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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

C.A./T.A. No. 2440/90 /19 Decided on: 20.3.97

Joginder Singh

..... .. APPLICANT(S)  
(By Shri R.K. Relan Advocate)

VERSUS

U.O.I. & Ors.


..... .. RESPONDENTS  
(By Shri P.S. Mahendru Advocate)

ORDER

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI S.R. ADIGE~~ / DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ?  
No

  
(S.R. ADIGE)  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

O.A.No. 2440 of 1990

New Delhi, dated this the 20<sup>th</sup> March 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Joginder Singh,

S/o Shri Gian Singh,

Ex. Sub-Head,

O/o the FA & CAO,

Northern Railway,

New Delhi.

R/o 1-D, Evershine Apartments,

Plot No.10 Phase I,

Bodella, Vikaspuri,

New Delhi-110018.

... APPLICANT

(By Advocate: Shri R.K.Relan)

VERSUS

1. U.O.I. through  
the General Manager,  
Northern Railway,  
Baroda House,  
New Delhi-110001.

2. FA & CAO,  
Northern Railway,  
Baroda House,  
New Delhi.

3. The Divl. Superintending Engineer,  
(Estate), D.R.M. Office,  
Northern Railway,  
Chelmsford Road,  
New Delhi.

.... RESPONDENTS

(By Advocate: Shri P.S.Mahendru)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant seeks quashing of Divl.  
Superintending Engineer (Estates), New Delhi  
impugned orders dated 2.3.90 (Ann. A-1)  
recovering Rs.19,251/- towards penal rent for

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retention of Railway Quarter No.1277/11, DCM Railway Colony, New Delhi for the period 1.6.88 to 5.3.90 from applicant's DCRG.

2. Admittedly the applicant who was a Railway employee and was the allottee of the above mentioned Railway premises (assessed rent Rs.22.50 p.m.) retired on superannuation on 30.6.88. By order dated 29.10.88 he was permitted to retain the said premises for four months beyond 30.6.88 on normal rent (Ann. A-2). Further permission to retain the premises for another four months upto 28.2.89 was also granted (Ann. A-3). Applicant contends that he could not afford alternative accommodation owing to his meagre resources and financial constraints thrust on him by non-release of his DCRG. Moreover he states that he had requested respondents to regularise the accommodation in the name of his daughter Smt. Gurmeet Kaur also a Railway employee, to whom sharing permission had been granted vide orders dated 18.2.88 (Ann. A-5), and was hoping that the request would be acceded to and hence he did not vacate the accommodation. Upon respondents refusal to do so and their threat to recover penal rent vide D.S.E's order dated 21.3.89 (Ann. A-6), applicant states he filed O.A. No.752/89 in which interim orders were passed on 12.4.89

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that applicant shall not be dispossessed, which were also extended on 24.4.89, but eventually the O.A. was rejected on 28.11.89 (Ann.A-8). Applicant states that the said judgment dated 28.11.89 was ~~h~~ however silent on the quantum of rent to be recovered by Respondents from 1.7.88 onwards till vacation from his DCRG, nor did the judgment deal with the question of withholding the entire amount of DCRG by respondents against the permissible retention of Rs.1000/- under Rule 323 Railway Pension Rules, 1950. Eventually applicant vacated the premises on 5.3.90, and respondents took possession on 9.3.90.

3. Applicant contends that the assessed rent for this quarter was Rs.25.50 p.m. and for the period 1.7.88 to 5.3.90 the total sum works out to Rs.515/-. As against that, he contends that respondents have adjusted Rs.1928/- p.m. his DCRG towards arrears of penal rent/damages. In addition he contends that Respondents have recovered Rs.6250/- from the salary of his daughter Smt. Gurmeet Kaur who was sharing accommodation with him, during the period Dec. 1987 to Dec. 1989 @ Rs.250/- p.m. Thus he contends that Respondents have in fact realised Rs.19,281 + Rs.6250 = Rs.25,531/- as against Rs.515/- as normal rent due from him. Thus applicant claims that respondents should release to him

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Rs.25,016/- (Rs.25,531 - 515) illegally adjusted by them from his DCRG with interest @ 17% p.a., for the period 1.6.88 to March, 1990 which works out to Rs.5,645/- and contends that he has a liability to pay penal rent/damages only if determined by the competent authority in accordance with provisions of the Public Premises (Eviction of Unauthorised Occupants) Act.

4. Respondents in their reply have contested the O.A. They state that what has been done is strictly in accordance with law, rules and instructions on the subject and the O.A. is fit to be dismissed. So far as the alleged recovery from applicant's daughter is concerned, respondents point out that she is not a party in the O.A. and applicant is not competent to seek any relief on her behalf. They state that delay in releasing applicant's DCRG was solely because of his own conduct in not vacating the Railway quarter in his occupation after retirement.

5. Applicant has filed rejoinder in which he has broadly reiterate the contents of the O.A.

6. We have heard applicant's counsel Shri Relan and respondents' counsel Shri Mahendru. We have perused the materials on record and given the matter our careful consideration.

