

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1022 OF 2000

ALLAHABAD, THIS THE 2nd DAY OF MAY, 2003

Hon'ble Mrs. Meera Chhibber, Member(J)

Niranjan Singh,
s/o Shri Ram Charan,
r/o 554-B, Type-II,
Rest Camp Railway Colony, Tundla,
District-Firozabad.

.....Applicant

(By Advocate : Shri B.N. Singh)

V E R S U S

1. Union of India through Chairman,
Railway Board, Rail Bhawan,
New Delhi.
2. The Divisional Rail Manager, Northern Railway,
Allahabad Division,
Allahabad.
3. Senior Divisional Electrical Engineer (TRD),
Northern Railway, Allahabad Division,
Allahabad.
4. Divisional Electrical Engineer (TRD),
Northern Railway, ~~Tundla District-Firozabad.~~

.....Respondents

(By Advocate : Shri A. Sthaleker)

O R D E R

By this O.A. applicant has challenged the validity and
legality of order dated 02.08.2000(Pg.23) informing the
applicant that his request to condone the damage rent on
account of unauthorised occupation cannot be acceded to as
there is no such provision.

2. The brief facts as narrated by applicant are that he



....2/-

was allotted Quarter No.294-A while he was posted at Tundla as Head Clerk. When he was transferred from Tundla to Kanpur vide order dated 24.05.1995 (Pg.27) he sought permission to retain the quarter as his children were studying. Permission was granted to retain the quarter till July 1996. On 22.06.1996 (Pg.31) he again applied for further retention but no reply was given to him so his family continued at Tundla. On 22.1.97 he was transferred back to Tundla when he requested to regularise the same quarter in his favour. This request of applicant was taken ^{up}by the Senior Section Engineer as he wrote to the Divisional Engineer Tundla to change the Quarter No.294A in their Pool (Pg.33 & 35). Even the Station Master Tundla wrote on 27.12.1997 (Pg.37) that Quarter can be transferred only in case the Quarter had been regularised in favour of applicant or they given another Quarter in exchange. This matter was taken up in the Division also as vide letter dated 07.03.1998 Division had asked the applicant to send proforma so that action may be taken for regularisation. It is submitted by applicant that he sent his application on 20.04.1998 (Pg.41). Thereafter, no response was given to the applicant as far as this Quarter was concerned but on 26.06.1999 he was allotted Quarter No. 554B type B so he immediately vacated the earlier Quarter and took possession of newly allotted Quarter.

3. Counsel for the applicant contended that since he had applied for extension which was not rejected, respondents cannot deduct damage rent for this period as, if, they had refused the request, probably applicant would have vacated the Quarter,



therefore, he cannot be now penalised for overstaying in the Quarter. He also contended that no damage rent could have been deducted without putting the applicant on notice or without atleast issuing a proper order informing him as to what is the rate of damage rent being deducted ^{and R} ~~at~~ for which period so that he could have challenged the same.

4. Counsel for the applicant, however, admitted that respondents had started deducting the damage rent @Rs.1910/- from applicant's salary from 22.06.1926. He has thus sought a direction to the respondents to place on record the order regarding deduction of penal rent and to quash the same. Thereafter to refund the amount deducted from applicant's salary alongwith 18% interest.

5. Respondents on the other hand have opposed ~~ed~~ this O.A. on the ground that prior to applicant's absorption in ministerial cadre he was working as goods train guard under station superintendent, Northern Railway, Tundla but on being medically decategorised he was posted under Senior Divisional Engineer (TRS) Kanpur in the year 1995. He was allotted Quarter No.294A while working as guard at Tundla but he did not vacate the same even after being posted at Kanpur. As such applicant remained in unauthorised occupation of Quarter from 20.05.95 to 27.01.1997 while he was at Kanpur and further till he vacated the Quarter on 26.11.99 as he was not granted any permission to retain the Quarter nor has applicant placed any such order on record. They have



also denied having received any application dated 22.06.96 and have submitted application be put to strict proof of same. They have further explained that house can be regularised if he is transferred back to same station within one year but this would not apply in case of applicant as he retained the house at Tundla for more than 2½ years since he retained the quarter unauthorisedly from 20.05.1995 to 26.11.1999, therefore, his damage rent was rightly recovered (Annexure CA-I) By [redacted] letter dated 20.02.2000 applicant was informed that damage rent was to be deducted as follows:-

20.05.1995 to 31.05.1995	: Rs.1456 per-month
01.06.1995 to 31.10.1997	: Rs.1766
01.11.1997 to 26.11.1999	: Rs.2076/- per-month

6. They have further explained that at the request of applicant and keeping in view his convenience, an amount of Rs.1000/- was only being deducted from his salary instead of Rs.2000/- otherwise damage rent ^{2 depended} [redacted] on plinth area as per rules.

