

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.2245 of 1992.

New Delhi this ^{26th} July, 1994.

Hon'ble Mr. S.R.Adige, Member(A).

Rattan Lal s/o Shri Ganesh,
Ex.Shunter Loco Shed Delhi,
Sarai Rohilla,
Delhi

By Advocate Shri R.K.RelanApplicant.

Versus

1. Estate Officer,
N.Rly.DRM office.

Union of India through

2. General Manager,
N.Rly Baroda House,
New Delhi.

3. The Divisional Rly Manager,
Northern Railway,
Bikaner (Rajasthan)

4. The Loco Foreman (MG)
N.Rly Loco Shed M.G.
Delhi Sarai Rohila,
Delhi-6

By Advocate Shri R.L.DhawanRespondents.

JUDGMENT

By this O.A., the applicant Shri Rattan Lal, a retired Railway employee, had prayed for various reliefs. The application was heard on 1.9.92 and certain reliefs prayed for in the O.A., were ordered to be deleted on the ground that these had already been granted vide order dated 14.5.92 in O.A.No.2806/91. It would appear from a perusal of the order-sheet dated 1.9.92 that Shri Relan, learned counsel for the applicant stated at the bar that he was not pressing the reliefs which had already been granted by order dated 14.5.92 in O.A.No.2806/91 referred to above, and accordingly the only reliefs which survive for adjudication in this application are;

i) To quash the orders dated 23.7.92 passed

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by the Estate Officer (Annexure-A1 & A1/1);

- ii) Any other and further consequential relief;
- iii) Costs of the suit.

2. The applicant was retired from the Railways on 8.1.89 on the ground of medical unfitness (Annexure-A2). With a view to rehabilitate the applicant's family, the applicant's son Shri Kishan Lal, was considered for appointment in the Railway and he was eventually employed at Rewari w.e.f. 11.2.91. All this time the applicant continued to be in occupation of Railway Quarter No. E-108A, Loco Shed Colony Delhi, Kishanganj. The Loco Foreman Delhi, Sarai Rohila thereupon issued a notice dated 24.7.91 directing the applicant to vacate the Railway quarter in question, failing which action would be taken against him under the provisions of Public Premises ^{of unauthorised occupants} (Eviction Act, 1971) (Annexure-A3). The applicant thereupon filed O.A. No. 2806/91 in the Principal Bench, which was eventually disposed of by judgment dated 14.5.92 (Supra) with the following directions:-

- a) The respondents are directed to pay the amount of DCRG due to the applicant after deducting from it the normal licence fee of the occupied allotted quarter to the applicant along with electricity and water charges, till the date of vacation with a right to recover damages under law under PP(EQU) Act, 1971. This amount shall be paid with interest @ 10% at the very moment when the applicant vacates the allotted house and delivers the possession to the respondents.

b) The respondents are also directed to restore withheld complementary post retirement passes to the applicant.

c) In the relief claimed by the applicant for the posting of his son at Delhi and the regularisation of the quarter in the name of his son is disallowed.

3. The applicant was ultimately evicted from the said quarter on 9.11.92 in pursuance of the impugned orders dated 23.7.92 passed by the Estates Officer, DRM, Bikaner under Section 7(2) PP(EOU) Act, 1971 holding him to be in unauthorised occupation of the Railway accommodation and directing him to pay Rs.38,139/- assessed by the Estates Officer as damages on account of unauthorised occupation of the Railway quarter for the period 7.2.89 to 30.11.91 and further pay the damages at the rate of Rs.1100/- p.m. from 1.12.91, till the vacation of the quarter, and directing him to vacate quarter forthwith, failing which he would be forcibly evicted (Annexure-A1 & A 1/1).

