

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No. OA-120 of 1996

(Date of decision 13.5.97)

Bishwanath Prasad Verma,
S/o Late Banarasi Prasad,
Resident of Village & P.O Garhara,
Police Station Barauni, Distt. Begusarai.

..... Applicant

By Advocate: Mr. S.K.Bariar

Versus

1. The Union of India, Through Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, North Eastern Railway, Gorakhpur.
3. The Divisional Railway Manager, North Eastern Railway, Sonepur Division, Sonepur.
4. The Divisional Railway Manager (Personnel), North Eastern Railway, Sonepur Division, Sonepur.
5. The Divisional Railway Manager (Signal), North Eastern Railway, Sonepur Division, Sonepur.
6. The Senior Divisional Personnel Officer, North Eastern Railway, Sonepur Division, Sonepur.
7. The Divisional Railway Manager, (Signal) North Eastern Railway, Samastipur Division, Samastipur.
8. Senior Divisional Accounts Officer, North Eastern Railway, Samastipur Division, Samastipur.
9. Divisional Signal and Telecom Engineer, North Eastern Railway, Samastipur Division, Samastipur.
10. Divisional Audit Officer, N.E.R. Samastipur Division, Samastipur.

By Advocate: Shri A.N.Singh

Coram: Hon'ble Mr. Justice V. N. Mehrotra, Vice-Chairman

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 with a prayer that the order dated 7th August, 1995 (Annexure-8) by which deduction of an amount of Rs.32400/- has been made be quashed and the respondents may be directed to pay full amount of gratuity to the applicant.

2. The facts of the case are that the applicant was posted as Office Superintendent Grade-II in the office of the Divisional Signal and Telecom Engineer, North Eastern Railway, Samastipur and in that capacity he was allotted Quarter No.137/B situated at Samastipur. The applicant was promoted as Office Superintendent Grade-I and was transferred from Samastipur Division to Sonepur Division. He joined the new post on 21st September, 1988. It is asserted that as the children of the applicant's were studying at Samastipur, he requested the respondent authorities to allow him to retain the quarter at Samastipur for a period of two months. The prayer was allowed. It is further asserted that Samastipur was within L.N. Mithila University and Sonepur was within the Bihar University and as there were ~~very~~ ^{many} complications in getting his wards admitted at Sonepur, he moved application on 15.1.1990 requesting the DRM, Samastipur to allow him to retain the quarter at Samastipur till June, 1991. This application was forwarded by DRM (Signal), Samastipur to DRM, Sonpur. However, no order on this application was communicated to the applicant. The applicant has further

asserted that one Shri S.P. Singh was posted at Muzaffarpur and was allotted Quarter No.E/33/I & J Type I which was within Sonpur Division. Shri S.P.Singh was transferred to Samastipur Division. Shri S.P.Singh however, did not vacate the quarter at Muzaffarpur. Ultimately, both the quarters allotted to the applicant at Samastipur and to Shri S.P.Singh at Muzaffarpur were regularised by the DRM (Signal) Sonepur vide his memorandum dated 31.1.1993 and both the applicant and Shri S.P. Singh were allowed to remain in possession of their respective quarters till retirement as both were to retire in near future. The aforesaid memorandum also transferred the quarter of Samastipur Division to Sonepur Division and the quarter of Muzaffarpur to Samastipur Division till their retirement. This memorandum was also sent to DRM(Signal) Samastipur and his concurrence was sought for. The DRM (Signal), Samastipur concurred to the proposal subject to the condition that the objection taken by the auditor during the audit inspection vide paragraph 12 be stayed. Thereafter, the auditor dropped the objection raised by him in a tri-partite agreement dated 4.1.1994 which was attended by the Divisional Audit Officer, Divisional Signal and Telecom Engineer, Samastipur and Senior Divisional Accounts Officer, Samastipur. It is further asserted that in view of these facts, the occupation of the quarter by the applicant at Samastipur was lawful and bonafide one. It is further asserted that prior to the dropping of the audit objection, the DRM (Signal), Samastipur vide his letter dated 31.12.1993 requested the Senior Divisional Personnel Officer, Samastipur to deduct the sum of Rs.25, 287/- as damage rent. However, after the audit objection was dropped, the DRM (Signal) Samastipur vide letter dated 12.1.1994, communication to the Senior Divisional Personnel Officer, Samastipur that now there

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was no question of any deduction. This fact was also communicated to the Senior Divisional Accounts Officer, Samastipur. The applicant superannuated on 31.1.1994 and two months prior to that he had vacated the quarter at Samastipur.

