

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
O.A. No. 428 of 1991
Lucknow this the 14 day of Feb., 2001.

HON. MR. D.C.VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

R.S. Nirmal aged about 46 years Signal Inspector, son of Sri Nathu Lal at present posted in the Office of Divisional Signal & Telecommunication Engineer/CTC NE Rly. Gorakhpur, r/o Railway Quarner No. 25-D Type II, Badshah Nagar, Lucknow.

By Advocate Shri A. Sahai.

Petitioner.

versus

1. Union of India through its Divisional Manager (Engg)/Railway state officer, N.E. Rly. Lucknow.
2. Divisional Rly. Manager, N.E. Rly., Varanasi.
3. Sr. Divisional Signal & Telecommunication Engineer N.E. Rly., Varanasi.
4. Divisional Signal Telecommunication Enginer/CTC, N.E. Rly. Gorakhpur.

By Advocate Shri Arvind Kumar.
By D.C.VERMA, MEMBER(J)

Respondents.

O R D E R

This O.A. is against the recovery of penal rent and for damages for unauthorised occupation of railway quarter.

2. The applicant was earlier posted at Lucknow and was allotted quarter No. 25 D type II at Badshahnagar Railway Colony on 14.6.85. The applicant was transferred to Gorakhpur vide order dated 29.12.86. The applicant however, joined his post at Gorakhpur in February, 87. Subsequently, in 1994, the applicant was re-transferred to Lucknow. On re-transfer, the applicant joined at Lucknow on 1.10.94. Even during the period the applicant was posted at Gorakhpur between February, 87 to September, 94, the applicant retained the quarter at

(1)

Lucknow.

2. The applicant's claim is that he was permitted to retain the quarter for two months vide order dated 24.4.87. Another request to retain the quarter for further 4 months was forwarded by the opposite party No. 4 (Divisional Signal Telecommunication Engineer), but the applicant was not informed about the approval or rejection of the said prayer. Thus, the applicant's application was pending till date ~~date~~ of filing of the O.A. The applicant's case is that at Gorakhpur, the applicant made an application for allotment of quarter as he was a S.C./S.T. employee, but inspite of the request, no quarter was allotted to him. Consequently, the applicant was compelled to retain his quarter at Lucknow. The other submission is that the applicant should have been transferred to a place near to his native place and where there are facilities of quarter. Also the quarter should have been allotted to the applicant on priority basis. The order of transfer dated 18.9.1986 (Annexure-1) has also been challenged. This prayer has however, become infructuous as the applicant, in compliance of the transfer order Annexure A-1 dated 18.11.86 joined at Gorakhpur and after about 7 years, the applicant has been re-transferred to Lucknow where he joined on 1.10.94. ~~the applicant is according to retain the quarter.~~

3. The first submission of the learned counsel for the applicant is that the railway quarter was duly allotted to the applicant when the applicant was posted at Lucknow. The allotment order was never cancelled, hence it has been submitted the applicant occupied the said quarter even after transfer. After transfer, the applicant was allowed to retain the quarter for two months. The other application to retain the quarter for further 4 months was not rejected by the respondents. Hence, it is submitted, the respondents cannot charge the damage rent from the applicant.



4. The learned counsel for the applicant has placed reliance on the decision of the Lucknow Bench of Hon. High Court in writ petition No. 302/1973 decided on 17.9.74 inre V.N. Chaturvedi vs. General Manager N.E. Railway Gorakhpur and others. The respondents' case therein that after transfer to Gonda, the allotment of the quarter at Kanpur came to an end was not accepted by the Hon. Court in the absence of any rule or departmental instructions. Reliance has also been placed on the ^{second appeal} / decision of the Hon. Allahabad High Court in the case of Kapil Dev Ojha vs. Union of India decided in November, 1980 in second appeal No. 3094/1978. It is not a reported case. Only ^{two} ~~the~~ pages of the judgment have been filed. As the full text of the judgment is not on record, we have gone through the facts contained in the photo copy of the order produced before us. The copy shows that disciplinary proceedings could not be taken for non vacating of quarter.

5. The third decision on which reliance has been placed by the learned counsel for the applicant is dated 1.10.91 ^{in O.A. No. 922/91} passed by Central Administrative Tribunal Allahabad Bench inre Mangal Prasad vs. Union of India and others. The Tribunal was of the view that "since the applicant has been allotted the said accommodation, in his name for which ^{no} cancellation order has been issued, hence the question of eviction and penal rent does not arise."