4. The applicant now contends that the respondents are not empowered to hold back the DCRG for adjustment towards the dues recoverable from him on account of damages for unauthorised occupation of the Railway accommodation beyond the permissible period, and the DCRG should be released with interest, while the respondents contend that as a result of valid judicial proceedings under the PP(EOU) Act, 1971 in which the applicant was given every opportunity to defend his case, the applicant is now required to pay damages and other Govt. dues amounting to Rs.53,745-80P while the applicant's DCRG together with interest thereon comes only to Rs.47,874/- and hence the respondents contend

that there is no question of release of the DCRG, because even after release of the same, a sum of Rs.5,871-20 will still be recoverable from the applicant.

5. On behalf of the applicant, it has been argued firstly that he was compelled to retain the accommodation owing to the delay in giving his son compassionate appointment and not posting him to Delhi thereafter inspite of the vacancies; secondly that part of the period of unauthorised occupation was covered by an interim order passed by the Tribunal in O.A.No.2806/91 restraining the respondents from evicting the applicant; and thirdly that the proceedings under the PP(EOU)Act, 1971, conducted before the Estates Officer, DPM, Bikaner resulting in the impugned order dated 23.7.92 are not in accordance with law.

6. The time lag between the applicant's retirement and the grant of compassionate appointment to his son at Rewari cannot be made a ground to justify unauthorised retention of the Railway accommodation. This was also the view taken in the Tribunal's judgment dated 14.5.92 in O.A.No.2806/91, wherein the relief claimed by the applicant for posting his son in Delhi and regularisation of the quarter in question in his name was specifically disallowed. Hence this argument fails.

7. As regards the second argument, even if an interim order was passed in O.A.No.2806/91 restraining the respondents from evicting the applicant till the disposal of the case, that does not absolve the applicant from paying the damages for unauthorised occupation of the accommodation, particularly when the Tribunal in its final judgment dated 14.5.92 in the said O.A.

specifically recorded the right of the respondents to recover damages for unauthorised occupation in accordance with law under the PP(EOU) Act, 1971. Hence this argument also fails.

8. As regards the third argument, it is alleged that the Estates Officer concluded the proceedings *ex parte*, but from a perusal of his judgment dated 23.7.92, it appears that the applicant failed to appear and defend his case in spite of several opportunities being given to him. This compelled the Estates Officer to decide the case *ex parte*. It has been urged that the rate of damages is excessive, arbitrary and unreasonable and does not take into account the period the applicant was entitled to retain the quarter after retirement on normal and twice the normal rent.

9. In so far as the rate of damages being excessive, arbitrary or unreasonable ^{is concerned}, it cannot be denied ^{that} under rules and administrative instructions issued by the railway authorities, the respondents are entitled to ^{prescribe} ~~determine~~ the rates at which the penal rent is to be recovered for unauthorised occupation of railway accommodation by the railway employees, having regard to the market rate prevailing in the area and other surrounding circumstances, which the Estate Officer may use in ^{an} proceedings under the PP(EOU) Act. Shri Dewan has filed an affidavit, in which it has been stated that ^{the} quarter in question is a Type II quarter and the Railway Board vide O.M. dated 31.5.88 has determined the penal rent for Type II quarters at Rs. 1100/- per month. The Estate Officer in his impugned order dated 23.7.92 has determined the penal rent payable by the applicant on the basis of said

