

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.768/1999

(29)

Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 17th day of August, 2001

R.S.Jamuar
Retd. Additional Legal Advisor
Central Bureau of Investigation
Govt. of India/Lodhi Road
New Delhi.
r/o Flat No.248, Arunodaya Apartments
Bodela, H-Block/Vikas Puri
New Delhi. ... Applicant

(By Advocate: Shri G.D.Bhandari)

Vs.

1. Union of India through
The General Manager
Eastern Railway
17, Netaji Subhash Road
Calcutta - 1.
2. Joint Director (Admn.)
CBI, Govt. of India
CGO Complex/Lodhi Road
New Delhi.
3. The Director
Central Bureau of Investigation
CGO Complex
Lodhi Road
New Delhi.
4. Superintendent of Police
Central Bureau of Investigation
(13-Lindsay Street) Salt Lake
Calcutta.
5. The Chairman
Railway Board/Rail Bhawan
New Delhi. ... Respondents

(By Advocate: Shri P.M.Ahlawat)

O R D E R

By Shanker Raju, Member (J):

The applicant is retired as Deputy Legal Adviser has challenged an order passed by the respondents whereby the recovery of Rs.78,777.36 has been deducted from his gratuity, vide respondents

order dated 10.3.1999 on account of unauthorised retention of transit Government accommodation w.e.f. September, 1991 to 15.7.1994.

2. The applicant has sought for refund of the recovered amount with interest and to take the transfer of applicant for Calcutta to Patna as temporary without levying of damage rent for the same period.

3. Briefly stated the applicant has joined Calcutta Region in September, 1985 as Regional Deputy Legal Adviser. He developed serious lungs trouble at Calcutta and he applied to Central Public Works Department (hereinafter called as 'CPWD') for allotment of suitable accommodation, Respondent No.3, CBI authority had requested the Eastern Railway for allotment of a suitable accommodation to the applicant as such the applicant was allotted railway transit flat No.24, Russa Road, Tolly Ganj, on temporary allotment basis, at a rent of Rs.350/- per month. Subsequently, the allotment letter was modified whereby he has been charged normal licence Rs.70 and also changed from transit flat No.24 to 24-B. On making a representation dated 1.2.1988 by the applicant, he was directed by CBI authorities to directly pay the rent to the Railway authorities. The applicant was transferred from Calcutta to Patna on 28.2.1991 and the same was treated as at his own request and later on in public interest temporarily for a period of six months. The applicant requested for grant of HRA and requested to retain the flat for few months. The applicant has also been transferred

from Patna to Lucknow where he joined in March, 1992. The applicant was allowed to bring his family by the end of August, 1992 subject to foregoing transfer TA Advance, which he had never withdrew. The applicant thereafter on account of some emergency in UP, was retained at Lucknow and he requested to keep his family at Calcutta. The applicant thereafter transferred from Lucknow to Bombay and on 10.11.1993 he joined at Bombay. The railway authorities had written to the CBI regarding unauthorised occupation of the transit accommodation and advised the CBI that the flat should got vacated by the applicant and thereafter, he ultimately vacated the accommodation in July, 1994. On joining the promotional post as Additional Legal Adviser at New Delhi on 19.9.1994, he was allotted a Government accommodation in May, 1994. On payment of draft of Rs.2744/- towards monthly rent and water charges was sent towards full and final payment w.e.f. 1.9.1991 to 31.7.1994 to the railways. As the applicant has occupied the flat till 15.7.1994 the Railway authorities charged him normal rent from 1.2.1988 to 31.7.1988 and double the licence fee from 1.8.1988 to August, 1991 and thereafter damage rent was charged from 1st September, 1991 to 15.7.1994 by the Railway Board's letter dated 7.9.1998 in accordance with Rules. Though the applicant had requested for charge of normal rent for this period but the same was not acceded to. The gratuity of the applicant amounted to Rs.237402/- was due out of which an amount of Rs.111485/- has been withheld whereas the demand of Railways was only Rs.72818.96 paisa.

