

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 717 of 1995

Allahabad this the 12TH day of August 1998

Hon'ble Mr. S.K. Agrawal, Member (J)

Moti Lal (II) S/o Sri Ram Saran, R/o House No. 5/43,
Fire Brigade Nagla, Aligarh at present working as Railway
Electric Driver at Tundla.

Applicant

By Advocate Sri A.S. Diwaker

Versus

1. Union of India through Secretary, Ministry of Railways,
Rail Bhawan, Baroda House, New Delhi.
2. Senior Traction Foreman (Running), Northern Railway,
Allahabad.
3. Traction Foreman, Northern Railway, Tundla, District
Ferozabad.

Respondents

By Advocate Sri S.K. Jaiswal

ORDER

By Hon'ble Mr. S.K. Agrawal, Member (J)

In this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has made a prayer to quash the order dated 25/3/95 by which the order to recover damage rent at the rate of Rs.553.50 for 115 months was issued on 25/3/95.

2. The facts of the case as stated by the applicant

are that the applicant was allotted a railway quarter at Aligarh on 15/12/1975 in capacity of a Cleaner, thereafter he was promoted as Assistant Electric Assistant Driver and transferred to Tundla from 06.1.1985 but, the petitioner was not allotted any quarter at Tundla, therefore, petitioner has no other alternative except to continue his family member to live at Aligarh railway quarter. It is submitted that applicant vacated the said quarter on 02/7/95 and the respondents vide order dated 25/3/95 issued an order for a recovery of damage rent at the rate of Rs.553.50 for 115 months amounting to Rs.63,652.50 vide order annexure-1. It is submitted that on 01.4.1989, rate of damage rent for unauthorised occupation was at the rate of Rs.15 per square mtr. of plinth area per month which was raised to Rs.30/- per square mtr. vide letter dated 10.7.91. It is, therefore, submitted that flat rate cannot be charged at the rate of Rs.553.50 per month from the applicant and petitioner was never given any notice whatsoever, before passing the impugned order. It is also submitted that amount paid by the applicant should have also been deducted, therefore, entire order is bad in law and needs to be quashed.

3. A counter was filed by the respondents. In the counter it is stated that the applicant after his transfer to Tundla from Aligarh remained in unauthorised occupation of the said quarter, therefore, damage rent was to be recovered from him. It is also stated that action of the respondents cannot be termed as unjust, unfair and against the principles of natural justice and at the end in the additional pleas the ^{detailed} description of the calculation of damage rent has been mentioned and it is stated that this application is devoid of any merits and therefore, is to be dismissed with cost.

4. Heard, the learned lawyer for the applicant and learned lawyer for the respondents and perused the whole record.

5. Learned lawyer for the applicant has submitted that the penal rent was assessed by the impugned order is not in accordance with the rules. It is also submitted that it was incumbent upon the respondents to provide an opportunity of hearing or to give notice to show-cause before issuing the impugned order. Therefore, the learned lawyer for the applicant has argued that this impugned order is liable to be quashed.

6. On the other hand, learned lawyer for the respondents objected to these arguments and submitted that the impugned order was issued after following the rules applicable and as such no notice or opportunity of hearing was required to be given before the impugned order is passed in this matter.

7. I gave thoughtful consideration to the rival contention of both the parties and perused the whole record.

8. Railway Board's letter dated 15.1.1990 lays down a consolidated and comprehensive instruction on the subject of retention of railway accommodation by the railway employees in supersession of all previous instructions. In this letter in respect of permanent transfers the following provisions have been made:

"(i) A railway employee on transfer from one station to another which necessitates change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of two months on payment of normal rent or single flat rate of licence

fee/rent on request by the employees on educational or sickness account the period of retention of railway accommodation may be extended for a further period of six months on payment of special licence fee, i.e. double the flat rate of licence fee/rent. Further extension beyond the aforesaid period may be granted on educational ground only to cover the current academic session on payment of special licence fee.

(ii) Where the request made for retention of railway quarter is on grounds of sickness of self or a dependent member of the family of the railway employee, he will be required to produce the requisite Medical Certificate from the authorised Railway Medical Officer for the purpose.

(iii) In the event of transfer during the mid school/ colleges academic session, the permission to be granted by Competent Authority for retention of railway accommodation in terms of Item (i) above will be subject to his production of the necessary certificates from the concerned school/college authority."

On the perusal of these instructions it becomes abundantly clear that retention of quarter by the employee after expiry of the permissible period will be treated as unauthorised and he would be required to pay damage rent in respect of railway quarter as per instructions issued from time to time.

9. In the case of Ram Poojan Vs. Union of India and Others delivered in O.A.No. 936/93, decided on 22.2.96 Full Bench of the Allahabad Central Administrative Tribunal held;

"(a) In respect of a railway employee in occupation of a railway accommodation, in our considered opinion, no specific order cancelling the allotment of accommodation on expiry of their permissible/permitted period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation

:: 5 k:

by the railway servant would be unauthorised and penal/damage rent can be levied.

(b) Our answer is that retention of accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorised occupation and there would be an automatic cancellation of an allotment and penal rent/damage can be levied according to the rates prescribed from time to time in the Railway Board's circular.

39. We further hold that it would be open to the Railway Authorities to recover penal/damage rent by deducting the same from the salary of the Railway servant and it would not be necessary to take resort to proceedings under Public Premises(Eviction of unauthorised Occupants)Act, 1971."

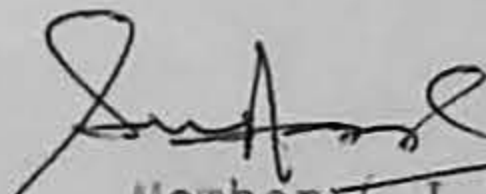
10. It is contended by the learned lawyer for the applicant that fixing the flat rate of damage rent in the impugned order is not only incorrect but also against the executive instructions issued by the railways from time to time, therefore, impugned order is liable to be quashed on this ground alone. He has again stressed that an opportunity of hearing should have been provided to the applicant before passing the impugned order.

11. It is an admitted position that Government of India, Ministry of Urban Development has issued executive instructions regarding the assessment of damage rent incase of unauthorised occupation of railway quarter by a railway employee but it appears that these rules have not been followed and a flat rate @ Rs.553.50 for 115 months was assessed and communicated to the applicant to recover the same. It also appears that before issuing the impugned order, no opportunity was provided to the applicant whatsoever. In the counter, the respondents have also admitted this position that Government of India Ministry of Urban Development has issued executive instructions from time to time for the recovery of penal/damage rent from

an unauthorised occupier of railway quarter. It is also abundantly clear that without following those executive instructions, the impugned order has been issued. Therefore, impugned order is liable to be quashed.

12. I, therefore, quash the impugned order at annexure-1 dated 25.3.95 and direct the respondents to issue a fresh order in accordance with the rules/executive instructions as are applicable from time to time after affording an opportunity of hearing to the applicant and taking ~~into~~ ^{into} consideration the amount already paid by the applicant.

13. No order as to costs.


Member (J) 12/8/58

/M.M./