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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 98/2003

Date of Decision: 02.03.2005

CORAM

Hon'ble Mr. Kuldip Singh, Vice Chairman

Hon'ble Mr. G.R. Patwardhan, Administrative Member.

R.B. Saxena (Rajendra Baboo Saxena) retired office Superintendent, Electrical Branch, Divisional Office, North West Railway Resident of H.No. 669 Bhagat Singh Colony, Sarvodya Basti Gajner Road, Bikaner (Rajasthan).

Applicant.

(Applicant present in person)

VERSUS

1. Union of India Through General Manager North West Railway Headquarters Old Loco Colony Area, Jaipur.
2. Divisional Railway Manager, North West Railway divisional Office, Bikaner (Rajasthan).
3. Deputy Chief Mechanical Engineer (Workshops) North West Railway Workshops, Bikaner (Lallgarh) Rajasthan.
4. Divisional Electrical Engineer, North West Railway, Divisional Office, Bikaner (Rajasthan).
Divisional Personnel officer, North West Railway Divisional Office, Bikaner (Rajasthan).

Respondents

(Mr. Salil Trivedi, Counsel for the respondents.)

ORDER(Oral)

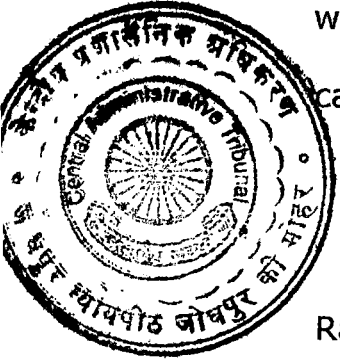
Kuldip Singh, V.C.

The applicant has filed this O.A to challenge the order No. 19-Elect/5/2/Vol. I IV dated 27.2.2002 (Annexure A/1) issued by Dy. Chief Mechanical Engineer, Northern Railway Workshop Lallgarh-B. The applicant was allotted Railway Quarter No. 206 A New Railway colony, Lallgarh (Bikaner) when he was working as Office Superintendent Grade -II in the office of Workshops Assistant Electrical Engineer, Northern Railway Workshops, Bikaner. The allotment of the said quarter was cancelled vide order dated 25.06.1999. Challenging the same, the applicant had filed the O.A No. 200/1999 which was

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decided on 14.2.2001. In the said O.A. the impugned order was quashed, however, it was held that the competent authority shall be free to proceed against the applicant in respect of cancellation of allotment of the quarter in question and eviction of the applicant therefrom, as per law after due notice and observance of due procedure as prescribed in the rules. Subsequent to that applicant, was issued show cause notice No. 19-Elect/5/2/Vol-iv dated 21.9.2001 that as to why allotment of Railway quarter No. 206A-LGH should not be cancelled and in reply to the show cause notice, applicant submitted a explanation and after considering the same, Dy. CME passed an order vide Annexure A/1 by which the plea taken by the applicant in his explanation was not accepted and the allotment of the quarter was again cancelled by the impugned order.



The applicant further alleges that he had vacated the Railway quarter No. 206A Type II on 1st February 2003. He further alleges that the normal house rent was being deducted from salary of applicant. As such it is illegal, unjust and improper to deduct any penal rent from salary of applicant for the month of January 2003. The applicant further submitted that the deduction of penal rent is illegal and improper because penal rent was not assessed by the competent authority and notice in this respect was not given to the applicant, as such recovery of penal rent is illegal and and improper. The applicant further submitted that the procedure as prescribed by Railways for assessing damages rent of alleged unauthorised occupation of quarter as per Rule 1055 of Indian Indian Railway code for the Engineering Department (Revised Edition) 1982 has not been followed before deduction of Rs. 6071.00 from salary of applicant for the month



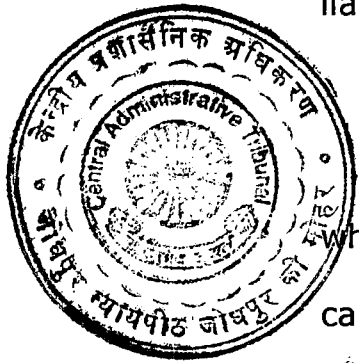
of January, 2003 and as such recovery is liable to be quashed and the order placed at Annexure A/1 should also be quashed.

The respondents are contesting the O.A. Respondents filed a reply wherein it has been stated that the applicant had earlier filed an O.A. No. 200/1999 challenging the cancellation of the quarter and this Tribunal vide Annexure A/8 had observed that since, the order of the cancellation of quarter was passed by an Authority who has not allotted the house, only the allotting the Authority is the Competent Authority to cancel the allotment of the quarter and in that way, the order of the cancellation was quashed. However, it was directed that the Competent authority shall be free to proceed against the applicant in respect of cancellation of allotment of quarter so now the competent authority after issuing fresh notice and after considering the reply had passed the present impugned order. Now since the allotment of quarter has been cancelled and the quantum of penal rent has been received under D.S.E./C/Bikaner letter dated 02/01/2003 vide annexure R/1 and accordingly, the monthly penal rent plus arrear was calculated which come to Rs. 5071.42 and 45823.90 respectively and accordingly Rs. 5071.42 the monthly penal rent plus 1000, the installment of arrear of penal rent, Rs. 6071 was recovered from his salary of January, 2003. The balance of arrears was deducted from his settlement dues. The respondents further pleaded that the authority who had allotted the house in question had right to cancel the allotment as has been done in the instant case and on cancellation, penal rent was assessed which is now being recovered from the applicant. Learned counsel for respondents further submitted that the applicant had misused the quarter as the applicant had made



