

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD this the 9th day of Sept. 2010.

Present:

Hon'ble Mrs. Manjulika Gautam, Member (A)

ORIGINAL APPLICATION NO. 323 OF 2007

Pradeep Kumar Kamal, S/o Shri Sobha Ram Kamal, Aged about 53 years, R/o Railway Quarter NO. 38-A, Type II, Railway Colony, Firozabad.

.....Applicant.

VERSUS

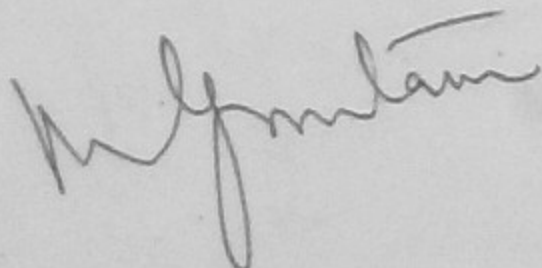
1. Union of India through the General Manager, North Central Railway, Head Quarter Office, Allahabad.
2. The General Manager, North Central Railway, Headquarters Office, Allahabad.
3. The Divisional Railway Manager, North Central Railway, D.R.M Office, Allahabad.
4. The Senior Divisional Operating Manager, North Central Railway, D.R.M Office, Allahabad.
5. The Station Superintendent, North Central Railway, Aligarh.

.....Respondents

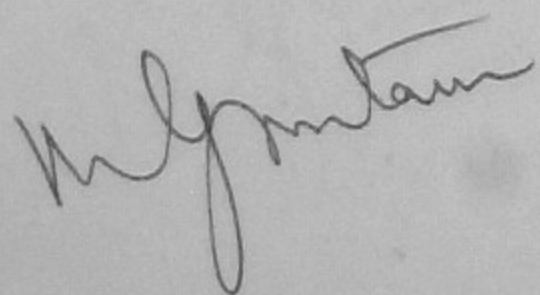
Advocate for the applicant: Sri S.S. Sharma
Advocate for the Respondents : Sri S.K. Chaturvedi

ORDER

The applicant, while working as Station Superintendent, North Central Railway, Aligarh, was transferred to Firozabad vide order dated 21.07.2005. He joined duty at Firozabad on 21.08.2005. As per Rules, he was permitted to retain his Railway Quarter at Aligarh up to 30.6.2006 on payment of normal rent and thereafter the



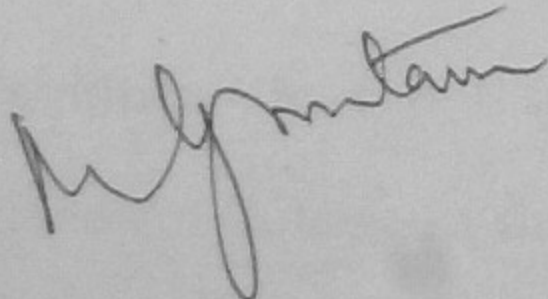
double normal rent. The applicant made representation dated 2.6.2006 requesting for retention of Railway Quarter on medical ground as his wife was seriously ill and two sons and one daughter were studying in higher class. The request was forwarded to Divisional Railway Manager, North Central Railway, Allahabad but vide letter dated 2/3/.08.2006. the request of the applicant was rejected and he was directed to vacate the said Railway Quarter. The applicant made another request for retention of Railway Quarter on 22.8.2006 and finally vacated the quarter on 30.9.2006. Vide letter dated 5.10.2006, Senior D.O.M North Central Railway, Allahabad directed Station Superintendent Aligarh for taking necessary action against the applicant and to make recovery of damage rent from the applicant w.e.f. 1.7.2006. Vide letter dated 12.10.2006, Station Superintendent, North Central Railway, Aligarh issued the order for recovery of damage rent for unauthorized occupation of Railway Quarter for the period from 1.7.2006 to 30.09.2006 i.e. 3 months @ Rs.18,288.27 per month, the total being Rs. 54,864.81/-. The same was recovered from the salary of the applicant since October 2006 in installment of Rs.9,145/- per month. The applicant made another requests dated 15.12.2006 for not recovering the damage rent from him as he had genuine reason for retaining the quarter but Senior D.O.M North Central Railway, Allahabad vide letter dated 28.12.2006 informed the applicant that his representation had been filed. Aggrieved by this, the applicant has filed the present O.A. seeking the following relief(s):-



- (i) That the Hon'ble Tribunal may graciously be pleased to set aside the impugned orders dated 2/3.08.006 dated 05.10.2006 and 28.12.2006 passed by the Senior Divisional Operating Manager, North Central Railway, Allahabad directing recovery of damage rent from the applicant for the period from 01.07.2007 to 30.09.2006 treating said Railway Quarter at Aligarh as unauthorized occupation by the applicant.
- (ii) That the Hon'ble Tribunal may graciously be pleased to quash/set aside order dated 12.10.2006 passed by Station Superintendent North Central Railway, Aligarh Junction assessing damage rent @ Rs.18,288.27 per month from the said alleged unauthorized occupation of Railway Quarter by the applicant for the period from 01.07.2006 to 30.9.2006 and directing recovery of a sum of Rs.54,864.81 from the salary of the applicant without any power and authority.
- (iv) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to refund a sum of Rs.46,725 as recovered from the salary of the applicant from October 2006 @ Rs.9145/- per month on account of alleged damage rent and also may kindly direct to refund with the amount if further recovery is made from the salary of the applicant with interest @ 12% per annum compounded annually.
- (v) That the Hon'ble Tribunal may graciously be pleased to allow heavy cost and legal expenses in favour of the applicant.
- (vi) That the Hon'ble Tribunal may graciously be pleased to pass any other order or direction as may deem fit and proper in the facts and circumstances of the case".

