

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 816 of 1997 decided on 17. 2. 1998.

Name of Applicant Sube Lal

By Advocate : Sh. G.S. Bajrangi (21)

Versus

Name of respondent/s Union of India

By Advocate : Shri P.S. Mahendra

Corum:

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

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

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

17.2.98

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 816 of 1997

New Delhi, this the 17th day of February, 1998.

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

Sube Lal
S/o Bhalloo
Railway Gangman
Qtr. No. 24/5D,
Railway Colony, Baghpat Road
Distt. Meerut

... Applicant.

(By Advocate : Sh. G. S. Bequrar)

Versus

Union of India: through

1. The General Manager
Northern Railway
Baroda House
New Delhi
2. The Asstt. Engineer,
Northern Railway
Shamli
Distt. Mujaffarnagar
3. The D.S.C. (Authority under
Unlawful Public Property Act)
Service through
Divisional Railway Manager,
Paharganj
New Delhi

... Respondents

(By Advocate : Sh. P. S. Mahendru)

ORDER

By Sh. N. Sahu, Member(A) -

The applicant seeks an order quashing Annexure- A-1, wherein he was informed to vacate the quarter held by him under unauthorised occupation and Annexure A-2 by which the applicant was transferred to Gang No.2. Annexure A-1 was dated 29.07.1994 and Annexure A-2 was dated 21.07.1985. The applicant was transferred from Gang No.4 to Gang No.2 by an order dated 21.07.1985 and was also asked to vacate the quarter allotted to him by virtue of being in Gang

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No. 4. From 1985 onwards rent was recovered from him at penal rate. He filed a petition under the Payment of Wages Act before a Labour Court at Meerut. The penal rent was ordered to be refunded by the Labour Court and compensation was also awarded. The respondents filed appeal before the Allahabad Bench of the Tribunal and obtained a stay against the refund of the amount. In the OA filed before the Principal Bench of the Tribunal (OA-175 of 1992), the applicant prayed for refund of the amount of penal rent recovered from him from 23.07.1991 onwards and further to restrain the respondents from effecting recovery of penal rent from him. This Tribunal held that the issue being the same, he cannot agitate the matter before two different Benches. The issue involved in OA-175 of 1992 was the same as that of in OA-1351 of 1992 before the Allahabad Bench. As the issues involved are already before the Allahabad Bench, the Principal Bench did not interfere and held that this OA is not maintainable under the principle of res judicata. Accordingly, the OA was dismissed.

2. The answer to Annexure A-2 is that such an order cannot be agitated after a lapse of a ~~decade~~ and such an order is hit by limitation. Annexure A-2 cannot be agitated before me after this lapse of time. With regard to Annexure A-1, the same is extracted as under:

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"Will you please call for a notice of PWI/BTU vide letter No.E-3/BTU dated 21.2.94 in which you were apprised to vacate the quarter being under unauthorised occupation by you since 21.7.85. You had approached Hon'ble CAT Allahabad vide O.A. No.1759/92 which was dismissed on 7.6.1993.

Neither you have behaved in a manner of being good citizen of the country nor behaved as a Railway servant abiding the Railway service conduct rule 1968. Moreover, you are liable to be taken up for contempt of court.

You are requested to vacate the quarter No.24-D at BPM within 7 days failing which you will be placed under suspension. Case will be moved under the law for action by Administration as well as the Hon'ble Court.

This is without prejudice.

Sd/
Assistant Engineer
N. Railway Shamli."

3. While the transfer is not fit for judicial consideration at this distance of time in order to appreciate the second contention, it is necessary to mention that the transfer was ordered to Gang No.2 at Gotra because ^{of unlawful activities like} the applicant ^{was} in possession of 9 arrows dipped in poison. He was continuing in possession of railway quarter for all this period, although a qmestry was allotted to him at his new place of posting. The main focus of the OA is to be found in the rejoinder by the applicant. He has raised the following 10 points:

1. Whether the post of Gangman is transferable?
2. Whether the P.W.I. Grade-3, is competent to transfer class-IV employee, (Gangman).

3. Whether the transfer order was in Administrative exigencies & statutory provisions were followed while transferring the central Govt. servant.
4. Whether the recovery of damages of penal rent can be ordered by any other person other than the competent authority i.e. Public Property (Unauthorised Eviction Officer) DSC/New Delhi.
5. Whether any proceedings initiated under P.P.E. Act, under section 5 & 7 of P.P.E Act.
6. Whether the deduction of wages which is continuous and without any time limit and without any assessment how much amount is to be recovered and in what instalments, does not amount to cruelty on a Schedule Caste illiterate employee.
7. What is the position of Res judicata?
When the Labour Court Meerut had already decided case No.183/91 by order dtd. 23.10.1991 for direction to pay Rs.20,867/- with ten times penalty and the Railway department honoured the judgement and deposited the actual deduction in the Labour Court at Meerut. Are they not bound by law of Estoppel.
8. Whether the applicant was not entitled to receive outside house rent allowance during alleged unauthorised occupation.
9. Whether Assistant Engineer Shamli was not competent to correct the initial mistake committed by P.W.I. in 1985 by any fresh order, directing the Gangman to work at original Station Baghpat Road. This would end the entire controversy.
10. Whether the litigations at the expenses of Railway Revenue are not fruitless and a burden on the people of India, to cover up the illegality committed by P.W.I., Sh. A.K. Jain, in 1985."

