

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of order : May 18, 1998

ORIGINAL APPLICATION NO. 360/1996.

Kishan Lal Sharma S/o Late Shri Munna Lal, Resident of L/59
Railway Colony, Rewari, Assistant Mechanical Engineer, Northern
Railway, Rewari.

..... Applicant.

VERSUS

1. Union of India through General Manager, Northern Railway,
New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner.
3. Divisional Mechanical Engineer, Northern Railway, Bikaner.

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CORAM :

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

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Present :

Mr. R.S.Sharma, Advocate, for the Applicant.

Mr. S.S.Vyas, Advocate, for the respondents.

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BY THE COURT :

The Applicant has filed this Original Application with the
prayer that the impugned order dated 6.11.1995 (Annex.A/1), be
declared illegal and be quashed. The amount of Damage Rent
recovered from the applicant, be ordered to be refunded with
interest @ 12% p.a.

2. Notice of the Original Application was given to the
respondents who have filed their reply in which they have stated
that applicant was in an unauthorised occupation of the Railway
Quarter No. L/59 at Rewari from 28.3.1988 to 10.10.1990 and,

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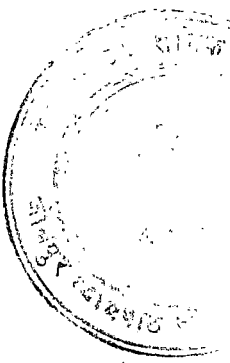
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therefore, he is required to pay damage rent as per rules and circulars on the subject. The Application of the applicant for regularising the period of un-authorized occupation, was rejected by the competent authority and, therefore, the damage rent was assessed and recovered as per rules. The Original Application has no force and is required to be rejected.

3. The applicant has filed rejoinder to the reply in which the applicant has stated that the rent at the rate of 10% of the Pay could at the most be recovered from the applicant for the period in question.

4. I have heard the learned counsel for the parties and gone through the record. In order to appreciate the rival arguments, bare minimum facts are required to be reproduced for clarity.



5. The applicant while he was posted at Rewari was allotted a Railway Quarter bearing No. L/59 by the Divisional Railway Manager, Bikaner. The applicant continued to remain in occupation of that quarter and was eventually promoted as Senior Loco Inspector and was posted at Muradabad where he resumed his duties on 28.7.1987. When the applicant was transferred on promotion he applied for retaining the Railway quarter which was in his occupation due to his family circumstances and because of educational session of his children. The applicant was allowed to retain the said quarter up to 27.3.1988 on normal rent. The applicant, however, thereafter did not vacate the quarter. While he remained at Muradabad, his family continued in occupation of the said quarter. From Muradabad the applicant was again promoted as Assistant Mechanical Engineer and was posted at Rewari where he joined his duties on 23.7.1988 (26.7.1988 as per Annex. A/12). The applicant was

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thereafter again transferred and was posted at Hanumangarh where he joined on 30.5.1989. While the applicant ^{was} posted at Hanumangarh his family continued to remain in occupation of the Railway quarter in question at Rewari. The applicant at last vacated the quarter on 10.10.1990 and shifted his family to Hanumangarh. From the foregoing facts, it appears that the disputed period of occupation of the Railway quarter is 28.3.1988 to 10.10.1990. The applicant is seeking regularisation of this period whereas the Railway authorities have recovered the damage rent for this period to some extent and claim to be entitled to recover remaining amount as per rules.

6. It was argued by the learned counsel for the applicant that the Railway authorities cannot recover the damage rent from the applicant because the allotment of the quarter has not been cancelled by any specific order and so long the allotment of the quarter is not cancelled, the applicant cannot be said to be in an un-authorized occupation of the Railway Quarter. I have considered this argument. In my opinion, in view of the specific rules as are in vogue relating to allotment and occupation of Railway quarter, no specific order cancelling the allotment is required to be passed by the authorities. In this concern the rules are covering all eventualities, hence, the contention of the learned advocate is devoid of any substance and is therefore rejected.

7. The counsel for applicant has also argued that as per rules and circular in force, the Railway authorities cannot recover more than 10% of pay as rent for occupation of the Railway quarter, but no such circular has been shown to me at the time of arguments. Therefore it cannot be said that recovery of rent for un-authorized occupation is in all cases restricted to

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10% of pay of the concerned employee. The argument in my opinion deserves to be rejected and is hereby rejected.

8. The applicant was permitted to retain the Railway quarter up to 27.3.1988 on normal rent as per rules. The recovery of damage rent, as described in Annexure A/1 has been calculated w.e.f. 28.3.1988, therefore, recovery of rent prior to this date is not in dispute. But in my opinion the applicant is required to pay damage rent for un-authorized occupation from 28.3.1988 to 23.7.1988 i.e. the date when the applicant resumed his duties on promotion at Rewari.