2. In the O.A. filed by him, the applicant has stated that according to the provision of Payment of Wages Act 1936, damage rent or penal rent cannot be deducted from the salary of an employee. The applicant has also referred the following decision of Hon'ble High Court and Central Administrative Tribunal:-

- (i) 1984 – ATC Vol. 27 366 U.N Swamy Vs, Union of India and Ors.
- (ii) 1993 (25) ATC 268 Ram Chandra Kamati Vs. Union of India and Ors.
- (iv) 2002-2003 A.T. Full Bench Judgemnts page 212, N.C. Sharma Vs. Union of India and Ors.
- (v) Kamla Prasad Pandey Vs. Union of India in O.A. NO. 127/2008 decided on 28.1.2009.



3. The attention has also drawn to Railway Board's Order dated 9.1.1963, which reads as follows:-

"(6) Eviction: The staff in unauthorized occupation of quarters should be taken up under Discipline and Appeal Rules for misconduct and breach of discipline. The provisions of Public Premises (Eviction of Unauthorized Occupants) Act of 1969 should be invoked to enforce eviction and recovery rents. No rent including electric Charges should be deducted nor should these be accepted during the eviction proceedings".

4. The applicant has also stated that he had very compelling family reason for not vacating the quarter at the time of transfer and also during the period for which he has been charged damage rent. Normal quarter rent @ Rs.125/- per month with water charges and electric charges were recovered regularly from the salary of the applicant. No H.R.A. was paid to him, therefore, he cannot be treated as unauthorized occupant. The applicant has also stated that action in cases of unauthorized occupation should be taken under the P.P. (Eviction of Unauthorized Occupant) Act and also before imposing of penal rent prior opportunity has to be given. Therefore, the applicant has claimed that recovery being made from him is illegal and not in accordance with Rules.

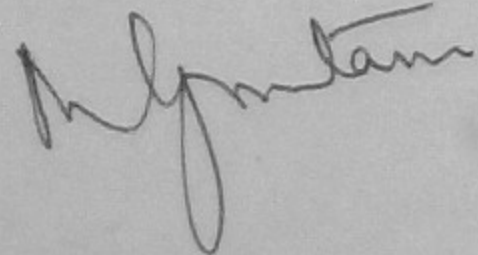
5. In the counter affidavit filed by the respondents, it has been stated that on the request of the applicant for retention of Railway Quarter, he was permitted to retain the same up to 30.9.2006 for one year, which is maximum period permissible after that he was asked to vacate and when he did not, action was taken as per Rules. It is being stated that medical ground of his wife's illness was not considered as she has been operated at Medical College in the year 1990 i.e. 17 years ago.

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but he was allowed to retain quarter on the ground of children education up to maximum permissible period of 1 year. It has also been stated that provisions of Payment of Wages Act are not applicable in the present case. The orders of damage rent passed by the respondents are as per Rules and provisions and there is no malafide against the applicant, therefore, there is no case is made out for intervention in the matter.

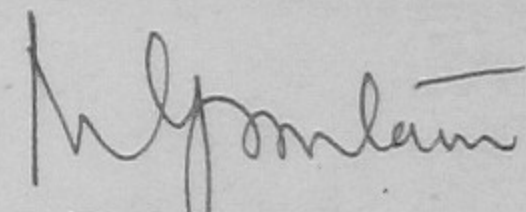
6. I have heard both the counsel and perused the record on file.

7. What has to be seen in the case is whether this is a case of damage/penal rent or not?. The applicant was transferred from Aligarh to Firozabad and immediately on transfer, he made a request for retention of quarter. He was permitted to retain the same for the period of one year, during which normal rent of Rs.125 and electric and water charges were being deducted from him. His requests for further retention were refused and he himself vacated the quarter on 30.09.200. Even during these three months when he overstayed, normal rent, electric and water charges were being deducted from his salary. It is also true that without giving him any opportunity to present his case or to be heard, damage rent of an excessive amount of Rs. 54,864.81/- was imposed upon him and was recovered from his salary in monthly installments. The applicant has nowhere shown willful disobedience or refusal to vacate the quarter. He was continuously making the request for retention of quarter and



when it was refused, he vacated but with a delay of 3 months. On the face of it, it does not seem fair to punish him for this delay of 3 months by imposing damage rent of Rs. 54,864.81/- @ Rs.18,288.27 per month particularly when normal rent of Railway Quarter was only Rs.125/-. The damage rent imposed certainly does not seem to be commensurate to the delay on his part of 3 months. It is also clear that he has not been given opportunity to explain or defend himself before the damage rent was imposed upon him and therefore, principles of natural justice have been violated.

8. In view of the same, the orders dated 2/3.08.2006, 05.10.2006 and 28.12.2006 are quashed and set aside and whatever amount has been recovered as damage rent should be refunded back to the applicant within a period of 3 months from the date of receipt of a certified copy of the order. No costs.


Member (A)

Manish/-