CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1142/93 199

~~T.A. No.~~

DATE OF DECISION 26th July, 94

Sh. S.C. Bhatnagar Petitioner

Sh. S.K. Sawhney Advocate for the Petitioner(s)

Versus

Union of India through General Manager, Northern Railway, New Delhi Respondent

Sh. O.P. Kshatriya Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✗
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1142/93

New Delhi this 26th of July, 1994.

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

Shri Sushil Chander Bhatnagar,
s/o Shri Shyam Chander Bhatnagar,
retired Chief Ticket Inspector,
Northern Railway,
New Delhi,
r/o Block No.A-25, Flat No.F-1,,
Dilshad Garden, Delhi
.....Applicant,

By Advocate Shri S.K.Sawwhney

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.

2. Divisional Railway Manager,
Northern Railway,
Chelmsford Road,
New Delhi .....Respondents.

By Advocate Shri O.P.Kshatriya

JUDGMENT

In this application, Shri Sushil Chander Bhatnagar, retired Chief Ticket Inspector, Northern Railway, New Delhi has challenged the adjustment of Rs.19,635-70P, being the market rent levied by the respondents from the DCRG payable to the applicant, for unauthorised retention of the railway quarter allotted to the applicant for the period 17.9.89 to 1.8.90.

2. The applicant joined the railways in 1953, and retired on 16.5.89. At the time of retirement, he was in occupation of Quarter No.28E, Mahawat Khan Road and was permitted by the respondents to retain the said quarter for four months beyond the date ofsuperannuation i.e. upto 16.9.89. The applicant claims that he submitted a representation on 8.9.89(Annexure-A2) praying for further retention

of the said quarter for four months i.e. upto January,1990, but the respondents deny having received the same. The applicant finally vacated the said quarter on 1.8.90 but the respondents have charged penal rent from the applicant as per details below:-

i)	17.5.89 to 16.9.89 4 months normal rent @ Rs.55/-	220-00
ii)	17.9.89 to 1.8.89 10 months 15 days market rent @ Rs.1347-50P p.m.	15496-25P
iii)	Final Electricity bill	3919-45P
	Total=	19635-70

The said sum of Rs.19,635-70P has been adjusted against the total DCRG amounting to Rs.41,663/- payable to the applicant (Annexure-R1), and according to the respondents, the net amount of DCRG payable to the applicant ,therefore, amounts to Rs.21,027/-. It is this adjustment which has been challenged by the applicant.

3. The grounds for challenge are:-

i) Payment of DCRG cannot be linked with the non-vacation of the quarter on the basis of principles of law laid down in the case 'UOI Vs. Shiv Charan'-1992(19) ATC 129;

ii) No details have been furnished or the manner of calculation of the sum adjusted;

iii) Rent in excess of 10% can be recovered only after termination of tenancy under Rule 1713 (b)(v) Railway Establishmen

Manual and no notice for cancellation served.

iv) Penal rent cannot be recovered except after following the provisions of Section7 of the P.P.(EOU)Act,1971;

v) No details were frunished and no opportunity was afforded while making deduction of Rs.3000/- from the DCRG on ground of commercial debits;

iv) The adjustment is in breach of Rule 2308 of the Indian Railway Establishment,Volume II.

4. The respondents in their reply have refuted the contents of the O.A. and have claimed that their actions are in consonance with the rules, inter alia that they have denied that a sum of Rs.3000/- has been deducted as commercial debits, and assert that only the sums adjusted are those shown in paragraph 2 above.