7. Counsel for the respondents relied on full bench Judgment reported in 1996 (34)ATC Ram Poojan Vs. UOI and others and 2003 (1)ESC 434 and a judgment given by this Tribunal in O.A. No.1203/99 on 09.08.2001 in similar circumstances which was dismissed after referring to Sisir Kumar dev's case and Ram Poojan's case.

8. I have heard both the counsel and perused the pleadings as well. In Ram Poojan's Case full bench 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 Mannual, Para 1711(b)-Railway Board's letters dated 17.12.1983 and 15.1.1990 prevail over the provisions of Para 1711 of IREM-Public Premises (Eviction of Unauthorised Occupants) Act,Sec.7."

Similarly in the case referred to above Division Bench

of Hon'ble High Court of Allahabad held that on transfer, Officer must vacate the official accommodation within a reasonable time. If the time is mentioned in rule within that time otherwise within 3 months. From the perusal of these Judgments it is clear that a duty is cast on the employee to vacate the accommodation within the prescribed period on his transfer and if he does not vacate he must face the consequences. Applicant herein was working as Head clerk ~~Court~~ therefore it was all the more reason for him to have vacated the house after his transfer as he was fully aware of the rules. The rules provide that a Railway employee on transfer from one station to another may be permitted to retain the quarter for a period of 2 months on payment of normal rent which may be extended in special circumstances for further period of 6 months on payment of double the normal ~~rate~~ rate. In this case though applicant has stated that permission was granted upto July 1996 but he has not annexed any such order and respondents have specifically denied the same therefore, his bold statement without any supporting document cannot be accepted. Since no permission was granted to him naturally he would be unauthorised occupant of Quarter No.294-A at Tundla and as per Ram Poojan's case respondents could have deducted the damage rent from applicant's salary without giving him any notice or without issuing any specific order cancelling his allotment or without resorting to proceedings under Public Premises (Eviction of unauthorised occupants) Act, 1971. However, I would agree with the applicant's counsel on the preposition that before starting the deductions respondents should have atleast informed the applicant what total amount is proposed to be deducted from his salary as damage rent and for which period after giving the break up and also



for explaining the amount which would be recovered from his salary every month so that in case applicant has any defence, he may put up the same or make a representation against the actions, if according to employee it is arbitrary or wrong on facts. In the instant case there is nothing on record to show the above breakup therefore, keeping in view the equities, respondents are directed to give the entire breakup as referred to above to the applicant within 3 weeks from the date of receipt of a copy of this order who would be at liberty to challenge the same before authorities in case there is something wrong in calculations or if applicant is able to show that the breakup shown is contrary to any rule.

9. As far as applicant's contention that since respondents did not decide his application he cannot be declared as unauthorised occupant, I would only like to say that firstly respondents have denied having received any such application for granting permission to retain and applicant has not been able to show us any document to the contrary showing respondents acknowledgment but even if it is assumed for the sake of argument that he had given any such application if he was not allowed, it is deemed to have been rejected as retention after transfer could only be subject to approval by the competent authority therefore, in absence of approval the entire period has rightly been treated as unauthorised. Applicant's counsel has also not been able to place on record any rule under which the entire period could have been regularised. It is correct that applicant has placed on record certain



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letters to exchange the Quarter within the different pool

but it has not found favour with the authorities ~~so~~ merely
because ^{*lower B*} some authority had taken up ^{*applicant's*} ~~case~~ case, it does not

give any right to applicant to retain the quarter or challenge
the validity of damage rent on this ground therefore, there is
no force in this contention as well.

10. I therefore, find no merit in this O.A. except the
portion as stated in para above, therefore, this O.A. is
disposed off with the directions as given in para above. No
order as to costs.



MEMBER (J)

shukla/-