

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.812/93

Date of decision: 5-10-1993

(13)

Shri Jaipal Singh .. Applicant

Versus

Union of India & Others .. Respondents

CORAM:

Hon'ble Shri C.J. Roy, Member (J)

For the applicant: Shri B.S. Mainee, Counsel

For the respondents: Shri H.K. Gangwani, Counsel

JUDGEMENT

The applicant is aggrieved by the orders dated 18.11.91 and 4.12.91 cancelling the tenancy of the Govt. quarter and imposing heavy damage rent with retrospective effect from 1.8.86 till date.

2. The applicant joined the Northern Railway as Rakshak in Railway Protection Force from 8.2.75 and his father was also employed as Sub-Inspector in the Northern Railway and later on posted on deputation to the Railway Board from where he retired on superannuation on 31.3.79. He claims that the Railway quarter No.96/7, Rly. Colony, Delhi Sadar, allotted to his father while he was in service, was regularised in his favour on the retirement of his father on 31.3.1979. The applicant is also on deputation to Railway Board. He made a request in January, 1986 for exchange of quarter No.96/7 to 95/5 in the same locality which was

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allowed and he continues to reside in the said quarter. He was issued with a letter dated 18.11.91 stating that he is in unauthorised occupation of the said quarter *upon the only ground* ^{as} *w.e.f. 1.3.86* having been transferred to Railway Board and also asking him to vacate the quarter within 10 days failing which eviction proceedings under PPE Act, 1971 would be initiated against him. He made a representation on 4.12.91 against this letter. The applicant has received another letter dated 5.12.91 imposing penal rent from 1.8.86 till the vacation of the quarter. The applicant claims that he has not been issued with any show cause notice for vacation of the quarter when it was regularised in his name after the retirement of his father and also he was allowed for exchange of the quarter.

3. The respondents have filed their counter denying the allegations made by the applicant on the ground that the quarter in question was never regularised in the name of the applicant on the retirement of his father and that the applicant may be directed to produce evidence to the effect that the quarter is regularised in his name. They also say in para 4.20 that it appears the instances cited where the quarter has been regularised are on compassionate grounds but it is not the case of the applicant that he is entitled for regularisation on compassionate ground.

4. They have further averred in para 5.4 that the registered notice dated 5.12.91 sent to the applicant was returned as he refused to accept the same. Subsequently a notice was pasted on the door of the applicant on 17.1.92 informing him that he is

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unauthorisedly occupying the railway premises belonging to Northern Railway when he is posted to Railway Board. Thus the applicant was proceeded under PPE Act, 1971 and the case was referred to the Estate Officer for recovery of arrears and vacation of the quarter on 27.1.1992. In view of this, the respondents pray that the application may be dismissed.

(B)

5. The applicant has filed a rejoinder denying the averments made in the counter and reasserting his contentions.

6. I have heard Shri B.S. Mainee, learned counsel for the applicant and Shri H.K. Gangwani, learned counsel for the respondents and perused the records.

7. The applicant was appointed as Rakshak in the Railway Protection Force of Northern Railway on 8.2.75 and his father was also an employee as Sub-Inspector in the Northern Railway and retired on 31.3.79. It is contended before me that the quarter was allotted to the applicant on the retirement of his father on 31.3.79. The applicant was deputed to work in the Central Crime Bureau of Railway Board in August, 1980 and he was allowed exchange of quarter No.96/7 to No.95/5 in the same locality by the competent authority as per Annexure A-3 which clearly states that Rly. Qr. No.95/5 at Naya Bazar/Delhi is allotted to Naik Jaipal Singh of CCB/Rly. Board, New Delhi in exchange of Rly. Qr. No.96/7 Naya Bazar/Delhi, which is in his possession.

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8. Normal rent was being recovered from the salary of the applicant regularly and he continues to live in the said quarter.

(16)

9. The applicant has been absorbed as LDC in Railway Board and he is presently working as Hindi Assistant there. Therefore whether he worked as Rakshak or LDC or Hindi Assistant, all these posts are under the Railway only.