6. All the decisions cited by the learned counsel for the applicant are of no help to the applicant in view of the circular dated 15.1.90 according to which a railway employee on transfer is entitled to retain the quarter only for two months. The said circular was considered in the case of R.N. Pandey vs. D.R.M. reported in 1996(1) ATJ, 35. The Allahabad Bench of the Tribunal held that where the period of retention of the quarter is not further extended by the competent authority, the allotment will be deemed to have been terminated automatically.

7. The circular is of the year 1990 and the decision cited by the learned counsel for the applicant are of prior years except in the case of Mangal Prasad which was decided on 1.10.91. A reading of the decision of Mangal Prasad shows that the circular dated 15.1.90 was not brought to the notice of the Bench. Consequently, it was not considered. Copy of the circular dated 15.1.90 has been filed. Item No. 17 provides that "on expiry of the permissible/permitted period indicated in all the above cases, the allotment of quarter in the name of employee at the old station will be deemed to have been terminated automatically. Retention of quarter by the employee after expiry of the permissible period will be treated as unauthorised. During the period of unauthorised occupation employee should be required to pay damages rate of rent in respect of railway quarter." In the case of Amitabh Kumar vs. Director of Estates and another reported in 1997 SCC(L&S), 698 the apex court held that retention of quarter during pendency of application after the expiry of permitted time limit would be unauthorised occupation. In the case of Amitabh Kumar (supra) the son of a voluntary retired officer applied for allotment of house in substitution of his father and failed to vacate the quarter after expiry of the permitted time limit. The applicant had taken the stand that since the issue of allotment, to which the applicant was eligible, was not determined for long and the delay was on the part of the respondents/government, the penal rentals cannot be imposed upon them. The contention of the applicant was, however, rejected by the apex court.

8. The next submission of the learned counsel for the applicant is that the applicant is a reserved category candidate, hence the applicant's transfer to Gorakhpur which was not adjoining district, is itself not valid. Such a relief cannot be considered at this stage especially when the applicant himself joined at Gorakhpur and after several years he has been transferred back to Lucknow.

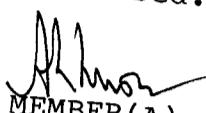
9. In view of the above, the transfer order dated 18.11.1986 and the order dated 29.12.86 are held valid. Notices dated 16.7.90 and 27.8.91 were issued by the Estate Officer under the Public Premises (Unauthorised Occupants) Act, 1971(in short the Act of 1971). The action under the aforesaid Act of 1971 is appealable to the appellate authority as per the Act and cannot be challenged before the Tribunal. Annexure A-3 dated 13/16.9.91 is a D.O. letter to D.R.M., N.E. Railway Varanasi seeking advice. Such D.O. letter cannot be questioned in a court of law. Only actions taken thereon can be assailed if that is not as per rules and has caused any grievance. Thus, the D.O. letter Annexure A-3 cannot be quashed. The other document dated 16.9.91 again marked as Annexure A-3 is only a show cause notice. This too cannot be quashed because only after a reply thereto, an action is required to be taken. Annexure A-4 dated 19.9.91 is a D.O. letter from DST Varanasi to DST Gorakhpur. the D.O. letter cannot be quashed. It is not an order. By this D.O. letter the D.S.T. Varanasi requested the DST Gorakhpur to obtain explanation of the employee & send the same without further loss. We are constrained to mention here that the applicant has obtained copies of the D.O. letters and has challenged the same. D.O. letters are not addressed to the applicant, nor copies were sent to the applicant. Thus, the copy obtained by the applicant must be through some unauthorised source which has not been explained by the applicant in the petition. Habit of obtaining copies of D.O. letters and assailing the same has to be deplored and we disapprove this action of the applicant.

10. The other document is extract of some order which is undated and unsigned. However, this document shows that the applicant has been treated in unauthorised occupation from 24.4.87. The applicant was transferred to Gorakhpur vide order dated 18.11.86, but the applicant joined at Gorakhpur on 25.1.87. Two months period was permissible



and so the occupancy of the quarter after expiry of the two months period is unauthorised. The applicant is therefore, liable to pay the penal damage rent as per rules.

11. In view of the discussions made above, the O.A. is dismissed. Costs easy.


MEMBER (A)

Lucknow; Dated: 14-2-01
Shakeel/


MEMBER (J)