

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 951 OF 2000

ALLAHABAD, THIS THE 08<sup>th</sup> DAY OF DECEMBER, 2004

HON'BLE MR. A.K. BHATNAGAR, MEMBER (J)  
HON'BLE MR. S. C. CHAUBE, MEMBER (A)

Khoob Singh Saini,  
s/o Nathoo Singh,  
Asstt. Station Master,  
Northern Railway Bijnore.

.....Applicant

(By Advocate : Shri K.S. Saxena)

V E R S U S

1. The Union of India through General Manager,  
Northern Railway, Baroda House, New Delhi.
2. The Addl. Divl. Rly. Manager,  
Northern Rly. Moradabad.
3. The Sr. Divl. Optg. Manager,  
Northern Rly, Moradabad.
4. The Divl. Optg. Manager,  
Northern Rly. Moradabad.

.....Respondents

(By Advocate : Shri P. Mathur)

O R D E R

By Hon'ble Mr. S. C. Chaube, A.M.

The applicant who was assistant Station Master at Bijnore was transferred on 28.10.1996 from Bijnore to Sneh Road Railway Station as the impugned D.A.R. 1968 proceedings against him for alleged unauthorised occupation of quarter at Bijnore. He has <sup>also</sup> prayed for quashing the appellate order dated 23.08.1999 (Annexure A-I).

2. The facts, as per the applicant, are that on

transfer from Bijnore, he requested for retention of the quarter at Bijnore, which as per rules was permitted <sup>to</sup> him for the period from 28.10.1996 to 27.04.1997 and again from 28.04.1997 to 27.06.1997. He requested for further retention of the quarter at Bijnore on the ground that no quarters for class III employees have been constructed <sup>at</sup> Sneh Road Railway Station and further there ~~are~~ <sup>were</sup> no possibilities of getting private accommodation there. While the representation of the applicant was pending before A.D.R.M. i.e. respondent No.2, ~~the~~ Divisional Operating Manager (respondent No.4) issued a major penalty(SF-5) for unauthorised occupation of Railway Quarter at Bijnore since 28.06.1997(Annexure A-4). In the intervening period the request of the employee for his transfer to Bijnore was considered favourably and the applicant joined back at Bijnore as ASM on 09.06.1998. On joining at Bijnore, he applied on 13.06.1998 to the Station Superintendent for allotment of Railway Quarter No.T-4/C stating that the quarter was already in his possession. The Station Superintendent Bijnore authorised possession of the said quarter in favour of applicant on and from 09.06.1998, the date of joining of the applicant at Bijnore.

3. Meanwhile the departmental enquiry was held against the applicant <sup>and E.O.</sup> submitted his enquiry report to the disciplinary authority on 22.07.1998. The disciplinary authority agreeing with the findings of the enquiry officer passed the punishment of removal from service of the applicant w.e.f. 01.06.1999. On an appeal preferred by the applicant, the appellate authority reduced the punishment of removal from service <sup>by</sup> withholding of increment permanently for two years and further ordered recovery of penalty for the period 28.06.1997 to 08.06.1998. The respondents have already started making recovery of penal

rent @Rs2174/- per month since April 2000.

4. The applicant has contended that the appellate order is a case of double jeopardy as it imposed the punishment of withholding increments permanently for 2 years and recovery of penal rent from the employee; that the punishment of recovery was not included in the punishment of removal from service for which the appeal was pending. No opportunity to show cause was given by the appellate authority before imposing the punishment of recovery of penal rent. In the Charge-sheet (SF-5) too no specific charge for making recovery for penal rent has been framed. Unauthorised retention of the Railway Quarter has not been taken as a mis-conduct vide Tribunal judgment and order dated 07.09.1992 in T.A. 1454/87 N.N. Verma Vs. Union of India and Ors.

5. Respondents on the other hand have contended that whatever maximum permission can be granted by the Railway Administration to the applicant had already been granted; that the departmental enquiry has established beyond doubt the unauthorised occupation of the Railway Quarter; that sufficient indulgence has already been granted by taking a lenient view by modifying the punishment of removal from service to withholding of increment permanently for two years and recovery of penal rent is perfectly legal and commensurate with the offence committed by the applicant; that as per the instructions of the Railway Board, immediately on transfer, an individual becomes an unauthorised occupant of the quarter unless and until a permission is granted for retention of the quarter by the competent authority ; that Sanehi Road Railway Station is very close to Nazibabad City and thus the contention of the applicant that private accommodation is not available

*Shank*



81. <sup>to</sup> nearby him is unacceptable; that as per Railway Board instruction recovery of penal rent has been calculated as per the plinth area of the accommodation in question; that applicant has disobeyed the direction to vacate the quarter and thus committed misconduct in violation of the provisions of Railway Service Conduct Rules 1966; that the recovery has been decided by the competent appellate authority; that no case of double jeopardy is made out by the applicant as the penal rent for recovery for unauthorised occupation of the quarter; that the judgment cited by the applicant under reference is not applicable to the facts and circumstances of the present case and finally the claim of the applicant is devoid of any merit.

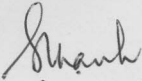
6. We have perused the pleadings and heard the counsel for the parties.

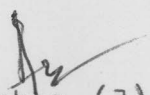
7. In the instant case, admittedly the applicant was transferred from Bijnore on 28.10.1996. He was granted permission to retention of the quarter at Bijnore <sup>at</sup> ~~in~~ normal rate of rent from 28.10.1996 to 27.12.1996 and subsequently permitted to retention of quarter from 28.12.1996 to 27.04.1997 on double <sup>the</sup> ~~normal~~ rent. There is lot of force in the contention of the respondents that applicant continued to be under unauthorised possession of the Railway Quarter from 28.04.1997 to 08.06.1998 till the quarter was regularised in his favour. Further no permission, admittedly, was granted nor it was within the competence of any authority to grant <sup>the</sup> ~~such permission~~ beyond the permissible period. Therefore, the respondents had no other option but to make recovery of penal rent, which was within their competence. In support of his arguments, learned counsel for the respondents has relied upon the judgment delivered by the Full Bench of CAT Allahabad Ram Poojan Vs. Union of India reported in 1996(34)ATC 434 FB

Shah

inwhich it was held that retention of accommodation after the expiry of permissible period of retention would be deemed to be unauthorised. It was further held by the Tribunal that such a situation would imply automatic cancellation of original allotment and it would be open for the railway authorities to recover penal/damage rent by deducting the same from the salary of the Railway Servant.

8. In view of the aforesaid discussions and case law cited above, the O.A. which is devoid of merits is dismissed with no order as to costs.

  
Member (A)

  
Member (J)

. shukla/-