

(34)

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

original Application No. 376 of 1997

this the 13th day of May 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Vinod Kumar Gaur, aged about 42 years, s/o Sri Gajraj Singh Gaur, R/o RB III, Sector II, Quarter No. 62 Railway Colony, Agra Cantt.

Applicant.

By Advocate : Sri Rakesh Verma.

Versus.

1. Union of India through General Manager, Central Railway, Mumbai.
2. Divisional Railway Manager, Central Railway, Jhansi.
3. Chief Workshop Manager, Rail Spring Factory, Sithauli, Gwalior.

Respondents.

By Advocate : Sri D.C. Saxena.

ORDER

By this O.A., applicant has sought the following relief(s):

"(i) to issue a writ, order or direction in the nature of certiorari thereby quashing the impugned order dated 26.2.94 (Annexure A-1)

(ii) to issue another writ, order or direction in the nature of mandamus thereby commanding the respondents including respondent no.1 to immediately convey the decision as per the order of Chief Workshop Manager given in his letter dated 8.3.95 (Annexure A-III) and further commanding the respondent nos. 2 & 3 not to effect any recovery from the running pay-sheet of the petitioner and finally commanding the respondent no.3 to return the entire amount of penal rent from 30.4.92 till date through a special paysheet.

(iii) -----"

2. It is submitted by the applicant that while he was posted at Agra Cantt under DRM, Central Railway, Jhansi, he was allotted Qr. no. RB III Sector II, quarter no.62 at Agra vide letter dated 20.8.90 (Annexure A-II). Vide order dated 8.3.95, he was promoted as Lab. Supdt and posted at

8

Gwalior with the assurance that he would soon be transferred back to Agra (Annexure A-III). While moving-out, he requested permission to retain quarter at Agra on 30.10.91 (Annexure A-IV) which was duly allowed vide letter dated 21.2.1992 (Annexure A-V).

3. The grievance of the applicant is that he was never given any show-cause notice, nor was declared unauthorisedly occupant, nor any proceedings under PP Act were initiated, nor tenancy was terminated under Section 106 of TPA or PP Act, therefore, recovery of Rs.1200/- per month from his salary is illegal, arbitrary and not sustainable in law. It is further submitted by the applicant that he sought clarification vide application dated 1.3.94 as to which rationale or criteria has been adopted while recovering Rs.1200/- (Annexure A-VI). No reply was given, so he gave another representation on 25.2.97 (Annexure A-VII), but without any response, ultimately, he was transferred back to Agra vide letter dated 20.6.95 (Annexure A-VIII).

4. Respondents on the other hand have submitted that the applicant was in unauthorised ~~occupy~~ occupation of Qr. RB III Sector II/62, Agra since 1.5.92, therefore, penal rent/damage rent was deducted @ Rs.1200/- per month from the salary of the applicant from March'93 till April'99, but vide letter dated 10.2.98 the ~~rate~~ of damage rent has been revised w.e.f. 1.1.1997, accordingly, the damage rent was started @ Rs.2590/- per month from May'99 and recovery of arrears @ Rs.1000/- per month had to be started from June'99.

5. They have further explained that the applicant was transferred to R.S.K. Sitholi in Sept'91, however, at his request, he was allowed to retain the quarter for a period of 4 months from 9.9.91 to 10.1.92 vide letter dated 26.11.91 (Annexure CA-2).

6. He was given further permission upto 30.4.92 vide letter dated 21.2.92 and in the same letter he was informed that no further extension will be possible (Annexure CA-3).

8

Therefore, he should have vacated the quarter w.e.f. 1.5.92, but he continued to retain the same un-authorisedly. More-over he never applied for a quarter at Gwalior, thus under rules, damage rent deducted from his salary rightly. They admitted that the applicant was transferred back to Agra on 20.6.95. They have further explained that plinth area of the quarter is 61.26 Sq. mtr. and from 1.11.97 the damage rent has been increased to Rs.37 per sq. metr. Accordingly, the applicant was informed on 27.5.99 through letter about increase of recovery of damage rent would be 74630/- and an instalment of Rs.1000/- per month would also be deducted from June'99. They have also given the break-up of amounts to be paid by the applicant which is as follows :

"Recovery Statement of damage rent in favour of Shri Vinod Kumar Gauri, Lab Supdt. Agra

Rly Qtr. No. RB-III 62/C at Agra
plinth area of Rly Qtr. 61.26 sq. mtr.
permission for retention of Rly. Qtr. was
granted from 9.9.91 to 30.4.92.

