

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 16th day of January 1998.

Original Application no. 320 of 1995.

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

Ajay Kumar, S/o Late Sri R.D. Rai, r/o House no. T/34A, N.E. Railway Colony, Rambagh, Allahabad City. Working as Hd booking Clerk at Varanasi City Under D.R.M (C) N.E. Railway, Varanasi.

... Applicant.

C/A Shri B. Tiwari

Versus

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Divisional Railway Manager (C) N.E. Railway, Varanasi.

... Respondents.

C/R Sri P. Mathur.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant seeks direction of the Tribunal for setting aside the process of recovery of penal rent and refund of penal rent recovered from the applicant to him with 18% interest along with cost of the application.

3. The facts as given by the applicant in his application is that the applicant's father Shri R. D. Rai worked as Head Train Examiner at Allahabad City and was residing

in quarter no.7/34 A, North Eastern Railway Colony, Rambagh Allahabad City which was allotted to him. The applicant was given appointment as booking clerk after his father's death in 19.10.82 and was paying rent @ Rs.55/- per month till March 1992. The applicant was promoted as senior booking clerk and transferred to Siwan in March 1992, but he continued to pay Rs.55/- per month till December 1992. It is alleged that the respondents have started recovery of penal rent from salary of the applicant since January 1993 and have recovered Rs.28,520/- upto July 1995. This is the provocation for coming to the Tribunal for relief mentioned earlier.

4. Arguments of Shri B.Tiwari, learned counsel for the applicant and Shri P.Msthur learned counsel for the respondents have been heard. Learned counsel for the applicant has contended that penal rent/damage rent cannot be charged without cancellation of allotment of quarter in question under paragraph 1711 (B)(V) of Indian Railway Establishment Manual. Learned counsel for the applicant has also contended that since no other quarter has been allotted to the applicant at places to which he was posted after transfer from Allahabad and he is serving the same Railway on the same post, he is entitled to retain the Railway Quarter. Yet another contention made by learned counsel for the applicant is that no show cause notice was issued to him before recovery of penal rent was started. Learned counsel for the applicant has cited the judgment of this Tribunal in the case of Shri Awdhesh Kumar v. Union of India and others in O.A.No.1004 of 1992 dated 30.08.1993 as laying down the Law on the issue.

5. Learned counsel for the applicant has based the

claim for relief of the applicant on the ground of non cancellation of allotment of quarter which was the law as laid down in Shri Awdhesh Kuma's case (Supra). This is no longer good law as a Full Bench of the Tribunal in Ram Poojan v. Union of India & another (1996) 34 A.T.C.434 has laid down a different law. That case lays down on the basis of the letters of Railway Board issued on 17.12.83, 27.8.84 and 15.1.90 to the effect that the allotment of quarter in the name of an employee shall be deemed to have been terminated automatically after 2 months of transfer from one station to another. This case also relies^{on} the judgment of Division Bench of the Tribunal in Mangal Prasad v. Union of India and others reported in (1993) 2 U.P.L.B.E.C. 26 which lays down that since no cancellation order was issued, eviction and levy of penal rent was not in order. The case of Shri Awdhesh Kumar (supra) also relies on the case of Shri Kamla Prasad Srivastava and others v. Union of India and others in O.A. No.556 of 1992 on 4.5.1993 in which it was held that communication of cancellation of allotment was necessary so that the occupant knows that the retention of quarter becomes unauthorised and any other method will be in consistent with the provision of paragraph 711 (B)(V) of Indian Railway Establishment Manual for charging rent in excess of 10% of emoluments. Yet another ground for which claim of the applicant was allowed in the case of Shri Awdhesh Kumar (supra) was that if the transfer from one station to another does not necessitate any change of residence and no quarter is allotted at the place to which he is transferred imposition of penal rent would not be valid. This interpretation of law was acceptable till the decision of full Bench in the case of Ram Pujan v. Union of India and others (1996) 34 ATC 434. The issues raised by the learned counsel for the applicant are taken up one by one as dealt within Ram Pujan's case (supra). Paragraph 711 (B)(V) of

Indian Railway Establishment Manual does not prohibit changing of more than 10% of the emoluments as demanded. It permits general or special orders to be passed by Railway Authority if any high rent is to be levied in such cases. The general orders in this respect were passed as early as in the year 1983 and have been applicable ever since. The judgment in the cases of Mangal Prasad and Awdhesh Kumar were given and have become ~~per incuriam~~ ^{inapplicable} because the existence of general orders of 1983 were not brought to the notice of the court. Hence the view taken by the court earlier that no deemed cancellation could be presumed and that charging of penal rent was not permissible in cases of retention of quarter by the transferred official.

6. Learned counsel for the applicant has mentioned that no quarter was allotted to the applicant at the place to which he was transferred and, therefore, the retention of quarter at the place of which he was transferred was justified, specially because the applicant remained on the same post. This is a specious argument and cannot be accepted unless and until the applicant establishes his claim that he is no ^{longer} within the purview of general orders that the allotment of quarters would be deemed to have been terminated after two months of transfer. The applicant has not established that his transfers to Siwan and Varanasi had not necessitated change of residence. If the employee is transferred, from one station to another, the general rule is that the applicant ^{is to stay at the new place of posting unless the applicant establishes} shall be required that he was not required to do so and since the applicant has not discharged this burden of proof in the present case, he cannot take the plea that he could retain the quarter at the earlier place of posting.

7. The learned counsel for the applicant contends that penal rent cannot be levied without show cause notice, served

on the applicant first. This ground has been taken on the presumption that levy of penal rent amounts to penalty falling within purview of Railway Servant Conduct and Disciplinary Rules. This is also based on the presumption that charging of penal rent falls in the category of fine for which minor procedure have been prescribed under the rules. The presumption is not valid because rent is charged in return of quarter allotted to an employee. The normal rent which is charged is a subsidised one and is charged on that basis from the employee because of his posting at the place and on coming of his turn for allotment of such accommodation. It is a known fact that the number of quarters is far short of requirement of demand. Therefore, charging of higher rent to the extent to which it is charged in the non Government sector cannot be considered to be punishment but only withdrawal of subsidy in case the employee retains accommodation beyond permissible period and the employee has a contractual obligation to pay it.

8. Learned counsel for the applicant has mentioned that the I.R.E.M. has a statutory force as laid down in Robbort DesSouza v. Executive Engineer 1992 (SCC) L & S 124. Learned counsel for the applicant has argued that the full Bench had decided that paragraph 711 (B)(V) of I.R.E.M. was superceded by the executive instructions of the Railway Board. This is not correct as the full bench had decided that general orders can be issued within the ambit of paragraph 711 of I.R.E.M. and, therefore, levy of penal rent in such cases was in order.

9. Therefore, there is no merit in the application and the application is dismissed.

10. There shall be no order as to costs.