

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Original Application No. 399 of 2000

This the 20th day of July, 2006

HON'BLE MR JUSTICE KHEM KARAN, VICE CHAIRMAN

Chhedi Lal, S/o late Shukh Deo, Posted as Senior Clerk under Divisional Electrical Engineer (TRD), N.R., Tundla, C/o R.P. Misra, Quarter no. 154-A Railway Colony, Etawah.

.....Applicant

By Advocate: Sri B.N. Singh.

Versus.

1. Union of India through D.R.M., N.R., Allahabad Division, Allahabad.
2. Senior Divisional Electrical Engineer (TRD), N.R., Allahabad Division, Allahabad.
3. Divisional Electrical Engineer (TRD), N.R., Tundla, District Agra.

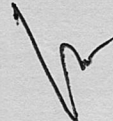
.....Respondents

By Advocate : Sri Amit Sthalekar

O R D E R


Heard Sri B.N. Singh, learned counsel for the applicant and Sri S.K. Pandey, holding brief of Sri Amit Sthalekar for respondents.

2. The applicant has prayed for a direction to the respondents, not to deduct any penal/damage rent from his salary pursuant to the letter dated 9.3.2000 of the Assistant Electrical Engineer (TRD), N.R., Etawah and also asked ⁹ them to refund the amount so



deducted as penal/damage rent together with interest @ 15% per annum.

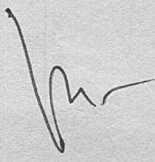
3. The brief facts giving rise to this O.A. are that while being posted as Senior Clerk in Northern Railway at Railway Station, Etawah, the applicant was reverted to the post of Junior Clerk vide order dated 17.1.1994 and by subsequent order dated 25.1.94 was transferred and posted at Dadari Railway Station, Tundla. The applicant was occupying a Railway quarter at Etawah. In normal course, he ought to have vacated, but he did not vacate and filed O.A. no. 803 of 1994 before this Tribunal challenging the reversion order dated 17.1.1994 and posting order dated 25.1.1994. This Bench of the Tribunal allowed that O.A. vide order dated 13.5.1997, copy of which is on record. It appears that honouring the decision of this Tribunal, the authorities restored the position of the applicant vide order dated 12.8.1997 but transferred him to Tundla to join as Senior Clerk. The applicant joined at Tundla, but retained the Railway quarter at Etawah. He moved an application on 13.8.1997 for permitting him to retain the accommodation at Etawah as he was not getting the accommodation at Tundla. Seeing no express orders were being passed and apprehending that he might be evicted from the quarter occupied at Etawah, he filed another O.A. bearing no. 1296 of 1997 before this Tribunal. It appears that an interim order was passed restraining



the respondents from evicting the applicant from the accommodation, in question. The said O.A. was, however, dismissed as infructuous on 11.12.1998. The position remained at that and it was on 31.1.2000 that the applicant handed over the possession of that accommodation at Etawah. Vide letter dated 9.3.2000 (Annexure-5) the respondents have worked out rent/damage rent etc. for the period commencing from 30.3.1994 to 31.1.2000. The applicant is aggrieved of it and so he has to come this Tribunal. He wants that no such recovery should be made from his salary on the basis of the said letter.


4. The respondents have filed Reply contesting the claim of the applicant. They have tried to say that possession of the applicant of the accommodation, in question, during the period mentioned in Annexure-5 was unauthorized and so he was liable to pay penal/damage rent as calculated in the said letter.