10. The applicant's contention is that on 18.11.91 by Annexure A-1 the respondents have issued notice declaring his occupation of the railway quarter as unauthorised with retrospective effect from 1.8.86. It is strange what the respondents have been doing all these years right from allowing exchange of quarter vide Annexure A-3 to issuance of notice on 18.11.91. The respondents have almost kept quite and have not taken any action thereby giving an impression to the applicant that he was staying in the quarter as if it is regularised in his name. It would be even presumed that it may be deemed regularisation by the efflux of time. The applicant claims that it is regularised in his name but he also claims that he has lost the order of regularisation. That apart, allowing him to continue as if it is regularised for such a long period and collecting normal rent, the respondents have almost made the applicant to believe that he is living in the quarter as per rules.

11. But the respondents have issued the notice declaring him his occupation as unauthorised with retrospective effect from 1.8.86 as per Annexure A-1 as

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stated supra. The applicant made a representation on 4.12.91 protesting this and also drawing their attention that a number of railway staff working in Railway Board are retaining the railway quarters belonging to Northern Railway. It may be noted here that the Respondents have issued another letter dated 5.12.91 seeking to recover 5 times of the assessed rent or 10% of the emoluments whichever is higher from 1.8.86 to 31.3.89 and damages at the rate of 468.25 per month from 1.4.89 to 31.5.91 and also further @ Rs.216/- per month from 1.6.91 onwards.

(17)

12. It may be pertinent to mention here that when the quarter was allotted to his father and regularised and his son was allowed to continue in the quarter for such a long time, it can not be subsequently termed as unauthorised only because the applicant is posted in Railway Board. As stated supra, anywhere he is working whether on deputation or posted they are all under Northern Railway only. By this kind of impugned order, the respondents have even gone against the spirit behind which says that a retired employee should have shelter on his shoulders after his retirement and live peacefully with his children especially when his son is also staying there with the permission for exchange of quarter by the respondents.

13. The allegation that a large number of railway employees working in Railway Board are retaining the railway quarters as stated in para 4.20 of the OA has not been denied by the respondents.

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14. The respondents have issued a notice declaring him unauthorised occupant without issuing a pre-decisional show cause notice and also without terminating the tenancy as per law. The action of imposing penal rent with retrospective effect seems to be not conducive to and in accordance with natural justice. The respondents ought to have issued a pre-decisional show cause notice with an opportunity of being heard and afterwards appropriate orders should have been passed. The respondents have failed to do so.

(18)

15. The respondents have not drawn any rule to my notice as to how the damage rent from retrospective effect is permissible.

16. Even according to 4.20 of the application/ the application, there are several instances where the staff working in the Railway Board office had been given Northern Railway quarter on compassionate ground viz.

Shri R.S. Shukla, Assistant, TT-III Branch, Rly. Board, allotted Railway Quarter No.119, Babar Lane;

Shri Bansi Lal, C.A., DR, Railway Board allotted Railway Quarter No.C-F, Railway Colony, Lajpat Nagar

Smt. Ushah Soin, UDC, Accounts Directorate, Railway Board, allotted Railway Quarter No.117, Babar Lane

But the respondents say that the instances cited where the quarter has been regularised are on compassionate grounds, it is not the case of the applicant that he is entitled for regularisation on compassionate ground.

17. It can also been in Annexure R-1 para 2 that says "that the respondent was allowed to occupy Rly. Qr.No.95/5 at Delhi Sadar Dli under the terms of service rules/Rules regarding allotment of Qr to Rly. Staff" After so allowing, how come that they declared him unauthorised occupant with retrospective effect? It further states that "tenancy was terminated with effect from 1.8.86 due to transfer to Rly. Bd". This also can not be accepted because transfer to Railway Board is not a deputation as they are under the same department ~~on this~~ ^{by} sole ground ~~in~~ ⁱⁿ

18. The respondents have blown hot and cold and put the hapless applicant in jeopardy by passing the orders as they pleased. The contention of the respondents that eviction notice has been issued because he was working in Railway Board is not palatable to me because wherever he is working, he continues to work in the Railways. If he is not entitled for that quarter then he should have ~~arranging~~ ^{arranging} ~~alleging~~ ^{alleging} been allotted alternative accommodation, ~~alleging~~ that he was in unauthorised occupation earlier.