9. The learned counsel for the applicant has also argued that the applicant was transferred from Muradabad to Rewari within a period of one year and therefore as per rules, he could retain the quarter on normal rent for this period but no specific rule has been shown which may authorise the applicant to continue his occupation on normal rent during the period of the said one year posting. The applicant was not transferred to Muradabad on the basis of temporary transfer, therefore, it cannot be said that applicant's transfer was temporary in nature. The transfer order has not been placed on record by the applicant to establish that his transfer to Muradabad was a short term and temporary transfer. The argument of the learned advocate is not sustainable on this count also hence, rejected.



10. From the record, it is not borne out that applicant was allotted any quarter during his stay at ^{Rewari} after he was transferred from Muradabad to Rewari in July 1988. The applicant vide his application dated 20.4.1988 (Annex.A/2), has stated that on his transfer to Rewari he is entitled to a non-pooled accommodation category and is due for allotment of Railway accommodation

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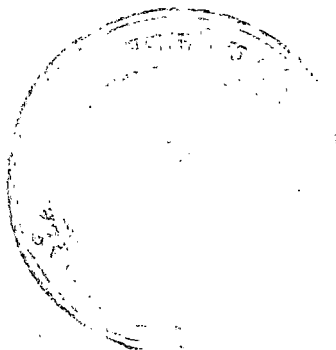
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afresh, therefore, his occupation of Quarter No. L/59 be regularised. He also indicated that another quarter L/69 is lying vacant to be allotted and is an ear-marked accommodation for non-pooled category. In the same letter, the applicant had applied for regularising his occupation from 27.3.1988. Decision on this representation (Annex.A./2) was taken vide Annex.R/2 dated 18.11.1988 in which it is written that applicant's letter under reference is not acceptable. The applicant has been informed in the past vide letter dated 17.8.1988. On going through this letter it appears that applicant was not communicated anything in respect of his entitlement for allotment of a non-pooled accommodation on his posting as Assistant Mechanical Engineer, Rewari. It also appears that applicant's application dated 28.8.1988 was held not acceptable in a routine manner and in view of the previous intimation dated 17.8.1988 calling upon the applicant to vacate the accommodation. This is a fact that while the applicant was posted at Rewari, he was in occupation of Railway accommodation. If the Railway accommodation had not been provided to him, he would have been entitled to House Rent Allowance as per rules. The Authorities had not intimated to the applicant that he was not entitled to seek allotment of any accommodation on priority basis. Neither he was informed that Quarter No. L/69 cannot be allotted to him, nor the applicant was ever intimated that he was not entitled to any Government accommodation simply on the ground that he was posted at Rewari. In my opinion, when the applicant was in occupation of Railway accommodation and was posted at Rewari then his occupation in respect of Railway quarter should have been regularised by the competent Railway authorities more so in view of the representation of the applicant dated 20.8.1988 (Annex.A/2). In fact, the letter dated 2.1.1995 (Annex.A/5) does not indicate that applicant was



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in an un-authorized occupation of Railway quarter from 24.7.1988 to 30.5.1989 i.e. the period applicant remained posted at Rewari. However, subsequently the applicant's occupation of the Railway quarter at Rewari became a case of vigilance, therefore, probably the entire period has been taken to be as un-authorized occupation. But in my view the applicant's occupation of the quarter from the date he joined on promotional post at Rewari on 23.7.1988 till he remained posted as such, cannot be treated to be as un-authorized occupation. This period - deserved to be regularised by the Railway authorities as the applicant was discharging his duties at Rewari and the respondents-Railway was to provide an accommodation for his residence ^{him H.R.A.} or grant/therefore, no damage rent can be legally recovered from the applicant for this period.



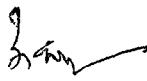
11. Once the aforesaid period of occupation of Railway quarter is so treated, the subsequent period starting from 31.5.1989 to 10.10.1990 is required to be dealt with and rent thereof is to be calculated and recovered as per rules after allowing the benefit of normal rent etc. to the applicant.

12. From the record it appears that a sum of Rs. 29,304/- has been recovered from the pay of the applicant as per the details contained in Annex.A/7. The question relating to amount due and initiation of recovery, is basically a question of calculation. Therefore, the respondents deserve to be directed to re-calculate the amount of rent due from the applicant as per the discussions and observations made above and if, for the period in question, some amount is found due then the same may be recovered from the applicant and if the applicant is entitled to refund some amount out of the amount already recovered from him earlier then the same should be refunded to him. However, in

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either case, no interest shall be payable or recoverable. The Original Application deserves to be accepted in part.

13. The Original Application is, therefore, partly accepted. The Original Annex. A/1 dated the 6th November, 1995 is hereby quashed and the respondents are directed to re-calculate the amount of rent in respect of occupation of Railway Quarter L/59 occupied by the applicant as per the discussion in the foregoing paras and regulate the recovery of rent as per rules. If any amount is found due to the applicant recovered or if some amount is found refundable, the same should be recovered from or refunded to the applicant but without interest. The parties are directed to bear their own costs.


(A. K. MISRA)
Judicial Member

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