5. Sri B.N. Singh, learned counsel for the applicant has submitted that after this Tribunal set aside the orders dated 17.1.94 and 25.1.94 vide its order dated 13.5.1997 passed in O.A. no. 803/94, and after the respondents reinstated the applicant on his original post of Senior Clerk, there is no justification for saying that the possession of the accommodation, in question, ~~by the applicant~~ ^{by the applicant} was unauthorized, especially when there was an interim stay against his eviction in that O.A. no. 803 of




1994. He has submitted that after posting orders dated 25.1.1994 from Etawah to Tundla were quashed, the applicant was to be treated at Etawah and so he was entitled to retain the accommodation, that was in his possession at Etawah. Though Sri Pandey has tried to meet this argument by saying that setting-aside of the earlier posting order of 1994 will not automatically render unauthorized possession of the applicant as authorized one. He says that the matter of reversion and consequent order of transfer from Etawah to Tundla cannot be linked with authorized or unauthorized possession of the applicant of the Railway quarter at Etawah.

6. The Tribunal has carefully considered the rival submissions and has also gone through the order dated 13.5.1997 delivered by this Bench in O.A. no. 803 of 1994. After the orders dated 25.1.1994, whereby the applicant was transferred from Etawah to Dadari (Tundla) as Junior Clerk were quashed by this Tribunal and after the applicant was restored to his original post, which he had earlier to his reversion, there is no point in arguing that he had no right to retain the accommodation at Etawah. For all legal and practical purposes, he remained at Etawah after setting aside the reversion and posting orders, so occupation of the applicant of the accommodation, in question from 30.3.1994 to 12.8.1997 cannot be said to be unauthorized. So he is not liable to pay any penal/damage rent upto



12.8.1997. No-doubt, he will be liable to pay normal rent.


7. As regards the period subsequent to 12.8.1997 to 31.1.2000 is concerned, the contention of Sri Singh is that there was an interim order of this Tribunal in O.A. no. 1296 of 1997 that the respondents will not evict the applicant from the accommodation, in question, so, the possession of the applicant period for which the O.A. remained pending cannot be said to be unauthorized. His second submission is that for the period subsequent to the dismissal of that O.A. of 1997, the applicant continued giving representations for allotting him suitable accommodation at Tundla and in absence of any such allotment, permitting him to retain the accommodation at Etawah, so from that point of view the question of penal/damage rent should not arise. It is also argued by Sri Singh that the applicant was entitled to draw HRA at Tundla, but the same has not been paid to him, so the respondents cannot realize any damage/penal rent for the accommodation occupied by the applicant at Etawah. On the other hand, Sri Pandey has submitted that payment of HRA for not having been allotted the Government accommodation at Tundla cannot be linked with the damage/penal rent, which is being charged from the applicant for retaining the accommodation at Etawah. Attempt has also been made to say that it is also doubtful as to whether a Railway servant retaining



Railway quarter at one station, will be entitled to draw HRA at another place of posting.

8. The Tribunal has considered all these aspects and is of the view that the applicant cannot escape the liability of payment of penal/damage rent for the period subsequent to 12.8.1997. Firstly, the interim order passed in O.A. no. 1296 of 1997 merged into the final order dated 11.12.1998 by which that O.A. was dismissed as infructuous. Secondly, occupation of the Government quarter at Etawah after having joined at Tundla, will remain unauthorized unless it is condoned or regularized by the authorities in accordance with rules. It is never the contention of Sri Singh that it was ever regularized by the authorities. What he says is that the applicant continued moving representations for regularization. But moving of representation does not amount to regularization of possession of the quarter. One can move the representation for months together but, unless there are orders of the authorities regularizing the occupation of the quarter, the person concerned does not become a regular or authorized occupant. It is always open to the authorities to consider the regularization of the accommodation in accordance with rules.

9. In so far as HRA is concerned, I think that it should not be linked with penal/damage rent to be paid by the applicant.



10. In the result, the O.A. is partly allowed and partly dismissed. The respondents are directed not to deduct the penal/damage rent from the salary of the applicant for the period commencing from 20.3.1994 to 12.8.1997. The rest of the claim of the applicant is not accepted and the relief to that extent is refused. It is clarified that these orders do not prevent the authorities from considering any request of the applicant for regularizing the period ^{from 5} subsequent to 12.8.1997 to 31.1.2000. No order as to costs.

Order
20.7.06

VICE CHAIRMAN

GIRISH/-