

In The Central Administrative Tribunal
Calcutta Bench

OA No.1071 of 1996

Present : Hon'ble Mr. D. Furkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Anupam Dutta, T.T.E. Special Grade,
E. Rly., Andal, residing at Andal
Bazar but family at Sitarampur Qr.
No.182/II/24 Sitarampur, Dist:Burdwan.

.... Applicant

- Versus -

- 1) Union of India, through the General
Manager, E. Rly, 17, N.S. Road, Cal-1.
- 2) The Divisional Railway Manager, E.Rly,
Asansol.

... Respondents

For the Applicant : Mr. B. Chatterjee, Advocate
Ms. B. Mondal, Advocate

For the Respondents: Mr. P.K. Arora, Advocate

Heard on : 31-5-2000

Date of Order : 08/6/2000

ORDER

G.S. MAINGI, AM

The applicant Shri Anupam Dutta has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against illegal and unauthorised act of realisation of penal/damage rent not prescribed anywhere in the rules of Railways and deduction of outsiders' rent with arrears in an illegal manner and in violation of the Rules in the Old Indian Railway Establishment Manual para 1730/1731 and para 1711 of the new one. The applicant Shri Anupam Dutta, Ticket Collector/ STN was transferred from Sitaram^{Edm} as TTE on 27.6.1987. He was occupying a railway quarter No.182/II/24 at Sitarampur which he did not vacate on his transfer to Andal. Since

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the quarter is still under his unauthorised occupation at Sitarampur, he was served with a notice dated 16.2.1989 for vacation of the quarter. When the applicant was living in the railway quarter at Sitarampur, his Headquarters was at Asansol from February, 1981. He was initially working as Ticket Collect^{clm} and ^{or} was transferred to Andal in July, 1987. The applicant states that there was no stipulation in the order of posting at Andal that he was required to vacate the quarter at Sitarampur. Thereafter, the ball was placed in the Court of the Estate Officer to whom particulars of the applicant are furnished vide Annexure-A to the application. It has further been stated that the respondents and their officers have no right or authority whatsoever to realise any kind of rent as penal/ damage rent save and except normal rent and for the recovery^{to be} made the legal course has to be adopted. He has prayed that all amounts so far deducted beyond normal rent must be refunded to him as it has been done illegally. He has drawn our attention to Rule 103(51) of the Establishment Code Vol.I^{that} as the Headquarter^{clm} of the applicant remained unchanged in his case, his posting cannot be treated as transfer. He has also placed a very old Indian Railway Establishment Manual (Vol.I) wherein he referred to para 1711. The applicant also includes an Annexure-A/1 as his representation dated 28.7.1996 to the Divisional Railway Manager, Eastern Railway, Asansol. On the very first page of his representation it is stated that he was transferred from Sitarampur to Andal ^{clm while} with the Headquarters remained at Asansol. So, it is not a case of transfer; but it is a case of posting. Because the word "Transfer" means transfer from one Headquarters to another Headquarters. But the applicant started controversy while filing this application that he was not transferred but only posted. It is also stated that the distance from Sitarampur to Andal is about 26 kms which is not only covered by the electric trains but it is also covered by the trains from Calcutta/Howrah upto to Burdwan. The applicant has made another representation to the Divisional Railway Manager, Asansol Division on 1st July '96 requesting that after about 9 years of transfer from Sitarampur to

