

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 5/2008

This the 11<sup>th</sup> day of July, 2008

**HON'BLE SHRI M. KANTHAIAH, MEMBER (J)**

K.D. Shukla aged about 55 years son of late Sri R.D. Shukla working under the respondents as Station Superintendent at N.Railway Station Ayodhya and resident of c/o Ashutosh Pandey House No. 3/20/205 Mohalla Miharban, City- Faizabad.

Applicant

By Advocate; Sri A.C. Mishra

Versus

1. The Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The General Manager, Northern Railway, Headquarters office, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Lucknow.
4. The Divisional Operating Manager, Northern Railway, Divisional office, Hazratganj, Lucknow.

Respondents

By Advocate : Sri V.K.Srivastava

**ORDER**

**BY HON'BLE SHRI M. KANTHAIAH, MEMBER (J)**

The applicant has filed the Original Application with a prayer to quash the order dated 16.8.2007 (Annexure No. 2) issued by the respondent No. 4 and also issue direction to the respondents to recover rent from 5.5.2006 to 4.7.2006 on normal rent from 5.7.2006 to 4.1.2007 on double of the rent and for the remaining period from 5.1.2007 to 12.2.2007 @ 10% of monthly emoluments as per Rule No. 1711 of IREM.

2. The respondents have filed counter affidavit denying the claim of the applicant stating that the claim of the damage rent from the applicant covered under

Annexure No.2 is in accordance with rules and no interference of this Tribunal is required.

3. The applicant has filed Rejoinder Affidavit denying the stand taken by the respondents and also reiterated his pleas in the O.A.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant while working as Station Superintendent under the respondent at Northern Railway Station Faizabad Railway Quarter Bungalow No. T/26-A (Type III) at Faizabad was allotted to him and he was in occupation of it. In the month of March, 2006, he was transferred from Faizabad to Gosaiganj and upon which he joined thereon on 5.5.2006. He sent representation dated 15.5.2006 and also reminder dated 12.12.2006 with a request to retain the said quarter at Faizabad on payment of normal rent till his vacation expressing ill health condition of his wife and mother but the applicant has not filed copy of the representation or reminder.

7. The applicant vacated the quarter on 12<sup>th</sup> February, 2007. Thereafter, the respondent No.4 sent letter dated 16.8.2007 (Annexure-2) claiming recovery of damage rent of Rs. 2,22,284.65/- in the shape of damage rent. After receipt of the same, he also made representation to the respondent No. 2 through respondent No. 4 against the claim of damage rent. Annexure No. 9 dated 20.11.2007 is the copy of such representation to respondent No.2 whereas Annexure No.11 dated 2.12.2007 is the copy of such representation to respondent No. 2 through respondent No.4 and thereafter he has filed this O.A. challenging the claim of damage rent amounting to Rs. 2,22,284.65/- as claimed by the respondent covered under Annexure No.2 on the ground that the authorities are going to recover the said amount of damage rent from next month onwards during the pendency of his representation to the higher authorities.

8. The respondents have also admitted in respect of representation made by the applicant dated 15.5.2006 for retention of his quarter in the order covered under Annexure No.1 dated 14.5.2007 issued from the office of Respondent No.3. In the said

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order, they have also stated that the applicant was permitted to retain the quarter from 5.5.2006 to 4.7.2006 on normal rent and for remaining period from 5.7.2006 till vacaton of the quarter, claim will be made as per rules treating the quarter as unauthorized occupant. Subsequently, they have also issued a letter Annexure no. 2 dated 16.8.2006, in which they have reaffirmed the order covered under Annexure No.1 and also claimed Rs. 2,22,284.65/- from the applicant towards the damage rent for his unauthorized occupation of the quarter from 5.5.2006 till he vacated the quarter on 12.2.2007.

9. It is the contention of the applicant that he is liable to pay normal rent from 5.5.2006 to 4.7.2006, double the rent from 5.7.2006 to 4.1.2007 and 10% of monthly emoluments as provided under rule No. 1711 of IREM for the remaining period from 5.1.2007 to 12.2.2007. In support of his claim he relied on Rule 1711 of the IREM (Annexure 10) and thus disputed the claim of the respondents as made under Annexure No.2 dated 16.8.2007. Rule 1711 of IREM says as follows:-

“1711. Recovery of Rent- (a) The rent charged to a railway servant in respect of quarters supplied should not exceed 10% of his/her monthly emoluments irrespective of the scales of pay allotted.

