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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH: JODHPUR

Date of order : 4.5.1995

OA NO. 183/1995

Smt. Bharti ... Applicant.  
versus

Union of India & Ors. .. Respondents.

Shri S.K. Malik, Counsel for the applicant.

CORAM:

Hon'ble Mr. N.K. Verma, Member (A)

BY THE COURT:

Mr. S.K. Malik, learned counsel for the applicant, has prayed for quashing the impugned order at Annexure A/1 dated 9.7.1993, by which the applicant was asked to vacate the Railway quarter occupied by her unauthorisedly and illegally on or before 28.6.93. Since she had failed to vacate the quarter, the damage charges @ Rs. 15/- per square meter was recovered for the period starting from 30.4.1993, the date on which she had allegedly occupied the Railway quarter, which was lying vacant. The applicant has also prayed for a direction from this Tribunal for allotment and regularisation of the quarter in her name and recovery of normal rent from her salary. The

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excess amount recovered as damages has also prayed to be refunded to her. In M.A. No. 112/95 to this H.A., a prayer has also been made for condonation of delay in filing O.A. The cause of action arose on 9.7.93 and the OA has been filed before this Tribunal on 1.5.1995. Learned counsel for the applicant while making submission for admission has brought to the notice the order <sup>passed</sup> by the Calcutta Bench of the Tribunal cited at 1995 (1) ATJ 230.

In this case, the Bench had held that the Railway Authority cannot deduct penal rent or damages without being empowered by an order of the competent forum i.e. the Estate Officer. In the case of the applicant, the Dy. Controller of Stores (DCOS) had vide his office order dated 9.7.93 levied the damages without being the Estate Officer. In a case cited at 1995 (1) ATJ 481, a Single Member Bench of the Chandigarh Bench of the Tribunal directed that the respondents will charge from the applicant only the normal rent and if any penal/damage rent has been charged from the applicant, it will be refunded to him.

*N.L.W.*  
2. The brief facts of the case are that the applicant who is a female employee of the Railway belonging to the category of Scheduled Caste had applied for allotment of a quarter on 16.7.1991 to the competent authority i.e. the Divisional Railway Manager which was followed by a certificate from the Divisional Medical Officer ~~as~~ for allotment of quarter on medical grounds. This application was

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admittedly forwarded to the Divisional Railway Manager by the D.C.O.S. on 9.3.92. The applicant also informed the Authorities about the vacancy position of some quarters from time to time. However, she was informed on 16.4.1992 that she was entitled to a Type-II quarter which was not vacant at that point of time. Inspite of several reminders thereafter and also having the information regarding a Type-II quarter being vacant, no action was taken by the respondents with the result that on 30.4.1993 she occupied a quarter No. L-260/D in the Railway Workshop Colony on her own and informed the Authorities that she had occupied that quarter on the basis of the Medical Certificate and she requested the respondents to recover the normal rent for the said occupancy. Thereafter, the applicant was served with a notice from the D.C.O.S. (Annexure A/2 dated 22.6.93) asking her to vacate the quarter by 28.6.1993. She was also informed that she would be required to pay the damages @ 15/- per square meter for that unauthorised occupation of the quarter. Annexure A/1 is dated 9.7.1993 by which the damage charges @ Rs. 15/- per square meter was imposed on her.

3. The applicant had no rightful basis on which she could have occupied the quarter. It seems from the Annexures submitted by the applicant that she was also suspended from the service on 3.5.1993

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and remained under suspension till 21.6.93 for this alleged misconduct. However, she has maintained in the application that she occupied a quarter on the verbal assurances of the Asstt. Controller of Stores. She made a representation to the Divisional Railway Manager dated 10.8.94 long after the notice for eviction was issued by the DCOS, requesting him to regularise the allotment of that quarter to her. She also admitted therein that she is paying damages @ Rs. 1135/- per month for that quarter.

4. From the facts and circumstances of the case, it can be seen that the occupation of the quarter under reference by the applicant was totally unlawful and irregular in view of the fact that there was no allotment in her favour. The cases cited by the learned counsel for the applicant pertains to over-stayal in a quarter unauthorisedly by the applicants in those cases. But in both the cases, the quarters were initially allotted to the applicants who had in the case of Calcutta Bench overstayed after his transfer to another station and/ the case of Chandigarh Bench the quarter was allotted to the applicant only for a specific period ~~so~~. Therefore, the cases cited by the learned counsel for the applicant are entirely different and the same cannot be relied upon for any assistance in the instant case. The

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applicant has not come with clean hands in as much as she never represented against the order regarding eviction and levy of damages for more than a year after the receipt of impugned order dated 9.7.1993. She made her first representation against this only in August, 1994 to the Divisional Railway Manager. The delay in coming to the Tribunal through <sup>the</sup> OA <sup>MA</sup> is also not convincing and acceptable.

5. In the circumstances, both the OA and MA ~~are~~ dismissed as not maintainable and devoid of merits.

N.K. Verma

( N.K. VERMA )  
MEMBER (A)

CVR.

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Part II and III destroyed  
in my presence on 21/12/2000  
under the supervision of  
Section Officer ( ) as per  
order dated 14/12/2000

Section Officer (Record)