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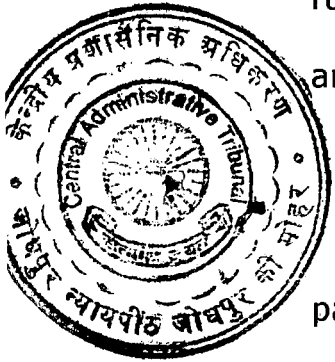
some unauthorised construction by raising a room in the courtyard of railway quarter no. 206 A and three dish antena has been mounted on the roof of quarter No. 206-C, whose connection are given to different block of the colony through Qr. No. 206/A and an additional room of size 3.15 X 2.05 has been constructed in courtyard of Qr. No. 206A which is being used as operating room for cable distribution. A joint check has been conducted by CVI/NDBH, JE-I/LGH and SE/W/BKN (both of Bikaner Division) on 02.12.1998 and the applicant was called from his office regarding this joint chek and he had also signed the report prepared by the team comprising of the members of the joint check team on the spot. As such it is submitted that the allotment of quarter has been rightly cancelled and applicant is liable to pay penal rent.



The applicant filed a rejoinder to the counter affidavit wherein he stated that the competent authority in such cases of cancellation of allotment of quarter and eviction there from is the Estate officer as per PPE Act 1971. The Estate Officer for Bikaner Division is the DSE (c)/BKN. and section 1049 to 1058 of Indian Railway engineering Code 1982 and the procedure and rules for eviction process as are enshrined in P.P.E. Act, 1971 are applicable every where in India but no show cause notice has been issued by the Estate Officer and no other authority could proceed further. It is submitted that the cases for unauthorised occupation, calcellation of allotment of quarter and eviction there from are to be dealt with under PPE Act. 1971 by the Estate Officer only and as such the impugned order is liable to be quashed.

We have heard the learned counsel for the parties and gone through the records. The learned counsel for the applicant submitted that the cancellation of the quarter can be done only by the Estate Officer under PPE Act. The authority who has passed the order in question is not the competent authority as he is not Estate Officer appointed under PPE Act 1971 so the order passed by the Deputy CME (Workshop) is bad for want of jurisdiction. The applicant had also made a representation calling upon the respondents to withdraw the order but in that representation he had not taken plea that the order has not been passed by the Estate Officer.

On the contrary, the learned counsel for the respondents submitted that recently the Supreme Court in case of Wazir Chand Vs. UOI and others reported in 2001 AIR SCW 5098 (2) , has held that the Government in accordance with rules, ^{can} has charged penal rent and would be entitled to deduct the arrears from the balance amount of gratuity which was payable.



We have considered the rival contentions raised by the parties. As regards the facts, the quarter in question had been cancelled earlier by the authority without giving a show cause notice to the applicant is not disputed, and after the earlier judgement in O.A. No. 200/1999, it was made clear that the respondents could proceed further to cancel the allotment of the quarter in accordance with the rules. It is thereafter the present impugned order has been passed. The applicant was unable to show as ^{to} who is competent to allot and cancel the allotment of the quarter. Though the applicant had stated that it is only under the the PPE Act, he should have been evicted and as regards

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the cancellation of the quarter is concerned, the same is required to be done by the Estate Officer. Though the applicant has annexed only some extracts of the Engineering Code which do not show that cancellation is also required to be done by the Estate Officer appointed under the PPE Act. He had raised the plea about the competence of the authority who had cancelled his quarter but the plea with regard to the fact that cancellation of the quarter could have been done only the Estate Officer had not been established.



Only other plea taken therein was that the applicant had not constructed any additional room nor any show cause notice was given. It was on the point of the show cause notice the matter was remanded that was the fresh order has been passed. In our view also, it is only after cancellation of the quarter, the allottee becomes unauthorised occupant and from that point, only the jurisdiction of the Estate Officer starts. If there is dispute regarding the assessment of damages and the calculation of penal rent is concerned, since the Railway Rules are already there and as per which the respondents before levying the recovery had got the penal rent calculated from the office of DRM (Bikaner), The applicant is liable to pay the penal rent in accordance with rules which has been calculated as per R/1. The learned counsel for the respondents has also drawn our attention to the O.A. No. 1338/2003 decided on 31.05.2001 by the Principal bench of Tribunal in the case of Sita Ram Vs. UOI and others wherein it was observed as under:-

"Full Bench decision of the Allahabad Bench of the Tribunal dated 22.2.1996 in O.A. 936/1993 in which several issues relating to railway quarters were decided. It has been inter alia held therein that if a railway servant does not vacate

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the railway accommodation even after the expiry of permissible period, further retention of the same would be unauthorized and penal/damage rent can be levied, that allotment of quarter stands automatically cancelled and penal rent can be levied according to the rates prescribed from time to time in Railway Board's circular and that it is not necessary to take resort to proceedings under PPE Act." (Emphasis supplied)

The respondents have also placed on record the schedule of powers 1984 which prescribes that who is the competent officer to cancel the allotment of Railway accommodation. The Schedule is taken on record and this Schedule does not speak that it is only the estate officer who is competent to cancel the allotment of quarter rather the competent railway official can cancel the allotment of quarter as per schedule. Thus, we find that the ground taken by the applicant that the cancellation of allotment order should have been passed by the Estate officer appointed under PPE Act has no force and the O.A is devoid of any merits. The same stands dismissed accordingly.



(G.R. Patwardhan)
Admn. Member

(Kuldip Singh)
Vice Chairman

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~~Part II and III destroyed~~
in my presence on 8/11/4
under the supervision of
section officer [signature] as per
order dated 18/12/13

[signature]
Section Officer (Record)

5/12/11

WLB

Received from

10/12/11

R. [signature]
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