19. It could be seen that without issuing a pre-decisional notice and also without terminating the tenancy the respondents can not declare him unauthorised occupant as held in OA No.365 of 1992 decided on 23.12.92 by the Cuttack Bench of the Tribunal in the case of B.Sankaraiah Vs. Union of India and another, which is as follows:

Held that law is well-settled that once an action is being proposed to be taken against a Government servant which may affect his service prospects, notice ~~on~~ the proposed action must be given to the concerned Government servant failing which principles of natural justice are violated(para 7)

Held further that there is a case where heavy amount of damage rent and penal rent has been assessed over the applicant. If notice had been given to the applicant, he would have certainly submitted his defence and would have submitted whatever he had to say in the matter and this procedure not having been followed, applying the above mentioned principles laid down by Their Lordships of the Supreme Court in the above mentioned cases, I have absolutely no hesitation in my mind to say that principles of natural justice have been violated and hence the order passed by the concerned authority imposing penal rent and damage rent are hereby quashed. (para 8).

(V/D)

The following cases were referred in the above judgement:

1. F.B. Judgement of CAT (1989-1991) pg.287
2. 1992 (3) SLJ (CAT) 107
3. (1987) 4 SCC 431
4. JT 1992 (5) SC 621

This decision goes in favour of the applicant.

20. The instructions of Railway Board's letter dated 28.10.86 produced by the respondents' counsel on the subject of "Retention of railway accommodation by railway servants proceeding on deputation/secondment to COFOIS" is not applicable in this case as the applicant is working in the Railway Board.

21. All the issues regarding issue of notice by registered post, pasting of order on the door are after predetermined action which are only an afterthought without issuing pre-decisional notice.

22. As per the decision stated supra and the laws laid down in this regard, the issuance of impugned orders clearly violates principles of natural justice. Also the respondents' case is weakened by abnormal delay and latches.

23. The contention of the learned counsel for the respondents that deputation to Railway Board would require different pool of accommodation is not tenable

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because wherever the applicant is working, in any capacity, he is still under the same Northern Railway. The transfer of the applicant to Central Crime Bureau in August, 1980 can not be considered as deputation as it is also under the Northern Railway.

(2)

24. It is also claimed by the applicant that the tenancy has not so far been terminated, no notice was issued declaring him unauthorised occupant with retrospective effect from 1.3.86 onwards. The applicant is working in Railway Board and is entitled to retain the quarter which is said to have been regularised in his name from 31.3.1979. So it can not be now disputed about regularisation at this stage. The competent authority has allowed exchange of quarter as per Annexure A-3. Annexure A-I is issued to the applicant arbitrarily and without terminating his tenancy with retrospective effect.

25. Dealing with the application of natural justice in the context of the employment relationship, the Hon'ble Supreme Court has held that punishment can not be applied retrospectively in respect of an act committed, before that particular act was made penal. It is a basic principle of natural justice that no one can be penalised on the ground of conduct which was not penal on the day it was committed. (Pyarelal Sharma Vs. Managing Director (1989) 59, Factory Law Reports 220(SC).¹ Thus penal law or taxable law can not be passed retrospectively unless it is specifically stated so. The damage rent is penal in nature.

¹This appears in the text of Constitution of India-selective comments by B.M.Bakshi, second revised & enlarged edition 1992 at page 132 in para 3.

26. Therefore, I have no hesitation to hold that the applicant has made out a case. I, therefore, set aside and quash the impugned orders dated 18.11.91 and 4.12.91. However, liberty is given to the respondents to take action against the applicant after issuing a show cause notice and personal hearing in accordance with the ~~extant~~ rules.

With the above direction, the application is disposed off with no order as to costs.

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(C.J. ROY)
Member (J)

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