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7. Shri Relan has argued that respondents could not have proceeded to realise penal rent/damages from the applicant unless the same was first determined by the competent authority under the P.P.(EUO) Act after giving him an opportunity to show cause and as this was not done the respondents' action was illegal, arbitrary and violative of the principles of natural justice. He contended that respondents were not competent to retain more than 10% of DCRG or Rs.1000/- whichever was less in terms of Rule 323 Railway Pension Rules, and as they were required to finalise his retiral benefits immediately after his superannuation, they failed to release his DCRG amounting to Rs.37950/- for a period of 21 months. Shri Relan has sought to buttress his arguments with a number of rulings including Wazir Chand Vs. UOI (CAT, Full Bench judgments 1988-91 Vol. II Page 287); J.K.Chatterjee Vs. UOI 1995 (1) ATJ 229 and M.N. Darveshi Vs. C.O. Equipment Dept. 1995 (1) ATJ 358 and UOI Vs. Shiv Charan 1992 (19) ATC 129.

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8. We have given our careful consideration to the matter but are unable to agree with Shri Relaan's contention. It is settled law that no Railway servant has a fundamental right to Govt. accommodation and it is only a concession extended by the employee on certain terms and conditions, in the public interest to enable the Railway servant to discharge his duties more effectively and efficiently. The applicant was aware that he would retire on superannuation on 30.6.88 on which date he would have to relinquish possession of the Govt. Quarter in his occupation, unless he was permitted by the Competent Authority to continue to occupy it for any further period. As it <sup>^</sup>turned out to be, applicant was allowed to retain the accommodation for a further period in two spells i.e. upto 30.10.88 and again upto 29.2.89. The applicant could not have been unaware that retention beyond the permissible period of 8 months was unauthorised and yet he did not relinquish possession. Even if he was unaware, ignorance of rules cannot be justify their violation, and in any case applicant has not pleaded that he was unaware of the rules. Instead he has contended that he could not vacate the accommodation owing to financial constraints and also because he was hoping that the quarter would be regularised in the name of his daughter. However even when his challenge to respondents rejection of that prayer, which he made in OA No.752/89 was rejected by judgment dated 28.11.89 he did not vacate the quarter promptly but continued to retain it for a further period till 5.3.89. Any interim stay order issued in the OA was against physical eviction from the premisses but the applicant would still be liable to pay licence fee for the period beyond authorisation <sup>in</sup> accordance with Rules.

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9. In this connection our attention has been invited to the CAT Full (Allahabad) Bench judgement dated 22.2.96 in Ram Pujan Vs. UOI & Ors. (1996) 34 ATC 434 which also dealt with a Railway Employee in which it has been held:

- (a) in the event of a Railway employee in occupation of a railway accommodation, no specific order cancelling the allotment of accommodation on expiry of the permissible period of retention of the quarter on transfer, retirement, 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) retention of accommodation beyond the permissible period would be deemed to be unauthorised occupation and there would be automatic cancellation of allotment and penal rent/damages can be levied according to rules prescribed from time to time in Railway Board circular.
- (c) it would be open to Railway authorities to recover penal/damages rent by deducting the same from the salary of the railway servant and it would not be necessary to take recourse to proceedings under the PP(EUO) Act 1971. Recourse to proceedings under the said Act is only an authorisation procedure which does not debar recovery as per Railway Board's Circular.

10. No materials have been shown to us to conclude that the said judgement has not become final.

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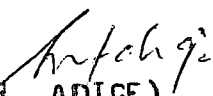
11. Again in S.C. Bhatnagar Vs. UOI bearing OA No.1147/93 many of the grounds taken therein have been taken in the present OA namely that :

- (i) Payment of DCRG can not be linked with non-vacation of the quarter on the basis of principles laid down in UOI vs. Shiv Charan(1992)19 ATC 129.
- (ii) Rent in excess of 10% can be recovered only after termination of tenancy under Rule 1713(b)(v) IRE17 and notice of cancellation is necessary.
- (iii) Penal rent cannot be recovered except after following the provision of the PP(EUD) Act.
- (iv) Adjustment of rental dues (including penal rent) and electricity charges from DCRG was not not legally permissible.

12. After noticing various rulings including those of the Hon'ble Supreme Court in Shiv Charan's case(Supra) and Rajpal(Wahi)'s case (SLP No.7685-91/88), the Delhi High Court in Harbhajan Singh Vs. UOI 1973 *Labour* IC 1659 and Avdesh Kr. Vs.UOI AISLJ 1994(1) CAT 446 as also the CAT Full Bench judgment in Wazir Chand case, the Tribunal negatived each of the above contentions, and that judgment have been upheld by the Hon'ble Supreme Court on 26.10.94 by dismissing SLP No.17725/94.

13. In the light of the above, the rulings relied upon by Shri Relan do not help the applicant and we find no good reason to interfere in this matter. The OA is dismissed. No costs.

  
(DR. A. VEDAVALLI)  
MEMBER (J)

  
(S.R. ADIGE)  
MEMBER (A)