5. I have heard Shri S.K.Sawhney, for the applicand and Shri O.P.Kshatriya for the respondents.

6. As regards the first ground, Shri Shiv Charan was a railway employee who retired from railway service in August,1986. His DCRG amounting to Rs.20,000/- as well as his railway passes were withheld on account of unauthorised retention of railway quarter by him. The Tribunal in its judgment dated 16.8.89 in O.A.No.1114/89 'Shiv Charan Vs. UOI' directed that the applicant must vacate the quarter by 31.8.89 and the respondents should also release the entire amount of gratuity after deducting the normal rent for the quarter till 31.8.89. The respondents

were permitted to keep Rs.1000/- towards electricity bill etc. not yet calculated. Interest on the delayed payment of gratuity was disallowed. The UOI preferred an appeal to the Hon'ble Supreme Court against that judgment who by order dated 23.4.90 reproduced in (1992) 19 ATC 129 granted the SLP and allowed the appeal. The respondent (Shri Shiv Charan) was directed to handover the possession of the quarter on or about 23.5.90 to the appellant (UOI) and the entire amount owing to the respondents, less the amount mentioned thereinafter was directed to be handed over by the officer taking possession, then and there. As regards the amount mentioned therein after, the Hon'ble Supreme Court directed that the rent for the period overstayed may be deducted from the payment to be made as aforesaid. The appellant would be entitled to make claim in accordance with law to which they were entitled for any excess or penal rent, and the respondent would be at liberty to make any claim for compensation in an appropriate forum, which he claimed to be entitled to. Nowhere in that judgment, it has been stated that payment of DCRG cannot be linked with non-vacation of the quarter as contended by Shri Sawhney. It is no doubt true that in the case of Wazir Chand Vs. UOI' (O.A.No.2573/89) decided by the Tribunal's Full Bench on 25.10.90 (Full Bench Judgments of CAT 1988-91 Vol.II 287), it was held that withholding of entire amount of gratuity of a retired railway servant so long as he did not vacate the quarter, (in accordance with the General Manager, Northern Railway' Pension's Circular

dated 4.5.82) was legally impermissible, but the Railway Board Circular dated 24.4.82 which was statutoryin character and which authorised an appropriate 'hold back' amount from DCRG/Special contribution to GPF, as the case m ay be, for rent recoveries was legally valid if the same was permissible under the extant rules.

The Tribunal had expressely stated in that judgment that the rules made by the Railway Board may be set out in the Indian Railway Establishment Code itself or may be contained in a circular, a letter or a decision, and has held that this Railway Board Circular dated 24.4.82 being statutory in character has the force of a rule . That being the position, and only that portion of the applicant's DCRG having been held back, and adjusted, which was equivalent to the amount of rental dues (including penal rent) and electricity charges payable by him, Wazir Chand's case (Supra) does not help the applicant either. Further more, in the case of Rajpal Wahi Vs. Union of India' (SLP No.7688-91/88), decided by the Hon'ble Supreme Court dated 27.11.89, the respondents in their affidavit had specifically averred that under Railway Board Circular dated 24.4.82, the amount of DCRG had been held back temporarily and would be paid to the retiral employee when he ultimately vacated the quarter after recovering the penal rent to be levied (emphasis supplied). The Hon'ble Supreme Court were pleased specifically to note the averments in their order, and were further pleased to observe that it was in order to impress upon the

railway servant to vacate the quarter after his had entitlement ceased; that the railway authorities issued necessary instructions on the basis of said Railway Board Circular dated 24.4.82. In other words, the Hon'ble Supreme Court did not hold the retention of the DCRG of the railway servant for unauthorised occupation of the railway quarter or adjustment of penal rent from the DCRG in accordance with rules to be legally impermissible. Hence this ground taken by Shri Sawhney is rejected.

7. The second ground urged has manifestly no force either, because the details of the rental dues(including penal rent) and electricity charges are contained in respondents's letter dated 10.9.90(Annexure -RII) and bill dated 15.9.90 (Annexure-R III), both of which are addressed to the applicant.

8. As regards the third ground, Shri Sawhney has argued that cancellation of the allotment order of the quarter and a show cause notice to the applicant was essential before an action could be taken to recover penal rent. In this connection he relies upon the Delhi High Court's ruling in Harbhajan Singh Vs. UOI-1973 Labour IC 1659 (v 6c 73) and Awadhesh Kumar Vs. UOI'-AISLJ 1994(1)CAT 446.

