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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.10/99

Date of order: 20/4/2000

C.L.Thcmar, S/o late Shri Pccran Singh Tcmar, R/o Quarter No.684-E, Railway Colony, Gangapurcity, Dist.Sawaimadhopur presently employed as Sr.Section Engineer, Idgah, Agra.

...Applicant.

VS.

1. Union of India through General Manager, W.Rly, Churchgate, Mumbai.
2. Divisional Railway Manager(E) W. Rly, Kota Division, Kota.
3. Sr.Divisional Personnel Officer, W.Rly, Kota Jn.

...Respondents.

Mr.Shiv Kumar - Counsel for the applicant

Mr.T.P.Sharma - Counsel for respondents.

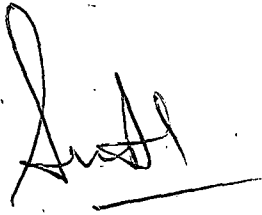
CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to declare that recovery of Rs.3802/- per month w.e.f.30.6.97 to 31.5.98 and special licence fee from 16.2.97 to 30.6.97 is illegal and arbitrary. A further request have also been made to direct the respondents to refund the amount which the respondents have recovered from the applicant alongwith interest.

2. In brief, facts of the case as stated by the applicant are that he was recruited as Apprentice IOW and was allotted Kota Division. He was earned further promotions. It is stated that the applicant was transferred from the post of Sr.Section Engineer, Gangapur City to Idgah vide order dated 11.12.96 whereas Shri T.P. Mangla was transferred from Idgah to Gangapur City in pursuance of the order issued by the Principal Bench, C.A.T, New Delhi. Finally, the respondents cancelled the transfer order of Shri T.P.Mangla and kept him at Idgah. It is further stated that the applicant made an application to the concerned authorities for permission to retain the Railway quarter No.684-E at Gangapur City at normal rent and permitted him till 30.6.97. It is stated that transfer of the applicant was a temporary one, therefore, he made an application for retention of the Rly quarter upto 30.6.98 (i.e. next academic session). The Railway Board has issued instructions on 21.9.96 to allow Railway quarters in case of temporary transfer for a period of 4 months or more. But the respondents have rejected the representation of the applicant vide order dated 16.7.97. Aggrieved by this order, the applicant filed O.A No.376/97 and this Tribunal granted interim order to stay the operation of the order dated



16.7.97 and the stay order remained in force upto 5.3.98 when the applicant has withdrawn the O.A with a liberty to file a fresh one. But now the respondents have issued the order dated 2.4.98 by which the applicant was asked to vacate the said Railway quarter, thereafter the applicant vacated the Quarter. It is stated that charging penal rent from the applicant is illegal, arbitrary and against the rules, therefore, he has filed the O.A for the relief as mentioned above.

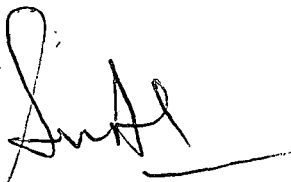
3. Reply was filed. In the reply, it is admitted that the applicant was transferred to Idgah, Agra, vice Shri T.P.Mangla but stated that the applicant was transferred on permanent basis. It is stated that the applicant was directed to join at Idgah, Agra, on the post temporarily transferred to Agra. It is also admitted that the applicant was allowed to retain the Railway quarter on normal rent on 16.12.96 to 15.2.97 and from 16.2.97 to 30.6.97 on special licence fee vide order dated 19.3.97 and the applicant was informed vide letter dated 16.7.97 that it is not possible to grant further permission to retain the residential accommodation to the applicant and he should immediately vacate the quarter. It is also stated that penal rent was charged from the applicant after he remained in unauthorised occupation of the said quarter, therefore charging the penal rent from the applicant was legal and valid and this O.A having no merits is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. Admittedly, the applicant was allowed to retain the Railway quarter No.684-E allotted to him at Gangapur City from 16.2.97 to 30.6.97 on payment of special licence fee and the applicant was specifically directed that further permission to retain that accommodation is not possible. In the letter dated 17.12.83 issued by the Railway Board in connection with retention of Rly.quarter by railway employees on occurrence of various events such as transfer, retirement, etc, were incorporated, which is reproduced as below:

(i) A railway servant on transfer from one station to another which necessitate change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of 2 months on payment of normal rent. On request by the employee on educational ground or ground of sickness the period of retention of railway accommodation may be extended for a further period of six months on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is the highest.

(ii) If a railway employee requests for retention of the railway quarters at the former station on the ground of sickness of self or a member of the family retention of



the quarter at the former station of posting can be permitted for a total period of upto six months—first two months on payment of normal rent and the next four months or till recovery, whichever is earlier, on payment of double the assessed or double the normal or 10% of the emoluments whichever is the highest. The Railway employee will be required to produce requisite medical certificate from the recognised medical attendant for this purpose.

(iii) In the event of transfer during the mid-school/college academic session, as employee may be permitted to retain the railway quarters at the former place of posting for a total period of upto 8 months the first two months on payment of normal rent and the next 6 months or till the current academic session ends, whichever is earlier, on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is the highest.

6. On the perusal of the letter, it is apparent that initial retention can be permitted for 2 months in normal rent, further it can be double to the normal rent or 10% of the emoluments whichever is higher.

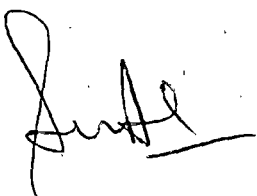
7. On the perusal of impugned order of transfer, it does not appear that the impugned order of transfer is a temporary transfer therefore, the circular referred by the learned counsel for the applicant is not applicable in this case. Moreover, in a leading case Ram Poojan Vs. UOI & Ors, delivered in O.A No.936/93 by Full Bench of CAT on 22.2.96, it was held that:

"(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 their permissible/permitted period 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/damage rent can be levied according to the rates prescribed from time to time in the Railway Board's circular.

39. We further hold that it would be open to the Railway Authorities to recover penal/damage rent by deducting the same from the salary of the Railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971."

8. As per orders/circulars issued from time to time revised the rate of damage rent for unauthorised occupation of the railway quarter have also been issued and on perusal of those instructions it does not appear that recovery of Rs.3806/- per month from the applicant is not in accordance with the instructions issued by the



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Railway Board from time to time. It is also not the case of the applicant that excess recovery has been made from him in violation of rules/instructions issued by the Railway Board for this purpose.

9. The applicant remained in unauthorised occupation of the railway quarter No.683-E, therefore, charging penal rent from the applicant Rs.3806/- per month is neither arbitrary nor illegal and I do not find any illegality or irregularity in the impugned order of recovery on account of damage rent and no interference is called for. This O.A is devoid of any merits.

10. I, therefore, dismiss the O.A with no order as to costs.



(S.K. Agarwal).

Member (J).