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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 31st DAY OF JANUARY, 2008
Original Application No. 650 of 2006

CORAM:
HON.MR.JUSTICE KHEM KARAN, V.C.

Krishna Behari Singh, Son of
Shri Saha Deo Singh, Maya Bazar
East Gate, Gorakhpur.

..Applicant

(By Adv: Shri Bashist Tewari)

Versus

1. Union of India through
The General Manager,
N.E.Railway, Gorakhpur.
2. Divisional railway manager (Commercial)
N.E.Railway, Lucknow.
3. Assistant Manager, (Commercial)
N.E. Railway, Gorakhpur.

..Respondents.

(By Adv: Shri P.N.Rai)

ORDER

JUSTICE KHEM KARAN,V.C.

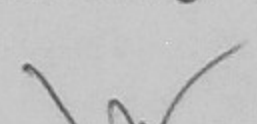
Applicant, K.B.Singh has prayed for quashing orders for recovering an amount of Rs.91,872/- as penal/damage rent from him for unauthorized occupation of residential Qr.No.T-51-A at Mailani and for directing the respondents for refunding the amount so recovered or deducted from his salary together with interest @ 18% per annum

2. While being posted at Mailani as Commercial Supervisor applicant was allotted railway quarter No.T-51-A at Mailani. He was transferred on 14.10.2000 from Mailani to Barauni station. It is said that under the rules he had to vacate the quarter at Mailani but he continued occupying the same even after the period

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provided under the rules. The allegation is that his possession from 29.6.01 to 10.8.04 was unauthorised so he was saddled with the impugned recovery of panel/damage rent as detailed in Annexure A-1 & A-2. The case of the applicant is that he did not occupy the said residential quarter but with the permission of station superintendent one Mr. K.D. Pandey, Commercial clerk remained in possession thereof w.e.f. 3.10.2000. He says he was subjected to disciplinary proceedings under Rule 9 of the Rules of 1968 for alleged unauthorized occupation of the said quarter but after inquiry the charges were dropped. He says that the Inquiry Officer came to a clear-cut conclusion that applicant was not in unauthorized occupation of the said quarter. In proof of these allegations he has annexed copy of the charge-sheet dated 14.8.01 (A-3) and copy of order dated 6.10.03 passed by Divisional Commercial Manager, N.E. Railway. He says when he has already been exonerated of the charge that he unauthorisedly occupied the said residential quarter, then how the orders of recovery of the panel/damage rent are being passed against him. He complains that his representations dated 22.7.05 and 5.12.05 (A-5 and A-6) putting all these facts before the authority concerned have not been duly considered and instead the impugned orders have been passed, for recovering penal/damage rent. It is said that in a view of Rule 14 of Payment of Wages Rules, 1938 so framed by the Railways no such recovery from salary is permissible without notice.

3. The respondents have filed written reply contesting the claim of the applicant. They say station supdt., Mailani allotted the said quarter to the applicant on 8.11.2000 and lock of the applicant remained there on the said quarter till it was opened in presence of observers, and so there is ample proof that he remained in unauthorized occupation thereof upto 10.8.04. They admit in para 7 & 8 of this reply that applicant was subjected to formal disciplinary proceedings and after inquiry the charges were dropped.



4. I have heard Shri Bashist Tewari, appearing for the applicant and Shri P.N.Rai for the respondents and have perused the material available on record.

5. In so far as the argument of Shri Tewari that recovery of penal/damage rent from salary of the applicant is not permissible in view of Rule 14 of Payment of Wages (Railways) Rules, 1938 is concerned, I am of the view that the same does not apply to the facts of the case in hand. Rule 14 reads as under:-

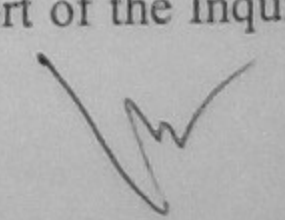
14. Procedure of imposing fines and deductions for loss or damage.-

- (1) No fine shall be imposed and no deduction for damage or loss under sub-section (1) of Section 10 of the Act, shall be made from a person employed by a Railway Administration except in accordance with the procedure laid down in the rule in force on the Railway and until the employed person has been given an opportunity of showing cause against such imposition or deduction.
- (2) No fine shall be imposed on and on deduction for damage or loss shall be made from the wages of a person employed by a contractor until the person authorized to impose the fine or make the deduction has explained personally to the said person the act or omission or damage or loss, in respect of which the fine or deduction is proposed to be imposed and the amount of the fine or deduction which it is proposed to be imposed and the amount of the fine or deduction which it is proposed to impose and has heard his explanation in the presence of at least one other person.

