. It is also not explained to the applicant as to why the damage rent was being charged for 25 months from May, 1992 to May , 1994 earlier and why the period of unauthorised occupation later was computed from 16.4.91 to 31.1.94 and increased to 33.5 months.

7. Since there was change in the period for which damage rent was being charged as well as change in rate at which damage rent was being charged, the applicant should have been given notice containing facts about the difference and the basis on which difference was being charged before the order of enhancement of damage rent was passed. I, however, find from documents dated 08.11.94 and 15.11.94 annexed to the original application as Annexure A-2 and A-8 that the applicant was aware of the basis on which such calculation was done before he filed the Application in the Tribunal It has been mentioned in letter dated 08.11.94 of the respondents (Annexure A-2 to the O.A.) that the applicant himself had made a request that recovery of additional Rs.12837-50 be effected in 30 monthly instalments. Therefore, non-issuance of a show-cause notice would not vitiate the

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order charging extra amount towards rent for a longer period and at a higher rate would not vitiate the order of recovery.

8. The learned counsel for the applicant has raised the issue that imposition of damage rent cannot be made without issuance of a show-cause notice. Ram Poojan's case(supra) does not lay down a clear law on this issue but briefly touches this issue. There is no right conferred on any Government servant that he shall be provided residential accommodation except in case of holder of certain posts for which residential accommodation is provided ex-officio. The Government provides residential accommodation to other Government servants subject to availability and subject to certain rules. The payment by the Government servant for this facility is also governed by rules. The rules stipulate that a Government servant posted at one station and transferred to another station can retain the government accommodation for his residence for a period of two months. After this period, the residential accommodation would be available to the next employee having entitlement for such accommodation and who is waiting in the queue. This is by way of maintaining availability of scarce resource for others. It is not necessary for a Government servant to reside in the Government accommodation and he does so under a contract under which he has agreed to pay a higher rent for retention of residential accommodation provided by the Government in case he retains it beyond the permissible period for lower rent. No show-cause notice is necessary in such a case and the Government servant will have to pay higher rent prescribed by the Government by way of damages.

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9- The learned counsel for the applicant has cited a number of judgments of the Apex Court in favour of his claim for relief. He seeks to rely on Mangal Prasad V. Union of India, Kamla Prasad Vs. Unionof India and Awadhesh Kumar Vs. Union of India which have been dealt with and over ruled by Ram Poojan's case(supra) and are no longer good law. The case of'S.C. Bose Vs. Comptroller and Auditor General of India and Others, 1995 S.C.C.(L&S) 1114' is not applicable because it does not lay down any ratio that if an employee is transferred from one station to another station, he can retain accommodation at the earlier station. The learned counsel for the applicant has cited M.L. Kapur V. Jagmohan, 1981 A.I.R. 136 SC ' and Awadesh Cotton Mills Vs. Union of India 1981 A.I.R. 818 S.C. to say that principle of natural justice has to be followed in each case without there being any independent or specific prejudice. The two judgments of the Apex Court are related to interpretation of statutes and it is laid down that where statue is silent about doing away with audi alteram partem, rules of natural justice will have to be followed. In the case before me there is no statute which deals with allotment of residential accommodation to Government servants and no statutory right of continuation in accommodation without paying damage rent has been brought to my notice. Lastly the learned counsel for the applicant cites the case of'Robert De Souza Vs. Executive Engineer 1982 S.C.C.(L & S) 124' to say that manual has been held to have statutory status and executive instructions of the Railway Board cannot supercede the provision of manual. Ram Poojan's case (supra) makes it clear that no supercession of Rule 1711

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of Indian Railway Establishment Manual is involved and that rent higher than normal rent can be charged by application of the same provision of the manual.

10. This Bench, however, finds that the respondents have not only regularised the allotment of the same quarter to the applicant on his return to Gorakhpur after a gap of nearly four years but have, by another order, given retrospective effect to this regularisation because the applicant was beset by financial difficulties. The respondents are directed to make no further recovery from the applicant so that the applicant is not subjected to any hardship. The application is disposed of with this observation.

11. There shall be no order as to costs.

Member (A)

/M.M./