

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

Original Application No. 502 Of 1996

DATE OF ORDER : DECEMBER 18, 2002.

Balram Jha, S/o late Harish Chandra Jha, Station Superintendent Turki, N.E. Rly, resident of village Bhojpatti, P.O. Bhojpatti, P.S. Sarai, District - Vaishali (Bihar), presently working as Station Superintendent, N.E. Rly., Turki Rly. Station, District - Muzaffarpur.

..... APPLICANT.

By Advocate : Shri Sudama Pandey.

Versus

1. The Union of India through the General Manager, N.E. Railway, Gorakhpur (U.P.).
2. The Divisional Rail Manager, N.E. Railway, Sonapur, (Saran)(

..... RESPONDENTS.

By Advocate : Shri P.K. Verma.

C O R A M

Hon'ble Shri Sarweshwar Jha, Member (A)
Hon'ble Smt. Shyama Dogra, Member (J)

O R D E R

By Sarweshwar Jha, M(A):- Heard both the parties.

2. The applicant, who is Station Superintendent under the N.E. Railway, Gorakhpur and posted at Turki Rly. Station, N.E. Railway under the administrative control of the Divisional Railway Manager, Sonapur, has approached this Tribunal against the order of the Divisional Railway Manager (D), N.E. Railway, Sonapur vide his endorsement No. 1/MUZ/KH/93 dated 16.4.1996 ordering recovery of the damage rent for quarter T/2 -B Type II at Sarai for the period from 22.6.1990 to 30.12.1993.

The applicant was initially posted at Sarai on 9.4.1981 and was allotted a Type II quarter No. T/2B at Sarai. He occupied the quarter on 1st October, 1981 on normal rent of Rs. 22.05 per month. He was transferred from Sarai to Goraul vide DRM (P), Sonapur's order No. 86 dated 24th April, 1990 on administrative grounds. He joined Goraul on 26th June, 1990. He continued to occupy the said quarter at Sarai even after he was transferred to Goraul. The reasons advanced by the applicant for his continued occupation of the said quarter included non-availability/non-allotment of a quarter at Goraul and also the fact that his children were studying at Sarai, and that it was not possible for him to disturb their education. He has also submitted that no private accommodation was available at Goraul. Further, his wife was receiving medical treatment at Sarai. The distance between Sarai and Goraul is 18 Kms, as submitted by the applicant. He has further submitted that he was never served with any notice to vacate the quarter at Sarai, as it was with the consent of the authority concerned. He was also not served with any eviction proceedings. He finally vacated the quarter at Sarai on 30th December, 1993. He has further submitted that after a lapse of about five years, on the recommendation of the accounts inspection party, recovery of the amount of Rs. 30,448/- was ordered as damage rent for the said quarter at Sarai from the salaries of the applicant in instalments vide the North Eastern Railway

order dated the 1st February, 1995 (page 15 of the O.A.). The applicant has, however, maintained that he has never been in unauthorised occupation of the said quarter, and hence has prayed for quashing of the impugned order being illegal, arbitrary, unjust and malafide. The applicant has also prayed for stopping the deduction of the arrears of damage rent and refund of the excess amount already recovered.

3. The applicant has cited the provisions of the Indian Railway Establishment Manual Vol. II, para 1711 in support of his submission. His contention is that the recovery of damage rent was initiated by the respondents without any notice or show cause. He has also cited the views held by the Hon'ble High Court and Hon'ble Central Administrative Tribunal (26 ATC, 1994 page 293, page 126, 1994 ATC (27) page 366 and page 704). The provisions of Section 7 of the Public Premises Eviction Act, 1971, orders in 1994 SLJ (1987) II page 390, in OA 120 of 1986 and OA 159 of 1992 decided by the Hon'ble CAT, Patna Bench have also been referred to by the applicant in support of his contention that the quarter could have been got vacated only through the provisions under the said Act. He has given a number of other arguments in support of his having retained the house even beyond the date of his transfer to Goraul vide paragraphs 5.7, 5.8, 5.9 and 5.10 of the O.A.

4. The respondents have contended that the applicant should have vacated the quarter at Sarai

immediately on transfer or should have obtained permission to retain the quarter at his former place of posting as provided for under the Rules. The applicant neither sought permission to retain the quarter at his former place of posting as provided for under the Rules nor vacated it on time. In their opinion, retention of the quarter was unauthorised on the part of the applicant who is liable for damage rent as per Railway Board decisions. The respondents have further submitted that the applicant did not submit any certificate in regard to education of his children at Sarai. He has also not submitted ^{any} certificate issued by the Railway Doctor regarding the sickness of his wife. The respondents have further submitted that the applicant has failed to avail himself of the benefits of retention of railway quarter at his previous place of posting on educational grounds and retained the quarter unauthorisedly, and , accordingly, created a condition whereunder the respondents had to take action according to Rules. They have further submitted that, on 30.11.1992, on retirement of one Shri Baleshwar Singh Nirala, when he took over ^{the} charge of the post of Station Superintendent at Goraul, he should have allotted the quarter No. T-6 Type II from 1.12.1992 vacated by Shri Baleshwar Singh Nirala. However, the said quarter remained vacant from 1.12.1992 to 30.12.1993 causing a loss of revenue to the railways. His allegations