3. The applicant has asserted that after his retirement he requested the authorities to pay his retirement benefits. He was thereafter paid retirement benefits excepting the full amount of gratuity. It is further asserted that DRM (Personnel), Sonepur vide his letter dated 7th August, 1995 informed the applicant that a sum of Rs.32,400/- has been deducted from his gratuity on account of damage rent. It is asserted that thereafter the applicant made his representation dated 21.11.1995 bringing the entire facts to the notice of DRMSonepur and requesting for the payment of the entire gratuity. However, no action in the matter has been taken so far. On the basis of these facts the applicant claims that the respondents be directed to pay the amount of gratuity deducted by them as damage rent.

4. On behalf of the respondents it has been contended that after his transfer from Samastipur to Sonepur, the applicant did not vacate the quarter which was allotted to him and he was liable to pay damage rent. It is asserted that according to the order by the Railway Board, the applicant could not have retained the quarter for more than two months and in any case this period could not have been extended beyond six months and so the applicant was liable to pay damage rent. It is further asserted that the applicant was permitted to retain the quarter for only two months and was not permitted to retain it after that period. The respondents have further asserted that the orders regarding regularisation, which have been relied upon by the applicant ^{were} ~~was~~ not in accordance with

rules.

5. I have heard the learned counsel for the parties and have perused the material on record. In this case it is not disputed that the applicant was transferred from Samastipur Division to Sonepur Division in September, 1988 but in spite of his transfer, he retained the quarter allotted to him at Samastipur. It is also not disputed that the applicant was permitted to retain the quarter at Samastipur for two months. Further, it will appear from the material produced by the applicant that he had in January, 1990 made a request for permitting him to retain the quarter June, 1991. However, it appears that no order on this prayer was passed and in any case there was no specific order to permit the applicant to retain the quarter at Samastipur till June, 1991. The fact, however, remains that subsequently when Shri S.P.Singh, who was posted at Muzaffarpur and was transferred to Sonepur Division did not vacate the quarter which was in the Sonepur Division and similarly the applicant did not vacate the quarter which was in Samastipur Division. It appears that these persons had represented to D.R.M (Signal) of respective divisions. This prayer was ultimately allowed and it was directed by these authorities that both these persons, i.e. the applicant and Shri S.P.Singh can retain their quarters in Samastipur and Sonepur Divisions till their retirement. In fact these authorities passed orders regularising the possession of the applicant regarding the quarter at Samastipur. It further appears from the material produced by the applicant that earlier audit objection was raised in respect of retention of quarter at Samastipur and a demand for recovery of damage rent was also made but subsequently the audit objection was dropped as the possession of the applicant in respect of the quarter at Samastipur was regularised.

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6. It has been contended on behalf of the applicant that as the possession of the applicant was regularised by the DRM (Signal), he continued to retain the same and vacated it two months prior to his retirement on 31.1.1994. It is asserted that after having regularised the occupation of the quarter by the applicant, it will be totally unfair and unjust to suddenly direct the recovery of damage rent after his retirement. It is also contended that before making any deduction, the fact regarding the regularisation of the possession of the quarter was not even considered nor the applicant was asked to show cause against the proposed recovery of damage rent.

7. As mentioned earlier, the DRM(Signal), Samastipur as well as DRM(Signal) Sonepur had passed the orders regularising the possession of the quarter of the applicant and further that even the audit objection regarding the possession of the quarter and recovery of damage rent was dropped in view of these regularisations. The applicant was not asked to explain as to why damage rent be not recovered from him but an order for deduction of damage rent was passed after his retirement. The fact of regularisation of the quarter by the DRM (Signal) was also not taken into consideration. In my view it will be very unjust and unfair to ignore the regularisation of the possession of the quarter by the applicant and to impose damage rent on him after his retirement. In view of the peculiar facts of this case there was no justification for making recovery of damage rent from the amount of gratuity payable to the applicant.

8. In view of the above facts this OA is allowed. The order dated 7th August, 1995 (Annexure-8) so far it relates to recovery of Rs.32,400/- as damage rent is hereby quashed. The respondents are directed to pay the full

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amount of gratuity as admissible to the applicant within a period of three months from the date on which a certified copy of this order is received by them. There is no order as to costs.

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(Vice-N. MEHROTRA)
VICE-CHAIRMAN