Damage rent recovery from 1.5.92 to 31.5.99
are as under :

(a) From 1.5.92 to 31.5.94 @ 15/- per Sq. Mtr.
per month (25 months) i.e. 61.26 x 15 919 per month

Rs.22975/-

(b) From 1.6.94 to 31.5.95 @ Rs.25 per Sq. Mtr
per month i.e. 61.26x25 Rs.1532 per month
Rs. 18384

(c) From 1.6.95 to 31.10.97 @ 32/- per Sq. Mtr.
(29 months) i.e. 61.26 x 32 Rs.1960 per month

Rs.56840/-

(d) From 1.11.1997 to 31.5.99 @ Rs. 37/- per
Sq. Mtr (19 months) i.e. 61.26 x 37 Rs. 2267 per month
Rs.43073

Total (A+B+C+D)

Rs.141272/-

7. They have also annexed number of letters with the counter to show that damage rent was deducted as the applicant did not vacate the quarter in spite of repeated letters and requests knowing fully well the consequences, therefore, he cannot have any grievance now. Counsel for the respondents submitted that having obtained extension only till academic session and having made use of the extension granted, he is now estopped from taking any other argument.

S

(37)

They have also annexed letters dated 20.2.98 and 10.5.99 to show that the applicant's request to regularise the same quarter has since been rejected.

8. I have heard both the counsel and perused the pleadings as well as judgments referred to by both the sides.

9. The counsel for applicant has relied on 1995 SCC (L&S) 114 and 1996 (5) SCC 54, whereas the respondents' counsel has placed reliance on 2002 SCC (L&S) 289, Full Bench judgment given by this Tribunal in Ram Poojan's case and two judgments given by this Tribunal namely Ram Gopal Anand Vs. Union of India & Others in O.A. no. 45 of 2000 decided on 30.5.2001 wherein the Tribunal had held that after the period upto which the applicant, therein, was allowed to retain the quarter, he becomes unauthorised occupant for which he is liable to pay damage rent for which he cannot escape in view of law laid down in Ram Pujan Vs. U.O.I. & ors. 1996 (34) ATC 434. In Ram Pjuan's case, the Full Bench had already decided that there is no need to give any show-cause notice to the person who retain the quarter after his transfer unauthorisedly and is liable to pay the penal rent if he continues to occupy the quarter beyond the permissible period. In 2002 SCC (L&S) 289 the Hon'ble Supreme Court had an occasion to deal with the question of estoppel, but I don't think that the same would apply in the given facts of the case. However, the principle of estoppel would definitely come in the case as the applicant had himself sought permission to retain the quarter upto academic session for the year 1992, which was duly permitted by the competent authority upto April, 92. Therefore, after the said period, applicant ought to have vacated the quarter on his own, but since he continued to retain the quarter at Agra without any permission, definitely he becomes un-authorised occupant especially when in the letter by which he was granted extension, it was mentioned that no further extension will be permissible.

therefore, he lived in the quarter knowing the consequences very well. The decision cited by the applicant's counsel would not apply in the given facts of the case because in the case of S.C. Bose, the facts were that the appellant, therein, was transferred from one department to another, as a result of which he became entitled to accommodation in the general pool, but was not yet given any accommodation from the general pool, therefore, he was allowed to stay in the accommodation in the department pool and it was in those circumstances that recovery of penal rent and damage rent for continuing occupation of the accommodation of the department pool was held unjustified, whereas in the instant case, applicant had been transferred from one station to another and there is a specific rule in the railways that on transfer person can retain the accommodation only for two months or with the permission of the competent authority for another six months, but thereafter if the person continues in the quarter un-authorisedly, he is liable to pay the damage rent. The applicant had been repeatedly asked to vacate the quarter, but in spite of that, he did not vacate the quarter at Agra. Moreover, he had not applied for further extention of the quarter, therefore, this judgment can be no help to the applicant.

10. Reliance by the applicant on 1996 5 SCC 54 is also totally misplaced inasmuch as that was a case against LIC where no such rule existed. In the case of Ram Pujan, Full Bench had held that retention of the accommodation after expiry of the permissible period would be deemed to be un-authorised and no specific order cancelling the allotment is necessary and penal rent can be recovered from the salary without resorting the proceedings under PP Act, 1971 in view of the Railway Board's letters dated 17.12.87 and 15.1.90. Similarly it was held in 1995 ATC 332 that normal/market rent can be recovered even from the DCRG, no notice is required as the employee is supposed to know the consequences of overstay in the Government accommodation.

8

(59)

11. In view of the above discussions, it is clear that the applicant is liable to pay damage rent, therefore, I do not find any irregularity in the orders passed by the respondents. The ~~mere~~ fact that he was posted back in Agra ^{from U.S.} would not absolve him ~~to~~ ^{from} liability to pay damage rent. In any case, the respondents have already rejected the applicant's request for regularisation of the quarter. Therefore, I do not find any merit in the O.A. The O.A. is accordingly dismissed with no order as to costs.



MEMBER (J)

GIRISH/-