of arbitrariness, non-issuance of charge sheet and show cause as well as non-compliance of the statutory provisions of Railway Establishment Manual and Eviction proceedings etc. are misconceived and after-thought, as per submissions of the respondents. The respondents have, therefore, concluded that the applicant is liable to pay damage rent as per Rules, for unauthorised retention of the quarter at Sarai after he took over as Station Superintendent at the new place of posting i.e. at Goraul from 30.11.1992.

5. In his rejoinder to the submissions of the respondents, the applicant has reiterated the facts of his not discontinuing the educational arrangement of his daughter and medical needs of his wife for having retained the quarter beyond the period permissible by the railways. He has also emphasised the fact of distance between his previous place of posting and ^{The} new place of posting, i.e., between Sarai and Goraul, which is 16 Kms only. He has contended that because of short distance between the two places, he was permitted to perform duties at the new place of posting while staying at ^{The} previous place of posting. He has further contended that as he was not in unauthorised occupation of the quarter, no step was initiated by the department to get it vacated under the Rules as contained in Chapter IV (page 38) of Allotment Rules of the Railways. He has referred to Rule 4 (ii) in Chapter VI (page 60) to explain that no eviction proceedings

or disciplinary proceedings were initiated for alleged unauthorised occupation of the quarter by him, and normal rent was recovered from him. He has referred to the case of one ^{shin}/A.K. Lal Srivastava RG/ASM who was served a notice for eviction of a quarter at Sarai. But no such thing was done in his case, as he was an authorised occupant. He has, therefore, prayed that the written statement filed by the respondents be rejected.

6. On closer examination of the submissions by both the sides, it appears that the applicant stayed in quarter in question at Sarai beyond the date of his transfer to Goraul on the grounds of educational and medical needs of his family. The department continued to recover rent for the quarter at the normal rate for this period. No notice was served on him for vacating the quarter nor were any eviction proceedings initiated. After a lapse of three years of having vacated the quarter on 30.12.1993, he was ordered to pay damage rent for the period from 21.6.1990 to 30.12.1993 amounting to Rs. 30,448.34 without any show cause notice or D.A.R. proceedings. It is also observed that he continued to commute between Sarai and Goraul during the period in question. No action seems to have been taken by the respondents during this period, asking him to stay at Goraul. The possible reason could be that his staying at Sarai did not affect adversely his functioning at Goraul. There appears to be no comments from the respondents about

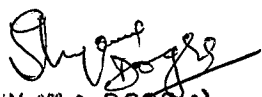
his performance at Goraul during this period. It is also not clear from the reply submitted by the respondents as to how they have arrived at the figure of Rs. 30,448.34 as damage rent for the period from 21.6.1990 to 30.12.1993. In ^{The} absence of rates etc of damage rent having been indicated by the respondents, it appears to be on higher side, taking the normal rent as well as possible damage rent into account. There is a possibility that the respondents did not take action on time to get the quarter vacated by the applicant as under the relevant rules. When they realised that the quarter should have been & vacated by the applicant under the rules, it was quite late, and by that time, the applicant had already gained a definite impression that, for the reasons mentioned by him and for the fact that recovery was already being made towards payment of rent at normal rate, he was permitted to retain the quarter, and that he was in authorised occupation of the same.


 7. Keeping the totality of the situation in view including the assumption of the applicant and also the rules which the railways have before them to guide them and also the fact that there was an omission on their part in applying them to the case of the applicant, we are of the view that the applicant be allowed retention of the quarter, as permissible

under the relevant rules on educational and medical grounds and that for the period beyond it, the respondents shall see whether Sarai and Goraul are so closely located that one can perform duties at one station living at ^{the} other station without causing any detriment to his performance and whether allotment of quarter at one place could be regularised against allotment against ^{the} other place also, taking ^a more pragmatic view of the matter. The respondents are also directed to look into the amount of damage rent which they have worked out for the period from 21.6.1990 to 30.12.1993 afresh and see whether it has been correctly worked out and is supported by the rules on the subject. The respondents shall, accordingly, issue within three months from the date of receipt of this order an appropriate and reasoned order as per law and as per rules on the subject, keeping in view the relief sought by the applicant in para 8 of his Original Application and also keeping in view the fact that there was omission on their part in not advising the applicant appropriately on time in the matter and in not taking appropriate action, as per rules in time.

8. With this, this Original Application stands disposed of, with no order as to costs.

/CBS/


(SHYAM A DOGRA)
MEMBER (J)


(SARWESHWAR JHA)
MEMBER (A)