

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No.1345 of 2000

Monday, this the 6th day of January, 2003.

Hon'ble Mrs. Meera Chhibber, J.M.

S.N.Rai S/o Shri Vishwa Nath Rai
aged about 42 years. Presently
serving as Inspector of Works
(Engineering) Control, Agra
Cantt under the control of the
Divisional Railway Manager,
Central Railway, Jhansi.

.... Applicant.

(By Advocate : Shri A.K.Dave)

Versus

1. Union of India,
through General Manager,
Central Railway, CST Mumbai.
2. Divisional Railway Manager,
Central Railway, Jhansi.
3. Divisional Personnel Officer,
Central Railway, Jhansi.
4. Senior Divisional Engineer
Central Railway, Jhansi.

.... Respondents.

(By Advocate : Shri A. Sthalekar)

ORDER (ORAL)

By Hon'ble Mrs. Meera Chhibber, J.M. :

By this OA, the applicant has challenged the order dated 20.9.2000 (Annexure-A-1) by which a recovery to a tune of Rs.87,300/- has been ordered to be recovered from the salary of the applicant by charging the damage/penal rent instead of normal rent of the quarters. He has further sought a direction

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to the respondents to refund the amount already recovered from the salary of the applicant from October, 2000 in pursuance of the impugned order and to pass any such further direction which Tribunal may deem fit and proper under the circumstances of the case.

2. It is submitted by the applicant that vide order dated 2.9.98 (Page-25) the applicant was granted permission to retain the Railway Quarter No. RB-III.100-A at Juhi from 5.2.98 to 4.4.98 on payment of normal rent on transfer account. However, for further retention on educational ground, the applicant was directed to submit proper educational certificate which shows the period of session, otherwise the period after 4.4.98 will be treated as unauthorised occupation of quarter. It is stated by the applicant that in pursuance to this letter he has submitted a representation dated 4.10.98 enclosing his children's educational certificate and Board's Circular with request to grant the permission to retain the quarter at Juhi as the applicant's son ~~who~~ is mentally retarded and at Mohabadi.e. the place of transfer, there is no such special Institution. It was also submitted that Railway Board has also agreed for Railway Employee considering that facilities for medical help and education of mentally retarded children may not be available at all stations as such Department is requested to take a sympathetic view. The grievance of the applicant is that the respondents without considering the representation of the applicant rejected the same. The respondents by impugned order dated 20.9.2000 directed the applicant to pay the damage rent from 5.4.98 to 30.9.2000 at the rate of Rs.49/- per Sq. Mtr. i.e. Rs. 2923/-

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It is this letter which has been challenged by the applicant. The applicant has also annexed the extract from Railway Board's letter dated 13.5.91 (page-28) and he has also relied upon order passed by Hon'ble High Court of Judicature at Allahabad ^{whereby according to him} in similar circumstances, the Hon'ble High Court had directed the respondents to recover the standard rent from the petitioner for the period in question by modifying the order passed by the Tribunal (page-29).

3. The respondents have opposed the OA and in the counter affidavit ^{have} stated that no such representation dated 4.10.98 was received in the office of the respondents. Therefore, the applicant should be put to strict proof regarding service of the said representation. The applicant was unauthorised occupant of the quarter after his transfer. As such he is liable to pay the penal rent. The respondents have also relied upon the judgement of Full Bench in the case of Ram Poojan Vs. Union of India & others (1996) 34 ATC 434 (FB), wherein it was held as under :-

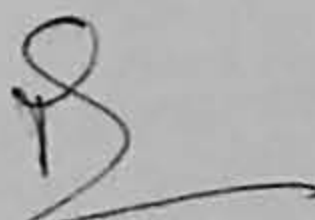
"Government Accommodation - Railway employee- Further retention of accommodation after the expiry of permissible/permitted period of retention - Held, would be deemed to be unauthorised - No specific order cancelling allotment necessary - Penal rent can be recovered from salary without resorting to proceedings under Public Premises (Eviction of Unauthorised Occupants), Act, 1971 - Indian Railway Establishment Manual Para 1711(b) - Railway Board's letter dated 17.12.83 and 15.1.90 prevail over the provisions of Para 1711 of IREM- Public Premises (Eviction of Unauthorised Occupants) Act, Sec.7."

