

## CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 722 OF 2005[Patna, this 23<sup>rd</sup>, the Day of March, 2009]C O R A M

HON'BLE MS.SADHNA SRIVASTAVA, MEMBER [JUDL.]

HON'BLE MR. AMIT KUSHARI, MEMBER [ADMN.]

.....  
 Eustace Augustine, son of Late C.F. Augustine, resident of Railway Quarter  
 No. 462/P, Railway Medical Colony, P.S.: Samastipur, P.O.: Samastipur,  
 District : Samastipur. ....APPLICANT.

By Advocate :- Shri K.M.Joseph.

Vs.

1. Union of India through the General Manager, East Central Railway, Hajipur, Bihar.
2. Divisional Railway Manager, Samastipur Division, East Central Railway, Samastipur.
3. Divisional Railway Manager [Engg.]-cum-Senior Divisional Engineer, East Central Railway, Samastipur.
4. Assistant Town Engineer, Samastipur [ATEN/SPJ], Samastipur.

.....RESPONDENTS.By Advocate :- Shri Mukund Jee, SC.O R D E R

**Amit Kushari, M[A]:-** The applicant was posted in Gang no.6 in Samastipur yard and he was working on deputation in the office of the Assistant Executive Engineer, Samastipur where he was normally doing ministerial or stenography work. In the year 1991 an order was issued by the Assistant Engineer, Samastipur that he should work in Gang no.4 at Hayaghat. He was, however, not relieved immediately from Samastipur and he continued to work there till he was finally relieved from Samastipur in the year 1995 and he joined at Hayaghat immediately.



2. The respondents in the written statement have claimed in para 17 that the applicant was on leave from 01.07.1991 to 25.08.1991 and on expiry of leave period he did not resume duty. He was unauthorizedly absconding for the period 26.08.1991 to 14.06.1995 and because of this the transfer order dated 19.07.1991 could not be implemented and he was ultimately relieved from Samastipur on 15.06.1995.

3. Shri K.M.Joseph, learned counsel for the applicant points out that the applicant had never received the so called transfer order dated July, 1991. Shri Mukund Jee, learned Standing Counsel for the respondents, however, produced a copy of the transfer order in the court. Perusal of the transfer order indicates that the Assistant Engineer had indeed ordered that the applicant, Shri Eustace Augustine, should work in Gang no.4 at Hayaghat instead of Gang no.6 at Samastipur. It is also mentioned that this change of duty is on administrative ground. Learned counsel for the applicant argued that this order, even if it existed, did not look like a transfer order. It did not mention anything about transfer allowance, etc. The applicant continued to stay in a Railway quarter at Samastipur and he did not apply for any quarter at Hayaghat.

Learned counsel for the respondents points out that Hayaghat is another Railway establishment which has a number of Government accommodations and the applicant should have applied for Government accommodation at Hayaghat which he never did although he reported for duty in June, 1995. The applicant was commuting daily between Samastipur and Hayaghat and since the distance between the two stations was only 22 kms. it

Hu

was possible for him to commute daily between the two stations.

Learned counsel for the applicant points out that the applicant is normally a resident of of Samastipur and his wife is also working in Samastipur. So he preferred to stay in Samastipur and commuted to Hayaghat everyday on his own expense. Learned counsel for the respondents points out that under the Railway rules this is not permissible. As soon as he was transferred in July, 1991 he should have vacated the Government quarter which he occupied. He never cared to do so and neither did he apply for Government accommodation at Hayaghat. Learned counsel for the respondents says that under the Railway rules no Railway employee is allowed to retain quarter at the earlier station for more than two months or utmost for six months on the ground of education of children.

Learned counsel for the respondents says that the applicant did not apply even for retention of his quarter and he continued to stay unauthorizedly in the quarter and under the circumstances the Railways had no other alternative but to impose the penalty of damage rent on him. He also points out that initially Railway had started deducting damage rent in August, 1991 itself but when the respondents realised that the applicant was relieved from Samastipur in June, 1995 they stopped the damage rent recovery and refunded the entire amount of recovery to the applicant. The recovery of damage rent started once again in June, 1995 when the applicant had actually been relieved from Samastipur and had reported for duty at Hayaghat. The applicant thereafter made various representations to the respondents seeking his transfer back to Samastipur and ultimately on 01.01.2000 the applicant

pu

was transferred back to Samastipur on his own request. He was re-alloted his own quarter and thereafter the recovery of damage rent stopped. However, for five years from the period June, 1995 to 01.01.2000 damage rent had been recovered from the applicant and in this OA he has prayed for refund of the entire damage rent which was recovered from him.

4. Learned counsel for the applicant points out that before imposing of damage rent the applicant was never given any notice, nor was any eviction order made by the Estate Officer under Public Premises Act. He says that this was a clear violation of natural justice and the respondents had not followed the proper procedure before recovering the damage rent.


5. We have carefully considered the arguments of both the sides. There can be no doubt that the applicant was indeed transferred in July, 1991 since the order of his transfer exists and was produced in Court. Although he is a Gangman, he is an educated person and he was working as a Clerk/Steno in the office of the Assistant Engineer. He cannot take the plea that he being an illiterate person was unable to understand the transfer order. On receipt of the transfer order he went underground and he was not traceable for four years. He surfaced only in June, 1995 and thereafter he was relieved. He should have applied for a Railway quarter in Hayaghat which he failed to do. There can be no doubt that by not vacating the quarter at Samastipur, the applicant had indeed done something wrong and for this reason the Railways had started deducting damage rent from him. However, it is also equally true that the entire fault does not lie with the applicant only. The respondents did not follow proper procedure for eviction by giving him notice by the Estate

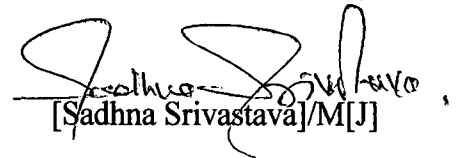
*hu*

Office. This was also a grave lapse on the part of the respondents. The lapses of the applicant however seem to be more serious and intentional.

6. We, therefore, feel that the respondents need not refund 100% of the damage rent to the applicant. It will be sufficient if the respondents refund 25% of the total damage rent to the applicant. The respondents should give refund of this damage rent to the extent of 25% definitely within two months of receipt of a copy of this order. This O.A. therefore succeeds to a very limited extent.

With these directions, this OA is disposed of. No costs.

  
[Amit Kushari]/M[A]

  
[Sadhna Srivastava]/M[J]

skj.