4. The learned counsel of the applicant contends that as the allotment order followed by subsequent modified order do not contain any stipulation regarding the period for which the transit accommodation allotted to the applicant their stand that the same was only for a period of six months is absolutely illegal and the applicant who was transferred from Calcutta to Patna in July, 1991 should be treated as temporary transfer in public interest. As per the Railway Rules, allottee can retain and continue to retain the Govt. accommodation at the original place so long as transfer of the allottee to the new place, is not converted into a permanent transfer. It is also contended that as the competent authority under SR-116-8(iii) permitted him to retain his family at Calcutta till the end of August, 1992 as such he may not be charged damage rent for the period. The applicant further contended that before withholding the aforesaid amount no show cause notice or reasonable opportunity has been afforded to him which is in violation of principles of natural justice and had visited the applicant in civil consequences. It is also contended that the applicant had not drawn any HRA during the stay period. His main contention is that his transfer to Patna was a temporary one and as such he is entitled for retention of the transit flat as he was not permanently transferred as his headquarter is at Calcutta as such he is entitled to retain the said flat. It is also stated that the damage\rent cannot be recovered from the applicant without following the provisions of Public Premises (Eviction of Unauthorised Occupants) Act. It is also contended that Railways have never

demanded any rent from the applicant nor issued any show cause notice. It is also stated that he requested the Ministry of Railways in principle to agree to waive the rent but nothing has been done by the respondents thereof. In fact it is stated that the aforesaid recovery is aftermath of an audit objection put by the Railway authorities. As there has been a condition of posting he is not liable to pay any damage rent. According to the applicant, the initial allotment of Government accommodation is permanent till his tenure at Calcutta and was unconditional without specifying any time limit. As he is not a Railway servant, his gratuity cannot be withheld and he cannot be liable to be damage rent under the Railway Rules. As the rent has not been released from his salary he cannot be treated as a Railway servant.

5. The learned counsel for the respondents strongly rebutting the contentions of the applicant stated that the applicant has given an undertaking to retain the transit accommodation for a period of six months by this the same has been allotted to him the allotment was only on a temporary measure. As the applicant was subsequently transferred to Lucknow, to Bombay, to Delhi at last he failed to vacate the same as per his undertaking. The applicant made an application to the Ministry of Railways for waiver of the penal rent which was considered and it has been decided to charge normal rent for six months initially and then upto the August, 1991 subject to licence fee and thereafter the damage rent. It is also stated in CBI's letter dated 1.8.1997 at Annexure/A-20 that the

transfer of the applicant was not treated as temporary transfer and no certificate can be issued to him for his over retention of Government accommodation from 16.7.1991 to July, 1994 was a matter to be dealt with between the applicant and the Railways. In this background, it is stated that in view of the Full Bench decision in Pitambar Singh's case and as per the provisions of Rule 16(8) of the Railway Pension Rules the gratuity can be withheld for unauthorised occupation of the Railway accommodation. It is also held that no show cause notice is not required for recovering the damage rent. As the applicant was allowed to retain the transit accommodation as a special case, for a period of six months, the further stay in the aforesaid flat is not an authorised for which he is liable to pay damage rent in accordance with the rules. The fact of applicant being transferred to Patna in July, 1991 is concerned at that time the applicant was duty to bound to vacate the transit accommodation. The flat was unnecessarily occupied by the applicant and later on allotted to one Shri R.C.Choudhary. The respondents contend that the applicant had failed to inform the Railways about his transfer and as per the extant rules he could have vacated the accommodation within two months from the date of his transfer, i.e., up to August, 1991. It is stated that excess recovery from gratuity has been refunded back to the applicant after deducting the amount of Rs.72880/-. It is also stated that the applicant has not exhausted the available remedy against the order of recovery. They have relied upon the following ratios to contend that the applicant is

135

liable to pay the damage rent on unauthorised occupation of Government accommodation and for this withhold of gratuity is legally permissible:

