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CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.

O.A.No.852/91.

(T.A.No.31/92 -T.L.)

LUCKNOW, THIS 28TH DAY OF OCTOBER, 1994.

HON'BLE MR. JUSTICE B.C.SAKSENA, VICE-CHAIRMAN.

P.P. Kalra,
Son of Shri R.C. Kalra,
aged about 57 years,
Resident of
4-B, V.M.Marg, Bandariya
Bagh, Lucknow.

: : : : : Applicant

BY ADVOCATE SHRI R.B.KHARE

Versus

1. Union of India,
through its G.M.,
N. Rly., Baroda Bouse,
New Delhi.

2. Divisional Railway
Manager(Engineering),
Northern Railway,
Lucknow.

: : : : : Respondents.

BY ADVOCATE SHRI A.K. GAUR

O R D E R (Oral).

JUSTICE B.C. SAKSENA, VICE-CHAIRMAN.

Through this O.A. the applicant challenges the order dated 1-8-91 through which damage^{charges} amounting to Rs.37,691.60 have been imposed and orders for recovery for the said amount from the applicant was ordered. Copy of the said order is Annexed as Annexure-A-1. It was passed on behalf of Divisional Railway Manager (Engineering), Lucknow. By the said order it has been indicated that as intimated by the Chief Engineer

to him an assurance has been made that the applicant who has been transferred from Lucknow to Delhi was not a temporary transfer and as such he was not entitled to retain the bungalow at Lucknow on normal rent on this count. On the basis of this assumption it was further ordered that after 20-2-1991 the retention of the bungalow by the applicant has been treated as unauthorised and damage charges of Rs.7,528.52 p.m. on total plinth area of 70.52 sq.mtrs. has been worked out upto 31-7-91 at Rs.37,641.60.

3. Counter affidavit, on behalf of the respondents, has been filed and the applicant has filed rejoinder affidavit.

4. When the case was called out the learned counsel for the applicant appeared and urged that since the applicant has already superannuated and because of the mere reason of disability suffered by him due to accident, the case may be heard and decided so as to avoid further harassment to the applicant.

5. I have heard the learned counsel for the parties and gone through the records. Along with rejoinder-affidavit copy of a letter dated 19/22-3-93 issued from Head Quarters Office, Baroda House, New Delhi, on behalf of General Manager, Northern Railway, in reply to the representation of the applicant dated 31-12-92 has been filed. Through the said letter it has been communicated that the Competent Authority has considered his request and agreed to grant permission for Flat No.4-B, Vivekanand Marg, Bandariya Bagh, Lucknow, for retention in his favour on the terms and conditions indicated therein. Right from

5-7-91 upto 30-4-93, the date of superannuation of the applicant, either on account of conversion of temporary transfer to permanent transfer, or because of special disability leave on medical ground, the retention of the said flat had been permitted on payment of flat-rate of licence fee. This order of the competent authority clearly supersede the impugned order dated 1-8-91 passed by the D.R.M. (Engg.), N. Rly., Lucknow. The O.A. has thus been rendered infructuous. The learned counsel for the applicant, however, rightly urges that the position may be clarified and the impugned order be set aside so that the recovery of the amount of Rs.37,641.60, as ordered by the impugned order may not be made against the applicant.

5. After going through the records and various documents filed along with the O.A., I am constrained to observe that though the documents clearly show that the transfers of the applicant, as made from time to time from Lucknow to New Delhi and other places were clearly temporary transfers and on his application, moved from time to time, permission for retention of the flat has been granted, strangely enough, on a reference made to the Chief Engineer, the Chief Engineer, as disclosed in the C.A., as also in the impugned order, ^{took} ~~put~~ the position that the transfer of the applicant from Lucknow to New Delhi was not a temporary transfer. No basis ^{for} ~~of~~ this decision of the Chief Engineer has been placed on record by the respondents. This decision was clearly contrary to the orders of the transfer of the applicant. The situation has now been remedied. As noted herein above, by order dated 19/22-3-93, the G.M. has permitted the retention of the flat in question by the applicant from 5/7/91 to

30-4-93 on payment of flat-rate of licence-fee. The applicant had been transferred from Lucknow by order dated 23-10-90. From the aforesaid order passed by the General Manager it would be evident that from 23-10-90 to 4-7-91 the applicant's transfers have been treated to be temporary transfer and from 5-7-91 to 4-9-91 it was treated as having converted into permanent transfer. Thus right from 23-10-91 till the date of the applicant's retirement on 30-4-93, vide decision of the General Manager, the applicant was liable to pay licence-fee at flat rate. The recovery, as ordered by the impugned order dated 1-8-91 (Annexure A-1) by the D.R.M., N.Rly., Lucknow, is clearly illegal and non-enforceable against the applicant. The said orders stand superseded by the order passed by the G.M. dated 22-3-93, copy of which is annexed as Annexure-19 to the R.A. Learned counsel for the applicant stated at the Bar that licence-fee on flat-rate basis has been recovered from the salary paid to the applicant till the date of his superannuation.

6. In view of the discussion herein above, the O.A. is allowed. The respondents are directed not to give effect to the order of recovery of Rs.37,641.60 as contained in the order passed by the D.R.M., Northern Railway, Lucknow, (Annexure-A-1). It is, however, clarified that in case the authorities have not received payment at flat rate of licence fee for Bunglow No.4-B, Vivekanand Marg, Bandariya Bagh, Lucknow, or any amount is due at the flat rate against the applicant, the respondents may recover the same only. No damages would be recoverable from the applicant for the retention

of the Bunglow.

7. The O.A., with the directions and observations herein above, is allowed. No order as to costs.

B. Salas

VICE-CHAIRMAN.

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