He has thus submitted that this OA is devoid of merit and the same may be dismissed with ~~xxx~~ any costs.

4. The applicant has annexed his representation dated 4.10.98 duly acknowledged by the office of Divisional Railway Manager, Central Railway, Jhansi alongwith rejoinder affidavit but in Supplementary Counter Affidavit the respondents have stated that the applicant did not submit any educational certificate in proof of the academic session of his children and accordingly damage rent was liable to be recovered from his salary.

5. I have heard the learned counsel for both the parties and perused the pleadings as well. The respondents had stated in the counter affidavit that since the applicant had not submitted any representation, the question of considering same does not arise, but the rejoinder clearly shows that the representation was acknowledged by the Office of the respondents. I have also seen the first letter by which the permission was granted to the applicant. In the said letter, it was clearly mentioned that for further retention of the quarter on educational ground, the applicant should submit proper educational certificate. The representation dated 4.10.98 clearly shows that the educational certificate and Railway Board's Circular was enclosed alongwith it. It is not disputed by the respondents that applicant's son was mentally retarded. The Railway Board Circular clearly shows that after examining the matter the facilities for medical help and education of mentally retarded children may not be available at all stations, a choice in the place of posting likely to be of some help to the parent in taking care of such a child. While administratively it may not be possible in all cases to ensure posting of such an employee at a place of his/her choice. Ministries/Departments are

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requested to take a sympathetic view on the merits of each case and accommodate such request for posting to the extent possible. As per the order passed by the Hon'ble High Court relied upon by the applicant's counsel. I find in that case it is only a 5 line order and that too it was in the facts and circumstances of that case whereby the Hon'ble High Court of Allahabad had directed the respondents not to recover the standard rent from the petitioner for the period in question. As per the Full Bench judgement relied upon by the respondents counsel, it is correct that the applicant could not have retained the quarter once he was transferred without taking the permission of the Competent Authority, but in view of the fact that respondents had earlier also permitted him to retain the quarter from 5.2.98 to 4.4.98 and they themselves had requested the applicant to make an application for further retention which was duly made by the applicant. (Annexure filed alongwith rejoinder clearly shows that the representation was indeed acknowledged by the respondents office) they ought to have considered the same and passed appropriate orders thereon. Respondents had taken a specific plea in its counter that the applicant had not at all submitted the representation dated 4.10.98 however applicant annexed his representation alongwith rejoinder duly acknowledged to show that the representation was indeed submitted by him in the office of the respondents. It is then that respondents have taken a different stand to the effect that education certificate was not annexed by him. Authenticity of receipt of representation dated 4.10.98 has not been disputed by the respondents in the Supplementary Counter Affidavit meaning thereby that they admitted having received



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the representation but took a different plea later on. It is seen applicant had already given the representation enclosing the educational certificate and the Railway Board had also decided to give concession to the parent of mentally retarded children, therefore, the stand taken by respondents is not sustainable in law.

6. I am of the considered view that in the circumstances of the case, respondents could not have issued the order of recovery straightaway from the applicant for the period of 5.4.98 to 30.9.2000 without deciding his representation. Therefore, the order dated 20.9.2000 is quashed and set aside. The matter is remitted back to the authorities to apply their mind to the given facts of the case and after considering the aspect that the applicant's child was mentally retarded, they shall pass a fresh reasoned order within a period of three months from the date of receipt of a copy of the order under intimation to the applicant.

7. Till such time final order is passed, no recovery shall be made from the applicant. With the above directions OA is disposed off with no order as to costs.


Member-J

RKM /