

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

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Allahabad, this the 10th day of Dec.2001.

QUORUM : HON. MR. RAFIQUDDIN, J.M.

O.A. No.62 of 2000.

1. R.N. Shama s/o Sri Shanker r/o Loco Colony, 129/J.,  
Mughal Sarai, Dist. Chandauli... ... Applicant.

Counsel for applicant : Sri S.K. Dey.

Versus

1. Union of India through the General Manager, E. Railway,  
Calcutta-1.  
2. The Divisional Mechanical Engineer (P), E. Railway,  
Mughal Sarai, Dist. Chandauli... ... Respondents.

Counsel for respondents : Sri P. Mathur.

O R D E R (ORAL)BY HON. MR. RAFIQUDDIN, J. M.

The applicant Ram Nandan Shama, who was posted as Turner, was in occupation of Railway Quarter No.584/B at Gaya. The applicant was transferred from Gaya to Mughal Sarai vide ~~order dated 11.5.92~~ <sup>Ru</sup> and vide transfer order dated 28.9.92, he joined at Mughal Sarai. According to the applicant, he gave a vacation report vide his application dated 9.10.93 which was also received at the respondent's office on the same day in respect of the quarter in question. (Annexure A-II) The applicant claims that after vacating the quarter in question, he was allotted Quarter No.129-J, Type-I, Loco Colony, Mughal Sarai vide letter dated 11.5.94 (Annexure A-III) However, the applicant has been served with impugned order dated 17.8.99 holding the applicant unauthorised occupation <sup>nt h</sup> of quarter in question at Gaya and direction to recover the damage rent. (Annexure A-IV). The applicant has filed this O.A. for quashing the impugned order mainly on the ground that after his having vacated the quarter in question on 9.10.93, the respondents have no right to recover from him the damage rent in respect of the alleged unauthorised

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occupation by the applicant. It is further stated that the applicant has been held responsible for sub-letting the quarter without giving any reasonable opportunity and the impugned order is arbitrary and is liable to be quashed.

2. I have heard the counsels for the parties.

3. It is admitted <sup>in</sup> position that the applicant had given vacation report in respect of the quarter in question on 9.10.93 after his transfer from Gaya to Mughal Sarai w.e.f. 28.9.92. In other words, the applicant was admittedly in unauthorised occupation of quarter in question during this period. Therefore, the respondents are justified to recover the damage rent in respect of the quarter in question for the period, the applicant remained in quarter till Dec.93.

4. It is, however, contended by the counsel for the applicant that respondents are not legally justified in recovery of any damage rent in respect of the alleged unauthorised occupation of the quarter in question by the applicant for the remaining period. In this connection, it is pointed out by the respondents that the respondents have already issued show-cause notice to the applicant vide impugned order dated 28.12.99 which has also been challenged by the applicant in this O.A. It is, however, seen that the letter dated 28.12.99 is not a show-cause notice but the same has been passed <sup>after</sup> for considering the reply submitted by the applicant on 21.10.99. It is mentioned in this letter that the matter was enquired into and findings of such enquiry are to the fact that the quarter is still under unauthorised occupation of the applicant and the applicant never tried to make over physical charge of the same. It is also stated that the applicant is responsible for sub-letting the quarter to some unauthorised person namely Sri Arjun Prasad since 9.10.93. In this connection, counsel for respondents have filed a copy of the enquiry report dated 7.12.99 which is CA-I.

5. The perusal of the report, however, indicates that it is based on physical inspection of the quarter in question

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made by one Sri R.K.P. Sinha on 15.11.99. The enquiry report, however, appears to be an ex-parte affair because the statement of the applicant was not recorded while making such enquiry. The statement of any witnesses does not appear to have been recorded and the same was based on oral enquiry on the spot by some persons living in the neighbourhood, whose names have also not been disclosed. It may be noted that the applicant has clearly stated and filed a documentary proof that he had submitted the vacation report before the respondents as early as in the year 1993. The respondents have not denied having received such application. In this connection, it is merely stated by the respondents in their C.A. that the applicant although had made a request to take charge of the quarter but he had not handed over the possession of the same and the same was allotted to one Sri Hafizullah Ansari, Store Khalasi Helper. But when the individual went to occupy the quarter, it was found that the same was in possession of one Sri Arjun Prasad which showed that the applicant had sub-letted the quarter. This plea of the respondents is not convincing because it is not explained as to why any action was not taken by the respondents against the applicant for alleged sub-letting of the quarter to one Arjun Prasad in the year 1993 when the vacation report was received by them. It is obvious that the so called enquiry has been conducted in respect of the occupation of the quarter in question in the year 1999 after a lapse of about six years.

6. As indicated above, the so called enquiry having been conducted in violation of principles of natural justice without affording an opportunity to the applicant, the impugned order dated 28.12.99 is liable to be quashed except in respect of admitted unauthorised occupation of quarter in question by applicant after his transfer till 9.10.93.

7. For the reasons stated above, the order dated 28.12.99 (Annexure A-VIII) is quashed for recovery of damage rent from the applicant for the period from 10.10.93 till

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the date of filing of the O.A. However, the respondents can recover the damage rent from the applicant for the period from 28.9.92 till 9.10.93 as per rules. The O.A. is disposed of accordingly.

There shall be no order as to costs.

*Rafiqul Haque*  
J.M.

Asthana/