This was replied to as under by the respondents:

- "1. Yes, the post of permanent Gangman in Open Line is transferable not only from one gang to the other but also in other category too. (Annexure R-VI attached).

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2. Yes, Permanent Way Inspector grade-III is competent to transfer class-IV employees since having been ordered by the Assistant Engineer on his behalf.
3. The transfer was for cogent reasons for breach of peace and provisions followed for transferring a permanent gangman.
4. The recovery of Damages Charges for unauthorised occupation of Railway Quarter starts automatically as per procedure laid down in Railway Board letter No.F(X) 1-88/11/0 dated 31.5.91 (Annexure R-7) and recovery of Damages Charges (Annexure R-8).
5. The applicant was allotted a quarter at the new place of working and it was statutory for the applicant to vacate the quarter at Baghpat Road peacefully. The applicant entered in litigation and not allowed to initiate the proceedings under PPE Act.
6. The deduction of Damages Charges are due to unauthorised occupation of the quarter while he had been allotted quarter at new place. The Railway Administration was put to a great loss of revenue as well as not allowing the next senior man in turn to get the quarter. These Charges are justified till he hands over the vacation of quarter.
7. Res judicata can be argued, if at all required at relevant time. The decision of case No.183/91 of ALC/Meerut challenged by U.O.I. vide OA No.1351/92 and the operation of the award by ALC/Meerut stayed (Copy attached Ann.R-9).
8. The applicant is not entitled for any House Rent Allowance since he was allotted quarter at new place of working (Annexure Ann.R-10).
9. The transfer was with the orders of Assistant Engineer Shamli and should not be taken as controversy.
10. Hypothetical and contents are not admitted.

4. Under the law laid-down by the Supreme Court the transfer of a permanent employee cannot be challenged when the transfer is to a permanent post in

the same cadre not carrying less pay even if such transfer materially affects his chances of promotion -

AIR 1971 SC 359. A railway employee on transfer from one station to another can retain his railway accommodation at the former station of posting for a period of two months on payment of normal rent. For educational or medical grounds, this retention can be extended for a further period of six months. It is also settled law that the railways can without recourse to the PP Act enforce a recovery of rent as per statute.

5. In one of my decisions also [Gopal Panigrahi Vs. Union of India & Ors. - AISLJ 1997(1) (CAT) 297], this has been discussed as under:

The CAT Allahabad Bench in the case of Dinesh Ch. Srivastava Vs. Union of India & Ors. Swamy Case Law Digest (1995) 527, held that after transfer and posting elsewhere if no extension of allotment was sought, the retention of Government quarter becomes unauthorised and no cancellation of allotment is necessary to charge damage rent. The Allahabad Bench followed the decision of Calcutta Bench of the Tribunal in Sankar Vs. Union of India & Ors (1994) 26 ATC 278. In a recent decision, in the case of Binay Kumar Rarhi (O.A. 35/95) a Division Bench of the CAT Calcutta Bench has upheld the recovery of penal rent without recourse to the PP (Eviction) Act. In Sarkar's case (1994) 26 ATC 278, decided on 16.9.1993 the Calcutta Bench held that so far as the Government employees are concerned, excess rent, whether it is called penal rent or damage rent or damages, can be recovered either by following procedures of PP Act or by following the procedures prescribed under the statutory service rules/instructions. According to the Division Bench CAT Calcutta, recourse to PP Act is one of the alternative procedures. Penal rent can also be levied under the instructions issued from time to time under F.R.45A referred to at page 197 of Swamy's Compilation of F.R.S.R. Volume-I 1991 Edn. The Principal Bench of

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the Tribunal had also supported the stand that excess rent can be recovered either by following the procedure laid down in the relevant service rules in the following cases.

1. Sushil Chandra Bhatnagar Vs. Union of India decided on 26.07.1994 reported in 1994(3) SLJ (CAT) 67.

2. Inderjit Singh Vs. Union of India, decided on 13.5.1993 reported in (1993) 25 ATC 446.

It has been clearly held in these rulings that for recovery of excess rent for unauthorised occupation of Govt. quarters, it is not necessary for the authority to follow the PP Act in respect of the Govt. servants. In Jagabandhu Saha Vs. Union of India, decided on 19.1.1996 reported in 1996(Vol-I) ATJ 335, the Calcutta Bench has reiterated its stand in Sankar's case. In order to harmonise the procedure laid down in the service rules, it is held that so far as the Government servants are concerned, the official respondents have the option to choose either of the two procedures. If, however, Government accommodation is occupied without any authority by a private citizen, a non-employee, then it would become obligatory for the official respondents to follow only the P.P. Act procedure. Thus there is force in the contention that having stayed without permission beyond the permissible period, the applicant is liable to be declared as unauthorised occupant. The respondents have the option to deduct penal rent or excess licence fee from the salary and there is no need for them to resort to P.P. (Eviction) Act for this purpose.

More detailed discussion is to be found in the order of CAT, Bombay Bench in Smt. M.P. Kanal Vs. Union of India & Ors. - AISLJ 1997(1) 41.

6. In the facts and circumstances of the case it is held that respondents ^{have} ~~every~~ right to issue the notice to the applicant to vacate the quarter. The

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notice is hereby held to be legal and the legal
consequences flowing from the same will follow.3

7. OA is dismissed. No costs.

Narayan Sahu

(N. Sahu)
Member (A)

/Kant/