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Andal in 1987 he may be allowed to retain the railway quarter on normal rent basis as the Estate Officer vide his letter dated 20.2.1995 had directed him to vacate the quarter by 25.2.1995. This order was issued under Sub-Section 1 of Section 5 of the Public Premises (Eviction of unauthorised occupants) Act, 1971. A copy of this letter also was endorsed to the Inspector of Works, STN, Eastern Railway wherein it is stated that one copy of the order should be fixed on the outer door or some other conspicuous part of the public premises and the other copy meant for Officer-in-Charge of the Police Station should be produced to the Officer-in-Charge of the Local Police Station, Kulti for securing necessary police assistance for the eviction in case the occupant does not vacate the premises within the prescribed date. It is seen from the Annexure-A/4 of the original application which is a letter of the applicant addressed to the Senior Divisional Commercial Superintendent, Eastern Railway, Asansol wherein he undertook to vacate the railway quarter at Sitarampur as early as possible as he was not finding the rented premises for his family. He also requested the said officer to make recommendation to the Area Officer/UDL to allot him a railway quarter at Andal out-of-turn. He further requested that he may be allowed to retain the said quarter until alternative arrangement is made. In a letter addressed to the Chairman, Quarter Committee(Traffic), Area Officer, Eastern Railway, Andal dated 13.3.89 (Annexure-A/5 to the O.A.) where he requested for allotment of a railway quarter at Andal. He was addressed a letter dated 16.2.89 by the respondents (Annexure-A/6) wherein he was directed to vacate the railway quarter at Sitarampur and deliver ~~the~~ vacant possession to the IOW within one month from the date of receipt of the letter. He was also addressed if he did not vacate the said railway quarter, he would render himself liable to such action in accordance with rules and law as may be deemed fit and proper by the administration. He was also advised that he was liable to pay damage charges at the market rent during

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the entire period of unauthorised occupation of the said railway quarter. It is clear that this letter was served on the applicant as a copy has been placed with the O.A. marked as Annexure-A/6.

2. The respondents have filed a reply which has been given by an Officer named S. Jha, Senior Divisional Personnel Officer in the Office of the Eastern Railway at Asansol DRM Office. He states that he is submitting the reply on behalf of the respondents and he has been authorised and competent to verify the said reply. Applicant pointed out here that the Sr. Divisional Personnel Officer is not one of the respondents and he has not produced any letter of authorisation on behalf of other respondents ^{Especially} through the General Manager, Eastern Railway and through the Divisional Railway Manager, Eastern Railway, Asansol. In the verification of the reply to the O.A. at page 6 he states that I, Sri Sushanta Jha, the respondent/abovenamed do hereby declare that the statements made above in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 10 of the reply are true to my knowledge and those made in paragraph 9 of the reply are based on information received from the records of the case in the office of the respondents. It is shocking to note that the Senior Divisional Personnel Officer declares himself as a respondent to the application. He has not produced any authorisation also on behalf of the Union of India or on behalf of the Divisional Railway Manager who are the only respondents in this application. There are many submissions made by the respondents which are as under :

- i) That the petitioner had/has alternative remedy and as such the petitioner is not entitled to any relief from this Tribunal.
- ii) That the application is barred by the Law of Limitation. However, no reason has been assigned or given by the respondents or in the reply or at the time of hearing of the application.
- iii) That the railway quarter is still under unauthorised occupation of the applicant. Therefore, penal, rent/damage rate recovery has been started as per rules against him. *Especially*

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iv) That the contention of the applicant in para 4 of the application that he was posted at Sitarampur with Headquarters at Asansol is absolutely incorrect. He was transferred from STN to Andal and was liable to vacate the quarter while carrying out the transfer order.

It is unfortunate that in the reply the respondents have used abbreviations of the Railway Stations which are not understandable by the Bench.

v) That the applicant was served with notice for vacation of the quarter dated 16.2.1989.

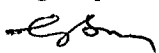
vi) That penal rent at the rate of Rs.1955/- from September 1987 to 31.3.89 has been recovered. Thereafter, the damage rent has been charged from him from 1.4.1989 onwards and the total amount of damage rent to be recovered upto 30.4.96 amounts to Rs.94,112/- out of which Rs.25,011/- has already been recovered and balance amount would be recovered is Rs.69,101/-. As per advice of the Estate Officer, the damage rate of rent @ Rs.1680/- per month is to be continued to be recovered from him till vacation of the quarter.