O.M. dated 31.5.88 in accordance with the provisions of the P.P.(EQU) Act and the same cannot be said to be arbitrary or unreasonable or suffering from non-application of mind. Shri Relan has relied upon the judgment 'UOI Vs. Wing Commander(Retd) R.R.Hingorani' - (1)1987 ATLT 332, but that ^{case} does not help him because the facts in that case are entirely different from the present case. In that case, Govt. had unilaterally deducted the market rent from Wing Commander Hingorani, wherein in the present case, the penal rent is sought to be recovered from the applicant in pursuance of a valid court order passed by the Estate Officer under the P.P.(EQU) Act. Shri Relan also relies upon the judgment of the Full Bench of this Tribunal in Wazir Chand Vs. UOI' Full Bench Judgments (CAT) Volume II 287, in which it had been held that the entire amount of gratuity cannot be withheld for non-vacation of the quarter by a Government servant. However, the case of the respondents is that the DCRG has been held back only temporarily so that the same would be paid to the retiral employee when he ultimately vacated the quarter which was in his unauthorised occupation, after recovering the penal rent and other railway dues which were payable by the applicant. In this connection, Shri Dhawan has invited attention to Hon'ble Supreme Court's order dated 27.11.89 in Rajpal Wahi's case (SLP No.7688-91/88) wherein the petitioner had challenged the action taken by the respondents in holding back the DCRG. The Hon'ble Supreme Court in their order specifically took note of the averment made by the railway authorities in their affidavit that the DCRG was being held back only temporarily so that the said amount would be paid to the retiral employee when he vacated the quarter which

is in his unauthorised occupation after the penal rent and other railway dues had been recovered.

Further more, it may be mentioned that the applicant had filed CCP No.12/93 alleging contemptuous violation of judgment dated 14.5.92 in O.A.No.2806/91. In the judgment dated 18.4.94 passed in that CCP, it was held to be entirely reasonable for the respondents to deduct the penal rent and damages assessed under the P.P.(EQU)Act and to pay only the balance amount if any due to the petitioner. Hence the applicant's plea that the rate of damages was arbitrary and unreasonable and imposed without application of mind, as well as his plea that the respondents had no authority to hold back his DCRG for non payment of damages and other liabilities, is rejected.

10. However, one aspect of this case needs to be discussed. By Railway Board Circular dated 13.6.86, a railway servant on retirement may be permitted to retain a railway quarter for a period of four months on payment of normal rent, and the next four months on educational or sickness account, on payment of double the assessed rent, or double the normal rent, or 10% of his emoluments, whichever is highest. The applicant was retired from the railways on medical grounds on 8.1.89. He was, therefore, entitled to retain the quarter on normal rent upto 8.5.89, which has not been taken into account by the Estate Officer ^{in his impugned order} or by the respondents. He could have been permitted to retain the quarter for a further period of four months from 8.5.89 i.e. upto 8.9.89 if he had specifically applied for the same, on grounds of education of his wards or on medical grounds, supported by necessary certificates, that he was required

to retain the accommodation, but the applicant has not made any such averment in his O.A., and under the circumstances, the question of retention of the quarter at double the normal rent from 8.5.89 to 8.9.89 cannot be allowed. However, the retention of the quarter from 8.1.89 to 7.5.89 at normal rent has to be allowed, in the light of Railway Board Circular dated 31.5.88 and in that extent, the applicant's liability to pay penal rent will diminish.

11. In the result, the Estate Officer's impugned orders dated 23.7.92 are modified to the extent that the penal rent payable by the applicant will be only from 8.5.89, and for the period 8.1.89 to 8.5.89 only normal rent will be charged. In his application dated 2.8.92 addressed to the Estate Officer, DRM Office, Northern Railway, Bikaner, the applicant has stated that the normal rent for the quarter in question was Rs.40/- per month. That means that the applicant's liability for the period 8.1.89 to 8.5.89 would diminish by $(Rs.1100 \times 4) - (Rs.40 \times 4) = Rs.4400/- - 160/- = 4260/-$. Hence what would still be recoverable by the respondents from the applicant would be Rs.5871-20 (See paragraph 4) minus Rs.4260/- = Rs.1611-20P. In other words, the damages and Govt. dues payable by the applicant to the respondents, would still be more than the applicant's DCRG with interest thereon, which he claims from the respondents.

12. In the facts and circumstances of the case, therefore, subject to the modification ^{continued} ~~advised~~ in paragraph 11 above, the impugned orders warrant no other interference from this Tribunal and it is disposed of in terms of that modification. No costs.

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(S.R.ADIGE)
MEMBER (A)