As regard Harbhajan Singh's case (Supra), Shri Sawhney 's reference is based upon a mis-understanding of the import of that judgment. All that the judgment states is that the liability to pay outsiders rent under Rule 1713(b) (v) of Railway Establishment

(19)

Manual arose only when the occupant did not vacate the quarter after the cancellation of allotment. That can not be construed to mean that because no cancellation order was issued in the present case, the applicant was not liable to pay penal rent inspite of over stay. In fact, in Harbhajan Singh's case (Supra) itself, it has been held in penultimate paragraph while disposing of the case, that the stay of that petitioner in the quarter was unauthorised, because the rule authorised the over stay only for a period of four months after the date of transfer, and it was not necessary either for the railway authorities or for the Railway Board to declare formally the stay of the petitioner as unauthorised, by issuing an order cancelling allotment for penal consequences to be visited, because the rules themselves act as a notice that a higher rent could be recoverable for the period of overstay. As far as Awadesh Kumar's case (Supra) is concerned, which was decided on 30.8.93, the same is a Single Bench Judgment, while in the case of Shanker & others Vs. UOI'-1994(26) ATC-278, judgment in which was delivered on 16.9.93, it was conclusively held by a Division Bench of the Tribunal (Calcutta) that no notice is required to be issued before initiating recovery proceedings, where the applicant was aware of the administrative instructions laying down the consequences of unauthorised occupation. The applicant cannot seriously contend that he was unaware of the consequences of unauthorised occupation, and in the light of the Division Bench's judgment in Shanker's case (Supra), which is also later

in point of time than in Awadesh Kumar's case (Supra), it must be held that no show cause notice was required in this case before initiating recovery proceedings.

9. The next ground taken is that the penal rent cannot be recovered except by following the provisions of Section 7 of PP(EOU) Act. In this connection, Shri Sawhney has placed reliance on the case 'B.S.Vedera Vs. UOI' -1968 SLR(SC)6 in support of the preposition that under the proviso to Article 309 of the Constitution, the rules regulating the recruitment and conditions of service of public servants shall operate only till provision in that behalf is made by or under a legislative enactment and once such legislative enactment is made, action regulative service conditions etc, has to be taken only under that enactment and not outside it. At the outset it must be mentioned that the ruling cited by Shri Sawhney has no application to the facts of the present case as it relates not to unauthorised occupation of Govt. accommodation, but to the reversion of an Assistant to the post of/UDC, What is of direct relevance is Harbhajan Singh's case (Supra), cited by Shri Sawhney himself and discussed above, in the penultimate paragraph of which, while disposing of the application, it has been conclusively held that a railway servant who continues to occupy railway quarter beyond the authorisd period, should be liable to pay a higher rate of rent and the rules 1728, 1730 and 1713 (b) (v) Railway Establishment Manual themselves act as a notice that higher rate of rent would be recoverable for the period of overstay..That judgment further went on to hold that the rules are enforceable independently of the P.P.(EOU) Act in as much as they

were statutory rules and cannot be said to be discriminatory or depriving the petitioner of the benefits of the P.P.(EOU) Act. As the rules are supposed to be known to the railway servants, no further opportunity was necessary to be given to the petitioner befo e he was charged ~~at~~ a higher rent than the normal rent after the expiry of the period of an authorised occupation and the question of applicability of the P.P.(EOU) Act did not arise as the relevant rules are operative outside the Act. A similar view has been taken in Shanker's case(Supra) wherein after referring to the decision of the Hon'ble Supreme Court in New Delhi Muncipal Committee Vs. Kalu Ram- 1976(3) SCC 407, in which it has been held that Section 7 of P.P.(EOU) Act did not create a right but merely prescribed an alternative procedure for recovery of certain dues, the Tribunal rejected the contention that the respondents had obligation to move the Estate Officer under section 7 P.P.(EOU) Act in order to recover damages ~~from~~ the unauthorised occupation, and held that such procedure was merely an alternative procedure and the railway authorities could recover such dues by deducting the same from the salary. Hence this ground also is rejected.

10. The next ground taken, viz. that the details of deduction of Rs.3000/- on account of commercial debits ~~were~~ were not supplied, neednot detain us because the respondents have categorically stated in their reply that no commercial debits amounting to Rs.3000/- have been deducted and only adjustment as contained in paragraph 2 above ~~was~~ has be done.

