

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2977 of 1997

New Delhi, this the 27th day of July, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)

1. Ivan Franklin, S/o Mr. Irwin Little, R/o 231/30, Vasant Lane, New Delhi.
2. Mrs. P.V.Littale, W/o Sh. Irwin Little, R/o 231/30, Vasant Lane, New Delhi.

-APPLICANT

(By Advocate Shri J.K.Bali)

Versus

Union of India through

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Superintending Engineer/ Estate, Northern Railway, Chelmsford Road, New Delhi.
3. Estate Officer, Northern Railway, Divisional Railway Manager's Office, New Delhi.

-RESPONDENTS

(By Advocate Shri R.L.Dhawan)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

In this Original Application the applicant, prayed for quashing and setting aside the judgment of the Estate Officer, DRM Office, New Delhi and the order of eviction dated 2.12.1997 (Annexure-A-1) passed under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the PP Act"). He also requests for setting aside the order dated 23.12.1997 (Annexure-A-2) passed by the District Judge, New Delhi in PP Appeal No.380 of 1997 under Section 9 of the PP Act.

[Signature]

(2)

2. I will first examine whether this Court has jurisdiction to entertain appeals against the judgment of the District Judge under the PP Act. The applicant challenged the decision of the District Judge, New Delhi dated 23.12.1997. The District Judge disposed of the appeal under Section 9 of the PP Act against an order dated 2.12.1997 passed by the Estate Officer, Northern Railway. No doubt the Full Bench of the Tribunal in the case of Rasila Ram and others Vs. Union of India and others, decided on 5.5.1989, 1989 (2) SLJ 342 : 1989 2(ATJ) 121 laid down that the employee aggrieved by cancellation of allotment orders can come to the Court, but once he goes to the Estate Officer he must seek the alternative remedy there. After Estate Officer's order he can either come to the Administrative Tribunal or go to the District Judge under Section 15 of the PP Act. After disposal of case by the District Judge he can again come to the CAT on further appeal. This view of the Full Bench is no longer settled law on the subject in view of the decision of the Hon'ble Supreme Court in the case of Krishan Prasad Gupta Vs. Controller Printing & Stationary, 1995 (5)SLR 763 in which their Lordships have laid down that in respect of claims pending before authority constituted under Payment of Wages Act and appeals before the District Judge, the Tribunal has no jurisdiction to decide those matters. Their Lordships have also laid down in paragraphs 19 & 20 as under -

"19. The appellate Jurisdiction of the Tribunal is indicated in Section 29

and 29A of the Act. While all appeals pending in various Courts, except those pending in the High Court on the date from which Tribunal became functional stand transferred to the Tribunal by the force of the Act, the appeals in all cases which were decided prior to the establishment of Tribunals, are required to be filed before the Tribunal, if they had not already been filed provided the cause of action on which the case was based is cognizable by the Tribunal.

20. The appellate jurisdiction of the Tribunal is extremely limited and was conferred on the Tribunal so that the judgment, if any passed, for example, by a Munsif or Civil or subordinate judge in a Civil Suit relating to a service matter (decided before the establishment of the Tribunal) may be challenged before the Tribunal notwithstanding that the judgment passed in that suit is not covered by the word "order" defined in the explanation appended to sub-section (i) of Section 14. Except the appeals, which are transferred to the Tribunal or the appeals which may be filed before the Tribunal in the above circumstances, no other appeal would lie before the Tribunal.

3. In view of the above proposition of law, I am afraid this Court has no appellate jurisdiction to decide as an appellate authority against the order of the District Judge passed under Section 15 of the PF Act.

4. Even on merits, the background history has been narrated and discussed at length in the order of the Hon ble Single Judge in OA 806/96 dated 1st May, 1998. The brief admitted facts are that the mother of applicant no.1, applicant no.2 was the original allottee of Nurses Hostel No.231/30, Vasant Lane, New Delhi and on her retirement on 30.4.1992 she did not vacate the quarter but continued in the same quarter.

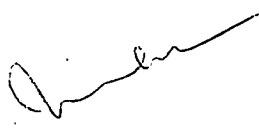
even after availing an extension of the permissible period of 8 months for a retired employee. The quarter aforementioned being part of a Nurses Hostel, applicant no.1 is not entitled to regularisation. In obedience to the order of the Tribunal dated 20.8.1997 (Annexure-A-5) in OA 806/96, the Divisional Superintending Engineer Estates, Northern Railway, New Delhi by an order dated 17.9.1997, (Annexure -A-6) allotted a Type-I Railway quarter no.112-A/C at Thompson Road, New Delhi in lieu of Railway Nurses Hostel No.231/30 at Vasant Lane to applicant no.1. He was invited to attend the office of Section Engineer Estates, Northern Railway, DRM's Office to complete necessary formalities with regard to regularisation of the newly allotted quarter no. 112-A/C, Thompson Road, New Delhi. It is surprising that this OA has been filed on 24.12.1997 being the fifth OA on this point. In view of the provisions of Rule 15(7) of the Railway Services (Pension) Rules and as the applicant had failed to take possession of the newly allotted quarter vide order dated 17.9.1997, eviction proceedings were started against applicant no.2 resulting in the impugned order dated 2.12.1997 for eviction and for charging of penal rent for the period of unauthorised occupation. The appeal filed by the applicant before the District Judge, New Delhi has been rejected by an order dated 23.12.1997. According to the respondents the applicant is in unauthorised occupation since 1.1.1993. In an earlier OA 56/94 disposed of on 8.9.1994 the Tribunal directed grant of Type-I railway accommodation. Accordingly such an

accommodation no. M-26/L, Pahar Ganj, New Delhi was allotted to applicant no.1 by an order dated 5.7.1995 (Annexure-R-2). This earlier allotment was also not availed of.

5. After perusing the grounds and the submissions made both in the O.A. and at the time of hearing, I am of the considered view that applicant no.2 has been correctly held to be in unauthorised occupation of the Railway quarter and the proceedings started against the applicant no.2 under the FP Act resulting in the impugned order dated 2.12.1997 as well as for charging penal rent do not call for any interference.

6. I am also of the considered view that this O.A is hit by the doctrine of res judicata in view of the findings of this Tribunal in para 21 of the order dated 1.5.1996 in OA 806/96. The main relief sought for by the applicant in OAs 95/93, 56/94, 1412/95 and 806/96 was common, namely, regularisation of a Type B quarter at Vasant Lane or allotment of entitled type of quarter or a Type-A new pattern unit. Even in this OA under challenge the grounds raised at para 5 are no longer valid and do not survive after the order was passed in OA 806/96 and after an affidavit was filed specifying the alternative accommodation allotted to the applicant.

7. Applicant no.1 has no vested right in the allotment of any particular quarter. It is to facilitate him as a matter of benefit and as a



consequence of his holding a post in the Central Government that a quarter is allotted to him. There are definite rules governing allotment of a quarter. Complying with these rules the respondents have been trying their best to accommodate the applicant. They have initially made allotment at Pahar Ganj and subsequently at Thompson Road. Applicant no.1 had failed to avail of these accommodations and continues to occupy the quarter allotted to the mother (applicant no.2) for six years after his mother applicant no.2 had retired. I entirely and respectfully agree with the conclusion arrived at in OA 806/96 to the effect that the applicants had been indulging in frivolous and vexatious litigation. After going through the findings in the order dated 1.5.1998 in OA 806/96 I am convinced that there is no merit in this O.A.

8. In the result the O.A. is dismissed. No costs.

N. Sahu
(N. Sahu)
Member (Admnv) 27.7.98

rkv.