

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD.Allahabad This The 26th Day Of May, 2000

Original Application No. 377 of 2000

CORAM:

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

Awadhesh Kumar Mishra S/o Shri Kailash Pati Mishra, aged about 46 years, Resident of 17-Balrampur House, Mumfordganj, Allahabad.

All Communications to be made at: Assistant Audit officer; Traffic Audit Office; Northern Railway; Near North Central Railway Zone Building; Balaipur Railway Colony; Allahabad.

(By Adv: Sri Wasim Alam)

.....Applicant

Versus

1- Union Of India- Owning and representing the Comptroller and Auditor General Of India-Notice to be served upon- The Comptroller and Auditor General of India; 10, Bahadur Shah Zafar Marg; New Delhi

2- Principal Director Of Audit; Northern Railway,
Baroda House, New Delhi.

3- Shrimati Revathy Iyer; Principal Director of Audit;
Baroda House, New Delhi.

4- The Divisional Railway Manager, Northern
Railway, Hazratganj, Lucknow.

.....Respondents

(By Adv: Sri G.P. Agarwal)

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O R D E R

(By Hon'ble Mr. S. Biswas, A.M.)

The applicant seeks quashing of the letter Director/ Administration Vide No. Admry/18-7/98/21262 dated 24-3-2000 (Annex-AI) addressed to Civil Engineer Northern Railway-which levies a penal rent of Rs. 98,242/- upon the applicant for unauthorised retention of Rly Banglow No. VA held by him in the previous station at Lucknow from where he was transferred to Allahabad on 29th July 1998. The applicant has inter alia claimed damage of Rs. 10,000/- and sought direction for issue of stricture on the respondents, for her action in the matter.

No C.A. has been filed.

2- Heard both the parties for disposal of the matter ~~on~~ at admission stage as interim prayer and the cause of action are same.

3- The undisputed facts in the case is that the applicant, an Assistant Audit Officer, was transferred from Lucknow to Allahabad on 29-7-98 along with 4 others, excepting him, others managed to get interim stay from CAT pending disposal of their representation and they still continue in Lucknow. The applicant meanwhile made a representation (dt. 5.10.99) to Senior Audit Officer (Adm) a respondent No. 3 for his transfer back to Lucknow which representation is pending. However, this has not been included in the list of reliefs. As far as this representation is concerned, the respondents have informed vide Annexure-A-3 (dt. 5-11-99) that soon after completion of the pending enquiry against him (in Allahabad), his request for retransfer to Lucknow would be considered.

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4- The applicant contested the authority of the penal rent assessed ~~not~~ order dt. 24-3-2000 on the ground that it is a matter relating to the jurisdiction of the Estate Officer, who is authorised to take note of such unauthorised occupation of Govt. accommodation and cancel or order eviction. Respondent No. 3 is not authorised under the law to initiate such action. Damage rent ought to be adjudicated by the Estate Officer. The action of the senior Audit Officer (Adm) in this behalf is illegal. However, I observe that the applicant has impugned the authority of the Director/Adm. but has not specifically made ~~for~~ ^{him/her} a respondent. The respondent No. 3 is principal Director.

5- The applicant submitted his representation dt. 1-12-99 to Senior Audit Officer (TA) with copy to Audit Deputy General Manager seeking permission to continue in the previous quarter in Lucknow, as the same fall, within the audit beat of Lucknow and that the applicant could retain his quarter in Lucknow. None of these authorities are specified as the respondents to the O.A. However, belatedly, the applicant has made a cursory observation in Para 4.9 of the O.A. that he addressed his application 1-12-99 and 29-9-99 to respondent No. 4.

6- Vide letters dt. 8-12-99 and 29-9-99 the applicant had inter alia challenged the fixation of penal rent by the Senior Audit officer as unauthorised. He also referred to his prayer retention of the quarter in the interest of his son's education in Lucknow. None of these representation was disposed of either way by the respondents. However, on the question of retention of old accommodation being within the same audit beat, no specific case law of H.C. has been cited.

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7- The applicant has quoted full Bench CAT cases: i) (1996) Vol. 32 CAT. (Page 370) Wazir Chand Vs. U.O. I. & others, ii) Robert Mashi Vs. U.O.I. and others in O.A. 202/92 CAT Allahabad Bench. In the latter case it was held that a show cause notice is necessary to levy penal rent. In the former case it was held that the Estate Officer is competent to levy penal rent. The order of allotment has not yet been cancelled by the competent authority.

8- The applicant further argued that his representations dt. 29-9-99, 1-12-99 and 8-12-99 which are yet pending, are to be treated as acceptance of his request. He has quoted G.I.M.H.A. No. 25/32/56 Estates (A) dt. 15/1/1957 which lays down the time schedule for disposal of intimation and permissions under Central Civil Service conduct Rules. The present issue is not governed by these rules. The applicant himself has sought that the matter falls under the jurisdiction of the Estate Officer.

9- No accommodation in the old station is permissible under the circular rules to be retained merely on the ground that the incumbent may or may not have to go there for tour. Audit beat is not a headquarters jurisdiction, where the applicant is eligible to apply for official accommodation.

10- The learned counsel for the respondent has pointed out that in Rampooran vs. U.O.I. case, the full bench of the C.A.T. decided all the attended dispute on levy of Damage rent for unauthorised occupation as per the statutory circular of the Railway Board in 1996, Whereas, the decision in R. Wazir Chand case is of the year 1990. In the latter case the issue was broadly on the question of deferred payment of DCRG to a retired person, who retained department quarter. It was held there "A direction to pay normal rent for the railway quarter retained by a retired railway servant in case where DCRG has not been paid to him, would not be legally in order."

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Hence, the intermediary observation vis vis the ^{plea} was not finally upheld in the order.

11- In Rampoonjan case it is held: "Our answer is that retention of accommodation beyond the permissible period in view of Railway Board Circulars would be deemed to be unauthorised occupation and there would be an automatic cancellation of an allotment and penal rent can be levied according to the rates prescribed from time to time in the Railway Board's Circular." It was further held that deduction of damage rent from Salary bill was also authorised. It would not be necessary to resort to the proceedings under Public premises (Eviction of unauthorised Occupants) Act 1971. That was held to be an alternative procedure, the non-observance of it would not inhibit the action initiated by the respondents to collect the damage rent as per Circular from the pay and allowances bills.

12- That is exactly what has been done by the impugned order dt. 24-3-2000., sought to be quashed. There is ~~not~~ provision for ^{any} entertaining of damage for this action of the respondent under the rules.

13- However, the applicant had made a representation at. 29-9-99 to respondent No. 4 for ^{accrual} ~~allotment~~ of the penal rent for retention beyond the authorised period for the education of his children. As per the Railway Board circular, the incumbent ~~was~~ eligible for retention of the quarter upto the end of the academic session or for another 6 to 8 months. The representation was not rejected formally but the authorities have calculated damage rent only w.e.f.

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on 1-7-99. after granting normal rental upto 13-10-98 and double the normal rent evidently for educational purposes for a period from 14-10-98 to 30-6-99- which I consider as adequate to take care of the applicant's plea of educational session for the children.

13- It is only w.e.f. 1-7-99, Penal/damage rate has been worked out as per latest circular and levied. The same is in order. The O.A. is dismissed on merits

14- No costs.

S. B. c/o

A.M.

A.A./