1. OA No.768/99 (R.S.Jammar Vs. UOI & Othrs.)
2. OA No.178/93 (Dinesh Chandra Srivastava Vs. UOI & Others)
3. UOI Vs. Wing Commander R.R.Hingorani AIR 1987 SC 808
4. UOI Vs. Shri Shiv Charan, 1991 Supp.(2) SCC 386.
5. Sh. Joginder Singh Vs. UOI & Others
6. Shri Ram Nagnia Pandey Vs. DRM, N. Railways OA No.1602 of 1994

6. The CBI has also filed their counter affidavit wherein it has been stated that the railway accommodation was allotted to the applicant as a transit accommodation on temporary basis on his undertaking for a period of six months on transfer to Patna, he should have vacated the Government accommodation in accordance with the rules. As the applicant has not been permitted to retain the railway transit accommodation beyond the period of six months there is no question of according permission to retain his family upto March 1993. The transfer of the applicant from Calcutta to Patna was not treated as a temporary transfer and no certificate was issued by the CBI either to the applicant or to the railway authorities. The transfer of the applicant to different places cannot be treated as temporary transfer as per the provisions of FR. The delay in paying him gratuity was due to the illegal act of the applicant by not vacating the transit accommodation.

The applicant was never allowed to retain the transit accommodation at Calcutta on his transfer to Patna onwards.

7. I have carefully considered the rival contentions of the parties and perused the pleadings on record. The grievance of the applicant is that whereas the recovery was only for Rs.72818.96, but the respondents have deducted an amount of Rs.111485 from the total gratuity is concerned, we find from the reply of the respondents that the excess amount has already been refunded back to the applicant after deducting Rs.72818.96.

8. Another contention of the applicant is that with regard to the jurisdiction and competence of railway authorities to recover and to withhold the gratuity of the applicant and to recover the amount is concerned, I find that the applicant being in CBI has been temporarily allotted transit accommodation on medical grounds by the Railways on the request of the CBI. The applicant was charged higher rent but on his application the same has been allowed as provided under the relevant Railway Rules. As recently held in Full Bench decision of the Tribunal in Pitambar Singh's case that before recovering any damage rent on account of unauthorised occupation of a Railway accommodation, firstly there is no requirement for issuance of any show cause notice and secondly as soon as the maximum period is over, the occupant is deemed to have been treated as unauthorised occupant and railway can recover the damage rent from the gratuity as provided under Rule 16(8) of the Railway Pension

Rules. Apart from it, the Apex Court in UOI Vs. Shiv Charan, 1992(19) ATC 129 has held the recovery can be effected legally, on account of overstay by a Government servant, from the dues payable to the concerned Government servants. The applicant cannot blow hot and cold for the purpose of charging the rent, as he has requested to be governed by the railway rules and thus rent of Rs.70/- was ordered to be charged from him initially for a period of six months when he occupied the transit accommodation. The applicant is now estopped from questioning the recovery of damage rent from his gratuity for which the respondents are legally competent and entitled in accordance with rules, ratio of the Apex Court as well as Full Bench. As such I am of the confirmed view that the Railway authorities have rightly recovered the amount regarding damage rent from the applicant from his gratuity/retiral benefits. There is no requirement for according an opportunity before the same. The applicant had undertaken to vacate the transit accommodation within a period of six months, on allotment of accommodation by the CPWD as such he cannot go back from his undertaking and is estopelled from contending that the allotment was regular and was not for the period of six months.