3. The application was heard on 31.5.2000 when Id. Advocate Mr. B. Chatterjee leading Id. Advocate Ms. B. Mondal appeared on behalf of the applicant while Id. Advocate Mr. P.K. Arora appeared on behalf of the respondents. Both of them vehemently put up their arguments before the Bench. A lot of case laws were cited by the Id. Advocate Mr. Chatterjee. Likewise Id. Advocate Mr. Arora also relied upon a lot of case laws regarding unauthorised occupation of the railway quarter by the railway employees. Mr. Arora also drew our attention to the Eastern Railway's letter No.E(PR)43/O/Vol. II dated 4-8-1992 enclosing therewith a copy of CPO/CCC's letter No.886/O/Vol.VI dated 16.7.92 which had been circulated to various addressees for information, guidance and necessary action. We must point out that it is not clear whether interest was taken by the respondents in circulating the important document of the railways i.e. the circular dated 16.7.1992. This is about unauthorised occupation of railway quarters on transfer wherein it has been stated

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that in case staff having quarter is not vacating the same, necessary damage rate will be charged for unauthorised retention as per rule. While Mr. Chatterjee was trying to draw our attention to the expression "Posting and Transfer" he took a lot of time of the Bench. Although he has enclosed a copy of the order dated 2.1.1987 of the Eastern Railway, Asansol Division, the same has been enclosed by the respondents at page 8 of their reply. This order relates to posting on promotion and transfer of various railway employees to various places. In the above order applicant Shri Anupam Dutta is placed at Sl.No.2 in Group 'B' and it is seen that he has been transferred as TC-I STN to UDL against the vacant post. It is the contention of the Id. Advocate Mr. Chatterjee that applicant has been posted to UDL but has not been transferred as the Headquarters continued to be at Asansol. He further drew our attention to Group 'B' in the same order where the very word 'Transfer' is used in the case of five employees of the Railways from various places to various other places. Mr. Chatterjee tried to convince the Tribunal that both the words 'posting' and 'transfer' are interchangeable. But we are neither convinced nor impressed with the arguments advanced by Mr. Chatterjee that the applicant has been posted not transferred.

4. During the course of hearing on 31-5-2000 Id. Advocate Mr. Arora for the respondents had produced a xeroxed copy of the order dated 29.6.1998 passed in O.A.317 of 1996 by this Bench which had been passed by the Hon'ble Member Mr. D. Furkayastha in a case of Lowakesh Kumar, son of Late Ramswarup Singh against the Union of India through the General Manager, Eastern Railway, Calcutta and the Divisional Railway Manager, Eastern Railway, Dhanbad. It is observed from the order passed in that application that Id. Advocates in that petition were also Mr. B. Chatterjee and Ms. B. Mendal for the applicant and Id. Advocate Mr. P.K. Arora for the respondents. The matter had been thoroughly discussed by the Hon'ble Member Mr. D.



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Purkayastha and we followed his findings in the order. After having seen that order of this Tribunal we do not feel necessary to go through any case law cited either by the Id. Advocate for the applicant or by the Id. Advocate for the respondents.

5. Id. Advocate Mr. Chatterjee was vehemently arguing during hearing that the applicant has been posted not transferred. But he failed to distinguish between 'posting and transfer' either by citing any authority or by any case law. To our minds it appears that posting is a wider expression than the transfer and it also includes the element of transfer. In many Departments 'transfer' is known as posting and even in Defence Service the posting is a regular terminology used for transfer. So, we are unable to appreciate the contention of the Id. Advocate for the applicant and even otherwise the applicant has used the word 'transfer' in various communications attached to the application. We find that applicant is not conversant with the word 'transfer' ^{may be} and includes ^{word} it in the posting.

6. It is true that the railway authority had moved this case to the Estate Officer for assessment and recovery had been made from the applicant by the respondents as per rules due to unauthorised occupation of the railway accommodation. It cannot be expected that a railway employee does not know that when an employee is transferred from one place to another place, he shall have to vacate the quarter after expiry of the permissible limit. It is not the case of the employees of the railway organisation, but most of the employees in other departments of Government of India also do not know the provision of allotment. The railway employees like the petitioner should appreciate that this accommodation is meant for railway employees posted at places such accommodation is permissible and he should have vacated the accommodation on his transfer for other employee.

7. We have discussed the case in detail. We do not find any merit in the application. In view of the matter we dismiss the application and respondents are justified to recover the damage rent as

per rules of the Railways. We do not impose any cost in this case despite the fact that the applicant has kept the accommodation unauthorisedly at a place from where he has been transferred to other place.

G. S. Maingi
8/12/00
(G.S. Maingi)
Member(A)

4/1/01
8/6/2002
(D. Furkayastha)
Member(J)

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