

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 1st day of Apr 2011

Original Application No. 1082 of 2007

Hon'ble Mr. S.N. Shukla, Member (A)

Puttu Lal, S/o Ram Sanahi Posted in T.C. Office-Shikohabad,
Railway Station (N.C.R.) District Firozabad.

...Applicant

By Adv : Sri J.P. Mishra and Sri I.R. Singh

V E R S U S

1. Union of India through its General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, (N.C.R.), Allahabad.
3. Deputy Chief Traffic Manager, Kanpur, Central Railway Station (N.C.R.).
4. Senior Divisional Commercial Manager, (N.C.R.), Allahabad.
5. Station Superintendent Kanpur Railway Station (N.C.R.) Kanpur Central.
6. Station Superintendent, Shikohabad, Railway Station (N.C.R.).

...Respondents

By Adv: Shri A.K. Sinha

O R D E R

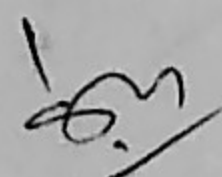
This OA is filed seeking the following reliefs:-

"i. Issue an order quashing the impugned order No. C-3/Ra R/IV/007 Dated 06/09/07 passed by respondent no. 5 Station Superintendent Kanpur Railway Station (NCR) Kanpur Central (Annexure-1) by means of that he directed to recover amount of ₹ 166678.17 against alleged penal rent of allotted quarter.

ii.

iii."

2. The brief facts of the case are that the applicant on allotment was occupying Railway Quarter No. 544/B-Military Camp Kanpur vide order dated 17.01.1996 (Annexure A-2). He

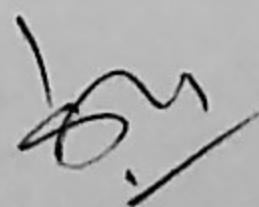


was transferred from Kanpur to Shikohabad where he joined on 01.06.2004 (Annexure A-3 and A-4). It is claimed that since no residential quarter was allotted at Shikohabad hence he continued to occupy the quarter at Kanpur and the house rent was continuously deducted. (Annexure A-5).

3. The respondent passed order dated 05.06.2007 and allotted the same quarter to one Smt. Kamla Devi. Thereafter, the quarter was immediately vacated and handed-over to Smt. Kamla Devi on 17.07.2007 (Annexure A-6 and A-7). It is further submitted that at the time of applicant's transfer from Kanpur to Shikohabad he was never directed to vacate the quarter and his allotment was never cancelled and, therefore, any recovery for alleged unauthorised occupation of the quarter is uncalled for.

4. In the counter affidavit it is submitted that the applicant retained the quarter at Kanpur unauthorizedly w.e.f. 01.06.2004 without any permission and vacated the said quarter only on 17.07.2007 and, therefore, the recovery at prescribed rate has been correctly ordered to be made.

5. It is also submitted that the office notice dated 13.05.2004, vide para 4 it was specifically mentioned that rules regarding vacation of Railway Quarter must be followed strictly. It is submitted that as per rules the applicant should have applied for retention of quarter for two months at normal rent and in addition to this for six months on the grounds as may be permitted. However, the applicant did not do so nor did he apply

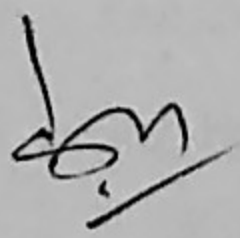


for accommodation at Shikohabad. Therefore, recovery has been ordered on the penal rent as applicable from time to time.

6. Heard learned counsel for the parties and perused the pleadings on record. Perused the Annexure CR-1 being promotion and transfer order of the applicant. In para 4 thereof it is clearly stated that rules regarding vacation of Railway Quarter must be followed strictly.

7. Perused the Rejoinder Affidavit, Supplementary Counter Affidavit and Supplementary Rejoinder Affidavit as well. The entire case of the applicant seems to rest on the fact that he was not allotted the house at Shikohabad, he was never asked to vacate the house at Kanpur or given any notice to pay enhanced or penal rent till final recovery was ordered against him (Annexure A-1).

8. As against that whereas the respondents do concede that no vacation proceedings or even enhanced rent was charged from the applicant during the period of unauthorised occupation of the house. Yet it is also the fact that the applicant never applied for retention of quarter at Kanpur nor did he apply for allotment of the house at Shikohabad. This position appears to be undisputed since no evidence has been brought on record by the applicant to establish that he applied for a house at Shikohabad or for that matter he applied for retention of the quarter at Kanpur for valid reasons as provided in Retention of Railway Quarter Policy dated 19.04.2001 (Annexure CR-2).



9. It is well settled position in law that the Government can recover its dues any time. It has been held by the Hon'ble Supreme Court in the *case Secretary, ONGC Ltd. and another Vs. V.U. Warriar : (2005) 5 SCC 245* as under:-

"Labour Law – Gratuity – Recovery of dues from gratuity without employee's consent – Sustainability – Unauthorised retention of official accommodation by the employee after his retirement entailing penal interest – Provision for, in statutory regulations – Held, employer can deduct from the gratuity payable to the employee penal rent in terms of such statutory rules/regulations – Respondent officer of ONGC, after retirement not vacating official quarters allotted to him, even after four months' time granted to him – His prayer for extension of time rejected in view of several officers waiting for quarters – He was also informed that penal rent as per ONGC's policy would be recovered from him on his not vacating the quarters within time – But respondent vacating the quarters only after eviction proceedings were initiated against him – In the circumstances held, action of ONGC of deducting penal rent from gratuity in terms of the Regulations was not arbitrary, unlawful and unreasonable – ONGC had a right to withhold gratuity by deducting the amount found due to it and payable by respondent towards penal charges for unauthorised occupation of the quarters – Oil and Natural Gas Commission Act, 1959, S.23 – Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969, REgn.5 – Service Law – Gratuity – Deduction from.."


10. In another case of *Ram Pojan Vs. Union of India and others : (1996) 34 ATC 434 (FB)* this Hon'ble Tribunal has held as under:-

"Govt 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 restoring to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 – Indian Railway Establishment Manual, 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."

11. The rules with regard to regular transfer are well defined in the policy document dated 19.04.2001. The rate of rentals for extended occupation of the Government accommodation are prescribed. In Annexure A-1 to the OA (impugned order) there is mention of lump sum amount of ₹ 1,66,678.17 not working as available in any of the annexures of the rival pleadings. Under these circumstances a presumption can be safely made that the respondents have taken a reasonable view and not charged any penal rent for the first eight months of the occupation of the

quarter that is to say normal rent has been charged for first two months from the date of handing over the charge on transfer. If that is the case no interference is warranted by this Tribunal in the impugned order. However, the arrears of rent includes any penal rent ~~for~~^{for} any period of first eight months from the date of transfer, the same shall be reduced to normal rent for first two months and double the normal rent for addition six months as provided under the rules. The balance if any refundable to the applicant will be refunded within two months of the receipt of certified copy of this order.

12. With the above direction the OA is disposed of. No cost.


Member (A)

/pc/