(b) Notwithstanding anything contained in sub paragraph (a), Railway Administration may, by general or special order, provide for charging a rent in excess of 10 % of the emoluments from a railway servant.

- (i) (who, is not required or permitted to reside on duty at the station at which the residence is supplied to him, or )
- (ii) (who, at his own request, is supplied wit accommodation which exceeds that which is appropriate to his status; or )
- (iii) (who is permitted to sublet the residence supplied to him; or )
- (iv) (who sublets without permission the residence supplied to him; or )
- (v) who does not vacate the residence after the cancellation of the allotment.”

10. From the above, it is clear that the Railway Administration may claim rent in excess of 10% of the emoluments from the Railway Servants, who does not vacate the residence after the cancellation of the allotment, and in such circumstances the

said provision is not at all helpful to the applicant to say that he is liable to pay only 10% of monthly emoluments.

11. In respect of retention of Railway Quarter on transfer, deputation, retirement etc. are dealt with by Railway Board's Order REB No. 208/2000 and RBE No. 100/2001 covered under Annexure No.A-3 and Annexure No.A-4. The said Railway Board orders in respect of retention of Railway Quarter on transfer by an employee in case of his necessity, he may be permitted to retain the quarter for a period of 2 months on payment of normal rent and on request by an employee on educational or sickness account, the period of retention of Railway accommodation may be extended for a period of six months on payment of special licence fee i.e. double the flat rate of licence fee/rent. It also says in respect of further extension beyond the aforesaid period may be granted on educational ground only. Beyond the permitted/ permissible limits, however, no further extension will be allowed on any grounds whatsoever.

12. In the instant case, the respondents also admitted that the applicant made request for retention of quarter dated 15.5.2006 but admittedly the respondents have not passed any order on such request. It is also the specific case of the applicant that he made request for retention of the quarter on the ground that his wife and mother are suffering with ill health and on such ground, he is entitled for retention of the quarter for six months on payment of double the rent after expiry of 2 months on normal rent. When admittedly the applicant made such reasonable request for retention of the quarter on the ground of ill health of his wife and mother, when there is no reply from the respondents, it is to be deemed that they have permitted him to retain the quarter for further occupation. The said Board circulars also clearly says that after extension period of six months, the employee is entitled to seek further extension only on education ground but in the instant case it is not at all the case of the applicant for continuation on the ground of education of his children.

13. When the Board's circulars are clear in respect of claiming normal rent, double the rent and damage rent from an employee who retain the quarter even after his transfer, it is the duty of the respondent authorities to claim the rent in accordance with the same. It is not the case of the respondents that the applicant had not made any

representation for retention of the quarter after his transfer and also it is not their case that they have rejected the representation of the applicant dated 15.5.2006 and in such circumstances, without passing any order on the representation of the applicant dated 15.5.2006, it is not open to the respondents to claim damage rent for all the remaining period of the occupation of the applicant after excluding 2 months on payment of normal rent.

14. In view of the above circumstances the applicant is justified in challenging the orders covered under Annexure No.1 and Annexure No. 2 dated 14.5.2007 and 16.8.2007 under which they have claimed an amount of R. 2,22,284.65/- without furnishing any of the circulars/ orders of the Railway Board for claiming such rent from the applicant. At the same time, the respondents are permitted to collect the rent from the applicant for his occupation after his transfer from 5.5.2006 to 12.2.2007 as per Railway Board's order RBE No. 100/2001 dated 1.6.2001 by collecting normal rent for two months from 5.5.2006 to 4.7.2006 and double rent for six months from 5.7.2006 to 4.1.2007 and damage rent for the remaining period as per REB NO. 108/2001

15. In the result, O.A. is disposed of by quashing Annexure No. A-1 and Annexure No.A-2 dated 14.5.2007 and 16.8.2007 issued by the respondents with a direction to claim rent from the applicant as per latest RBE No. 100/2001 dated 1.6.2001. No costs.

  
(M. Kanthaiah)  
Member (J)

11-07-2008

HLS/-