

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No. OA 424 of 1996

(Date of decision 15.5.1997)

Naresh Prasad Singh,
S/o Late Sahdeo Singh,
Station Manager, Eastern Railway, Manpur,
Mugalsarai, Bihar.

..... Applicant

By Advocate: Mr. Abhay Kumar Singh
with
Mr. Uma Shankar Verma
Mrs. Peonam Singh

versus

1. The Union of India through General Manager,
Eastern Railway, 17, Netaji Subhas Road,
Fairly Place, Calcutta.
2. The Divisional Railway Manager,
Eastern Railway, At & P.O. Khagaul, Danapur,
Patna.
3. D.O.S.(T), Danapur, Division, Danapur,
Eastern Railway, At & P.O. Khagaul.
4. The Sr. Divisional Personnel Officer,
Eastern Railway, Danapur, P.O. Khagaul, Patna.
5. The Divisional Railway Manager, Eastern Railway,
Mugalsarai, Distt. Varanasi.
6. The Sr. Divisional Personnel Officer, Eastern Railway,
Mugalsarai, Distt. Varanasi.
7. The Divisional Accounts Officer, Eastern Railway,
Mugalsarai, Distt. Varanasi.
8. The Chief Personnel Officer, Eastern Railway, Calcutta.

..... Respondents

By Advocate: Mr. Gautam Bose.

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

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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 orders Annexures-5 and 11 passed by the Divisional Personnel Officer, Eastern Railway, Mugalsarai Division be quashed and the respondents be directed not to take any coercive step against the applicant for realisation of damage rent. It has further been prayed that the amount of damage rent which has been recovered from the applicant be directed to be refunded to him.

2. The brief facts of the case are that the applicant was appointed as a Railway employee in the year 1964. Later in the year 1972, he was transferred to Gaya where he was allotted Quarter No.632/C. The applicant was transferred from Gaya in May, 1983. Since that period the applicant remained posted at different places but he retained the quarter at Gaya. It is asserted by the applicant that since August, 1983, penal rent was being recovered from him though there was no order declaring the possession of the quarter by him to be unauthorised nor there was any order cancelling the allotment of the quarter. It is further contended that subsequently in the year 1994, the order Annexure-5 was passed regarding the recovery of damage rent and by Annexure-11 the rate of damage rent was enhanced. It is contended that the applicant had made repeated representations to the authorities concerned but they were not disposed of. It is in these circumstances the present OA has been filed.

3. On behalf of the respondents it has been contended that the applicant who was allotted the quarter at Gaya unauthorisedly retained the same though he was transferred in the year 1983. It is further contended that under the

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various orders issued by the Railway Board, the applicant could retain the quarter for a period of only two months from the date of his transfer and as he has continued to occupy the same even after expiry of that period, his possession became unauthorised and it should be deemed that the allotment was automatically cancelled. It is further contended that penal/damage rent was recoverable from the applicant in view of the unauthorised possession by him.

4. I have heard the learned counsel for the parties and have perused the material on record. The learned counsel for the applicant has not denied that the applicant has continued to be in possession of the quarter at Gaya even though he was transferred from that place in May, 1983. His contention, however, is that as there is no specific order for cancellation of the allotment and for eviction of the applicant, the damage/penal rent could not be levied. It is further contended that the orders issued by the Railway Board regarding the deemed cancellation of the allotment and also regarding the recovery of penal/damage rent did not provide a forum or the authority for these purposes. It is further contended that in case these orders were issued under Article 309 of the Constitution, the same could not be enforced as the same were not issued in the name of the President of India nor they were published in official gazette. It has also been argued that Para 1711 of the Indian Railways Establishment Manual do not provide for automatic cancellation of the allotment nor it provides for the mode or method of recovery of penal/damage rent.

5. The learned counsel for the respondents has, however referred to the decision in Full Bench case of Rampoorjan vs. Union of India 1996(3) 92 CAT All India Services Law Journal, decided by the Allahabad Bench on 22.2.1996. On the basis of this decision the learned counsel for the respondents has argued that there was no need for passing a specific

order for the cancellation of the allotment in favour of the applicant and that the authorities concerned had a right to recover penal/damage rent for the quarter if the applicant unauthorisedly retained the same even after his transfer from Gaya.

6. In Rampoorjan's case (supra) a similar matter came up for decision of the Full Bench. A large number of rulings by the Hon'ble Supreme Court as well as by different Benches of the Central Administrative Tribunal were considered and the questions referred to the Full Bench were replied as follows:-

"(a) In respect of a railway employee in occupation of a railway accommodation, in our considered opinion, no specific order cancelling the allotment of accommodation on expiry of the permissible/permited period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied."

"(b) Our answer is that retention of accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorised occupation and there would be an automatic cancellation of an allotment and penal/damages can be levied according to the rates prescribed from time to time in the Railway Board's circular."

7. This decision clearly supports the arguments advanced by the learned counsel for the respondents. This decision also fully replies the points which have been raised by the learned counsel for the applicant. The orders dated 17.12.1983 and 15.1.1990 issued by the Railway Board were considered vis-a-vis the provisions of para 1711 of the India Railway Establishment Manual. It was held that these orders supplement, and not supplant, the provisions of para 1711 and could be enforced. The provisions of sub-clauses b(i) and b(v) of para 1711 were noted and considered and thereafter it was held that in view of

these provisions considered along with Railway Board's orders, it was not necessary for the authorities concerned to pass a specific order for cancellation of the allotment after the employee failed to vacate it on the expiry of the stipulated period. It was also held that the Railway Board could provide for the recovery of penal/damage rent in respect of the persons who are in unauthorised occupation of the quarter.

8. In view of the above circumstances I do not find any force in the arguments advanced by the learned counsel for the applicant. During his arguments the learned counsel for the applicant stated that the Full Bench decision require reconsideration by a larger Bench. I am, however, not impressed by this argument.

9. In the case OA-417/94 Ambika Prasad Sinha vs. Union of India & Others decided by me on 26.2.1997 reliance was placed on the above mentioned Full Bench ~~because~~ ^{and} a similar view was taken.

10. On a consideration of the entire material as well as the arguments advanced by the learned counsel for the parties, I do not find any force in this OA. The OA is accordingly dismissed with a cost of Rs.500/- . Interim order passed earlier is vacated.

15/5/97
S. N. MEHROTRA
VICE-CHAIRMAN