6. A bare perusal makes it clear that it prohibits recovery of fine or deduction for damage or loss under sub-section (1) of Section 10 of the Act until the employed person has been given an opportunity of showing cause against such imposition or deduction. Sub-section (1) of Payment of Wages Act, 1936 says that a deduction under clause © or clause (o) of sub-section (2) of Section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person. Clauses © or (o) of sub-section (2) of Section 7 of the said Act of 1936 do not cover the recovery or deduction of panel/damage rent for occupation of a residential quarter. While clause © refers to deduction for damage to loss of goods especially interested to the employed person for custody; or loss of money for which he is required to account, where such damage is directly

attributable to his neglect or fault, clause (o) refers to deduction for recovery of losses sustained by Railway Administration on account of any rebates or refunds incorrectly granted to the employed person, where such loss is directly attributable to his neglect or fault. Deductions for house accommodation supplied by the employer or by government or any housing board set up under any law for the time in force or any other authority engaged in the business of subsidizing house accommodation is covered by clause (d) of sub-section (2) of Section 7 of the Act of 1936 and the same is not referred to in sub-section (10) of the said Act and so not covered by Rule 14 of the Railway Rules 1938 as referred to above. Shri Tewari was not able to satisfy me as to how Rule 14 was attracted to the case in hand, where the recovery of panel/damage rent was to be made from the salary of the applicant.

7. The next submissions of Shri Tewari is that when in proceedings under the Rules of 1968 it was not found that the applicant was in unauthorized occupation of the Railway quarter in question, then how on the basis of any administrative inquiry, such a conclusion could be drawn that he was in unauthorized occupation of the said quarter. The learned counsel goes on to argue that once the charges were dropped after inquiry under the rules of 1968, no second inquiry or administrative inquiry was permissible in law. With a view to support this argument Shri Tewari has drawn my attention towards '**State of Assam and Anr Vs, J.N. Roy Biswas**, 1976 SCC (L&S) pg-10 and towards **R.B.E. No.171/93** dated 12.1.1993. There appears to be sufficient force in these submissions of Shri Tewari. The nature of proceedings under the rules of 1968 is quasi judicial one and if on inquiry under the said rules, charges were not found established and the same were dropped, no administrative inquiry could have been held to upset those conclusions and no action could have been taken on the basis of the conclusion drawn in any such administrative inquiry. Law does not permit administrative authorities to over-rule the judicial or quasi-judicial conclusions. Once the charges framed against the applicant were dropped on the basis of the report of the Inquiry

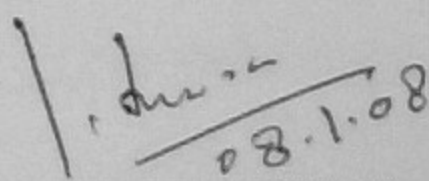


officer, it was not open to the authorities concerned to say that he was in unauthorized occupation of the quarter in question. Shri P.N.Rai has not been able to satisfy me as to how the matter relating to the unauthorized occupation of the quarter in question by the applicant was inquired into on the administrative side after the conclusions in the departmental proceedings. I think the impugned orders of recovery are totally illegal and unjustified, in the facts and circumstances of the case in hand.

8. Shri Tewari has also tried to say that in any case such orders of recovery from salary involving civil consequences should not have been passed without giving reasonable opportunity of hearing to the applicant and with a view to support his submission he has referred to **D.K.Yadav Vs. J.M.A Industries Ltd**, (1993) 3 Supreme Court Cases pg-259. I think when I have already concluded that impugned orders of recovery of damage/penal rent are bad in law there is no need for entering into this question.

9. In the result, the impugned orders (Annexures A-1 & A-2) to the extent they direct for recovery of penal/damage rent, have to be quashed and the respondents to be directed to refund the amount which they have deducted on the basis of the said orders.

10. So, the O.A. is disposed of and the two communications dated 21.9.04 and 21.2.05 (Annexures A-1 & A-2) to the extent the same provide for recovery of penal/damage rent from the salary of the applicant for unauthorized occupation of residential quarter No.T-51-A at Mailani, are hereby quashed with a direction to the respondents to refund the amount that they have recovered from his salary in the shape of penal/damage rent on the basis of the said order. In case they do not refund the amount so recovered within a period of two months from today, they shall be liable to pay interest @ 9% per annum from the date of this order to the actual date of such refund. No costs.


08.1.08
VICE CHAIRMAN

Dated: Jan: 2008
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