9. As regards the contention of the applicant that has been temporarily allotted the accommodation and allotment order was subsequently modified without any conditions it is stated that the CBI vide letter dated 1.8.1997, Annexure/A-20 clearly stated that the transfer was only for a period of six months and as the applicant has claimed transfer TA from Calcutta to

(28)

Patna and Lucknow and Bombay for himself and his family, the same cannot be treated as temporary and no certificate to that effect has been issued to the applicant or to the Railways by them. Apart from it, I find that Annexure-A2 a letter written by the applicant on 15.10.1987 whereby it is clearly stated that he undertakes to vacate the accommodation as soon as provided the accommodation by the CPWD which is likely to take six months. Further more, the quarter was allotted to the applicant on 9.12.1987 and modified allotment order was issued on 13.1.1988. The contention of the applicant that in absence of any stipulation regarding the period for which the present accommodation was allotted the same should be taken as regular as he was allowed regular allotment in 1994. According to him, he is liable to pay normal rent is absolutely unfounded and unjustified. As the nomenclature of the transit flat itself connotes that it should not be allotted permanently and is meant only for an officer who is in the transit, can be allotted the same. It was incumbent upon the applicant to have vacated after he was transferred from Calcutta to Patna. As such I am unable to hold that as the order was without specifying the time limit has been allotted to the applicant till he get his own accommodation. As regards the issue of temporary transfer of the applicant is concerned, his resort to an order passed on 26.6.1991 and modified on 12.7.1991 where he has been transferred temporary for six months on his own request to Patna from their he has to look after the work at Lucknow is also and his further resort to order dated 16.4.1992, Annexure/A-12 whereby under SR 116(b)(iii) permitting the applicant

but bring his family by the end of August, 1992 which is claimed as a permission by the Department to the applicant to retain his family in the railway quarter is concerned the same is not legally tenable. From the letter of the CBI which is clear that temporary transfer is distinguishable from regular transfer which is restricted to only 180 days and is treated as tour which does not entitle a Government servant transfer TA. It is stated that the applicant has claimed transfer TA while being transferred from Calcutta to Patna and Bombay as such the same has not been treated as temporary transfer. Apart from it, from the reply of the CBI, it transpires that the applicant was directed to claim transfer TA in respect of the family members by the end of August, 1992 and has nothing to do with and cannot be construed as a permission of the CBI to the applicant to retain the railway transit accommodation beyond the period of six months. SR 116(b)(iii) has no relevance to the accommodation and deals exclusively with TA etc. The applicant has also deposited the rent which was forwarded vide Demand Draft of normal rent subsequently from 16.7.1991 to July, 1994. The applicant was not authorised to retain the transit accommodation beyond six months as he has not sought permission of the railway authorities. Transfer of the applicant from Calcutta to Patna to Lucknow to Bombay as per FR cannot be treated as temporary transfer. The applicant has no right to retain the transit accommodation and should have vacated the accommodation as undertaken by him within six months and beyond this he is liable to pay the rent along with the damages as prescribed under the Railway Rules

-12
(40)

which shall be applicable in his case. In absence of any specific order of extension of stay in the transit accommodation accorded by the Railways, I am of the confirmed view that the applicant has remained as unauthorised occupant for which he has been rightly charged the damage rent as per the Rules prescribed under the relevant Railway Rules. The recovery is neither proved to be arbitrary nor malafide by the applicant. The railway has also not allowed the applicant normal licence fees during the period. The applicant was allotted the transit accommodation as a special case on temporary basis on the request of the CBI. The applicant has violated the policy instructions of the Government of India and the Railway Board by not vacating the same after the expiry of six months. Subsequently, the accommodation was allotted to Shri R.C.Choudhary on 31.9.1994 on the request of the SP, CBI. The applicant has also not intimated the Railways about his transfer and had not shown any permission of the CBI which allowed him to retain the accommodation. In fact, such a permission is not existing in the record. The case of the applicant has been considered at all levels and having found him unauthorised occupant the recovery has been effected. The case law cited by him is distinguishable and is not applicable in the circumstances of the present case. The respondents have rightly withheld the part of gratuity to the damage rent. The applicant has been allowed the accommodation on special licence fees from 1.1.1988 till August, 1991 but from September, 1991 till its vacation, i.e., 15.7.1994 the damage rent has been charged which is legally permissible.

10. In the result, having regard to the discussion made above and reasons recorded I find no merit in the case, the same is accordingly dismissed but without any order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/