11. Lastly, it has been argued that the adjustment is in breach of Rule 2308 of Railway

Establishment Code Volume II.

12. This issue has been discussed in some detail in paragraph 8 of Wazir Chand's case (Supra), wherein a reference has been made to a decision of Calcutta Bench of Tribunal in 'Union of India Vs. Baidyanath Hazra-1987(4) SLJ(CAT) 533. In Hazra's case (Supra), the question whether the railway authorites were competent to whhold gratuity in the face of Rule 2308 of the Indian Railway Establishment Code (Volume II), was discussed and it was held that the railway authorities did have a right to withold the gratuity of the respondent as the matter of aseertaining his outstanding dues remained to be finalised. Under the circumstances, this ground also lacks force.

13. It may be mentioned that a case of similar nature came up before a Bench of this Tribunal presided over by the former Chairman Hon'ble Mr. Justice V.S. Malimath and myself in CCP No.352/92 arising out of O.A.No.1309/90 and O.A .No.717/92 which was decided on 26.8.93. In that case, the petitioner had retired from service on 26.12.88 on med ical ground but stayed in the quarter allotted to him even after his retirement i.e. upto 18.12.89. The said quarter was regularised in favour of the petitioner's son who was given compassionate appointment. The petitioner approached with O.A.No. 1309/90 complaining that the gratuity amount was withheld without any justification. That petition was allowed on 18.3.91 with a direction to the respondents to pay the amount of gratuity due to

the applicant within 30 days, inter alia, observing that the respondents would be free to recover in accordance with law the amount claimed by them as license fee/damages/ penal rent for alleged unauthorised occupation of the quarter by the applicant after his retirement from service. Thepptitioner's claim for interest on delayed payment of gratuity to him was disallowed. The respondents refunded Rs.3,467/- to the petitioner on 15.2.93 which amount was withheld on the ground of certain due and earlier in May,1991, the respondents refunded to the petitioner a sum of Rs.13,164/- which according to him represented the balance of the gratuity amount payable to him. The contention of the p etitioner in CCP and the O.A was that the entire amount of gratuity should be paid without making any deduction and the respondents may realise the amount of licence fee/penal rent/electricity charges etc. in accordance with law. In our judgment dated 26.8.93, which was passed in CCP No.352/92 after hearing both sides at a considerable length, we held that the adjustment of penal rent for overstay, electricity charges etc. from the DCRG payable to the respondents was not legally impermissible.

14. Under the circumstances, the p rayer for refund of the penal rent, electricity charges etc. adjusted from the DCRG payble to the applicant with a further prayer for payment of interest on the said amount is rejected.

15. Before parting with this case, however, one aspect needs to be referred to. It appears that the penal rent in this particular case has been calculated

on the basis of Railway Board Circular dated 31.5.91 enhancing the rate of damages for unauthorised occupation of the residential accommodation w.e.f. 1.6.91 a copy of which has been filed by Shri Kshatriya for the respondents and has been taken on record. However, the period of unauthorised occupatio in this particular case is from 17.9.89 till 1.8.90 i.e. before coming into operation of the Circular dated 31.5.91. Manifestly, the enhanced rate cannot be applied with retrospective effect and the quantum of damages for unauthorised occupation of the Govt. quarter which the applicant is required to pay, will have to be determined on the basis of rates prevailing from the period 17.9.89 till 1.8.90.

16. Under the circumstances, this application is disposed of with a direction to the respondents to recalculate the amount of damages due from the applicant for unauthorised occupation of the railway quarter in accordance with the rates of damages prevailing during the period 17.9.89 till 1.8.90, and refund the balance, if any, to the applicant from out of the total sum adjusted, with a simple interest on the sum refunded at the rate of 10% per annum w.e.f. 1.8.90 till the actual date of refund.

17. These directions should be implemented within three months from the date of receipt of a copy of this judgment. No costs.

(S.R.ADIGE)
MEMBER(A)

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