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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

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Allahabad : Dated this 4th day of February, 2000

Original Application No.64 of 1995

District : Jhansi

CURAM :-

Hon'ble Mr. S. Biswas, A.M.

Raja Singh Rajput,
S/o Sri Brij Lal Rajput
R/o House No.25/1, Mohalla Police Chouki,
Prem Nagar, Jhansi (U.P.), working Driver
in Jhansi Division of Central Railway.

(Sri HP Pandey/Sri AD Prakash, Advocates)

. Applicants

versus

1. Union of India through the General Manager,
Central Railway, GM's Office, Bombay V.T.
2. Divisional Railway Manager,
Central Railway, DRM's Office,
Jhansi.

(Sri J.N. Singh, Advocate)

. Respondents

ORDER

The applicant is a Driver in the Jhansi Division of the Central Railway. By the order dated 04-12-1986, he was transferred from Jhansi to Bhopal on promotion as a Driver. He was occupying quarter at Jhansi at that time w.e.f. 23-12-1983 as per a regular allotment order. He resumed his duties at Bhopal on 18-12-1986 but he was soon thereafter transferred back to Jhansi on 19-2-1987 but he could not be relieved because of administrative exigencies prior to 4-2-1988. He joined back as per the

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order dated 19-2-1987 at Jhansi on 5-2-1988.

2. In the background of this status of his transfer, posting and retransfer back to Jhansi, the applicant has contested the following two orders :-

- (i) The order dated 10-1-1992, cancelling the allotment of Quarter No. MA/526-B which was properly allotted to the applicant in 1983. Even at the time of cancellation the applicant was posted at Jhansi.
- (ii) He has also impugned the recovery of damage rent @Rs.750/- per month from 21-8-1990 and penal rent of Rs.96/- being three times the normal rent w.e.f. April 1987. He has been also charged to pay arrears @Rs.500/- per month. Consequently, a sum of Rs.1346/- per month was recovered from his pay. The applicant ^{allegedly} had been unauthorisedly occupying the said Railway Quarter No. MA/526-B w.e.f. 28-8-1990. It appears that the electricity bill has been levied on him w.e.f. April, 1987 and consequently the arrears were deducted.

3. The applicant has quoted the Railway Rulings on occupation of official accommodation which state that if the the occupant fails to vacate the quarter on transfer the General Manager may permit retention of the quarter for two months and thereafter after for four months on exceptional grounds. The rent will be normal for the first two months and the remaining four months' rent will be assessed double the rent. Further extension for another two months can be granted on the ground of sickness and education.

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4. These instructions were not observed. Several applications/representations were sent by the applicant but they were neither rejected nor considered.
5. In this connection the applicant has also brought on record that the respondents have proceeded against him by way of cancellation of the original allotment order of 1983 and also imposition of damage and penal rent alongwith arrears without taking into fact that he was occupying the quarter as per the proper order and at the time of cancellation and imposition of penal rent, he was re-posted at Jhansi, which is his place of latest posting.
6. Vide another letter dated 26-8-1992 of respondents (Para 4.16) the applicant averred that the list of unauthorised occupants which was drawn up by the respondents had wrongly included his name. A photocopy of the order dated 26-8-1992 of the respondents has also been filed by the applicant to impress upon the fact that the entire exercise to treat his occupation as unauthorised was a mistake.
7. I have gone through the facts of the case as submitted by the applicant as well as the counter filed by the respondents. The respondents have only hampered unauthorised occupation of the Railway Quarter No.MA/526-B but they have failed to spell why the said quarter could have been occupied by the applicant unauthorisedly. It was allotted as per the order dated 23-12-1983 which has not been cancelled.
8. The respondents' counsel has, however, stated that on transfer, allotment automatically stands cancelled. I am not inclined to agree to this at all because the allotment was actually cancelled by the respondents. If a subsequent occupation was treated as unauthorised occupation and the order of allotment is automatically

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cancelled due to transfer, the cancellation order of 10-1-1992 should not have been required to be issued. As per Rules cited by the applicant, it is clear that the General Manager ought to have entertained the application for retention and passed orders on merits. The theory of automatic cancellation is not sustainable at all in the case.

9. The respondents have admitted that the applicant had requested for retention of the quarter but all the same, no explanation has been given in rejecting the application or entertaining them. No cognizance on the averment that the applicant's name was wrongly included in the list of unauthorised occupant has been taken nor any counter on this point has been submitted. Hence, this ground for the applicant holds good. The respondents' stand that the quarter was unauthorisedly occupied by the applicant is not sustainable as after his transfer from Bhopal to Jhansi, he was liable to retain quarter upto 18-8-1987 i.e. for 8 months as per Railway Rules. The rent for six months at the most could be charged at double the rate i.e. RS.64/-. The applicant was transferred in the meantime on 19-2-1989 back to Jhansi and for the administrative exigencies of the Railway during the pendency of this transfer order his relieving from Bhopal to go back to Jhansi was delayed. Therefore, his transfer back to Jhansi in 1987 and till he was relieved on 4-2-1988 is official on account of Railways. The applicant had joined at Jhansi on 5-2-1988. The quarter is situated there. Hence, the period when he was holding the quarter in excess of the period of 8 months is from 18-8-1987 to 4-2-1988 i.e. only four months. The respondents could have charged the applicant for this four months only because thereafter he was regularly posted at Jhansi w.e.f. 5-2-1988 requiring no more regularisation. Despite that it

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appears that the respondents have made an oversight about his posting at Jhansi and his regular authorised occupation. I, therefore, accept the merit of the application as sustainable. However, I dispose of the OA with the following directions :-

- (a) No penal rent or damage rent is payable from the period from 4-2-1988 onwards. Only for the period 18-8-1987 i.e. for four months the respondents may re-assess the penal rent at a reasonable rate keeping in view that his retention at Bhopal upto 18-8-1987 after the order of transfer dated 19-2-1987 to Jhansi was on the administrative exigencies of the Railway. For this reason it is not just and proper to penalise the applicant.
- (b) The arrears of penal rent and damage rent as recovered from the applicant is accordingly readjustable and liable to be refunded. The order of cancellation also stands vacated provided the applicant is still posted at Jhansi.

10. The OA is disposed of with the above directions with no order as to costs.

S. B. Rao
Member (A)

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