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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1427 of 1987.

(Writ Petition No. 2550 of 1980)

Sri Bharat Singh Petitioner.

Versus

Union of India & others Respondents.

Hon'ble Justice K. Nath, V.C.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This Writ Petition No. 2550 of 1980 filed by Sri Bharat Singh, a Coaching Clerk at Kashi Railway Station, Northern Railway, in the High Court of Judicature at Allahabad against the Union of India and five other Railway authorities, has come up for disposal on transfer under Section 29 of the Administrative Tribunals Act, 1985. The admitted facts, relevant for decision in this case, are, briefly, as follows :-

2. The petitioner was posted on transfer from Zafrabad Railway Station to Kashi Railway Station on 21.6.1959. He was allotted railway quarters at Kashi with effect from 21.6.1959. He was transferred from Kashi Railway Station to Lucknow on 13.8.1966. On his transfer to Lucknow he did not vacate his residential quarters allotted to him at Kashi, as aforesaid. After his transfer to Lucknow, and he was posted to Akbarpur for sometime/again ~~and~~ transferred back to Lucknow on 15.10.1975. He vacated the quarters at Kashi on 20.10.1975. The Railway authorities had issued notices to the petitioner a number of times seeking his explanation for not vacating the quarters on his transfer from Kashi to Lucknow on 6.8.1966 and stating that he was liable to pay the penal rent in term of 1967 circular (Annexures 'I', 'III' & 'IV' to the writ petition). He was also threatened with disciplinary action for not vacating the

quarters. The penal rent minus the amount already paid has been deducted from the salary of the petitioner in instalments. The petitioner had, therefore, prayed for quashing the orders, if any, passed for realising penal rent by the respondents. He had also sought for directions to the respondents not to realise penal rent and to refund the money already realised as penal rent. The petitioner's prayer for staying the realisation of arrears of penal rent, during pendency of the writ petition, was considered by the Hon'ble High Court which rejected the application for stay on the ground that no case had been made out for grant of such an interim order, on 5.8.1981.

3. The main ground urged by the petitioner is that he was a tenant and neither his tenancy was determined nor was there any cancellation of the allotment of the quarters, as provided under para 1713(b)(v) of the Indian Railway Establishment Manual (IREM). He further argues that he cannot be asked to pay penal rent as he is not an unauthorised occupant of the quarters. He further states that the tenancy right cannot be abrogated by the rules made for railway quarters.

4. In the counter affidavit filed on behalf of the respondents it is stated that the house rent, according to rules, was realised from the petitioner only after finalisation of necessary investigations, due to his failure to vacate the quarters and his unauthorised retention of the same at Kashi even after his transfer from there on 13.8.1966. The respondents aver that on transfer to Lucknow on 13.8.1966 the petitioner should have vacated the railway quarters at Kashi. The petitioner neither did so nor sought necessary permission for retention of the quarters. The respondents assert that the realisation of the penal rent was done exactly in accordance with the relevant rules in the IREM. In Annexure 'I' to the counter affidavit there is a work-sheet dated 22.9.1980 showing the ^{detailed} calculations of the rent due, rent paid earlier and the ^{outstanding} rent to be realised, which has actually been realised.

5. The case was heard on 29.11.1989 when Sri N.K. Saxena, learned counsel, argued on behalf of the petitioner, and Sri A.K. Gaur, learned counsel, presented the case on behalf of the respondents.

6. The learned counsel for the petitioner mainly relied on his interpretation of para 1713(b)(v) of the IREM, and a decision of the Calcutta High Court, which will be referred to presently in this order. According to the learned counsel, the above mentioned para provides for charging of penal rent when the railway servant does not vacate the residence after the cancellation of allotment. According to the petitioner, there was no cancellation of the allotment made to him and therefore, under the above rule, no penal rent could be charged. Para 1713 of the IREM deals with "Recovery of rent". Clause (a) of this para deals with charging of normal rent, and clause (b) is regarding charging of rent in excess of the normal rent under clause (a). This clause states that notwithstanding anything contained in clause (a) of para 1713 the railway administration may, by general or special order, provide for charging a rent in excess of 10 per cent of the emoluments from a railway servant - (i) who is not required or permitted to reside on duty at the station at which the residence is supplied to him, /etc. & (v) who does not vacate the residence after the cancellation of the allotment. This provision is only for empowering the railway administration to prescribe penal rates of rent in various circumstances. Sub-clause (v) of clause (b) of para 1713 of the IREM no-doubt talks about cancellation of the allotment. The argument of the learned counsel for the respondents as well as the stand taken by the respondents in the pleadings is that on his transfer from Kashi to Lucknow on 13.8.1986 the allotment of quarters to the petitioner at Kashi stood terminated by virtue of the standing rules and even if ^{there} ceased was no specific cancellation, the petitioner ~~was~~ to be entitled to reside in the quarters after the date unless, of course ^{permitted} by the appropriate authorities in accordance with the ^{rules. There} ^{er}

is force in this contention of the respondents. Even otherwise, sub-clause (i) of clause (b) of para 1713, cited above, also seems to cover the situation, as in the present case, since the petitioner was not required or permitted to reside on duty at Kashi. The above mentioned contention of the petitioner is, therefore, to be rejected.

7. The next contention of the learned counsel for the petitioner, during the hearing, was that the decision in the case of Rabindra Nath Bose v. G.M. Eastern Railway, Calcutta & others (1976(1)SLR 692) is directly applicable in the case of the petitioner. It is argued that in that case it was held that if the rent was recovered and accepted from the occupier of the quarters, he cannot be said to be an unauthorised occupant and no penal rent can be imposed upon such a tenant so long as his tenancy was not determined. On a deeper reading of the judgment, as a whole, it is seen that the ratio in that case was based on certain special circumstances of that case and cannot be extended to other situations as a general rule. In that case the petitioner, a Typist, who was entitled to occupy a railway quarters, made an application for allotment in July, 1964. He was informed by a letter dated 1.8.1964 that there was no vacant quarter at Ballygunge, as desired by the applicant-petitioner. It is stated in the judgment that in some unavoidable circumstances, the petitioner was compelled to occupy the said vacant quarters and requested the authority concerned to regularise the issue. He was directed to vacate the quarters by a letter dated 28.11.1964. He again made a representation and this kind of exchange continued. In 1965 he was informed that no more time would be allowed and that disciplinary action would be taken, if he failed to vacate the quarters. No action was taken against the petitioner till 1968 when the Chief Security Officer recommended allotment of quarters to the petitioner for ~~xxx~~ ^{Am} amelioration of the hardship that he ~~would~~ face. In February, 1969 he was again told that disciplinary action would be taken against him besides deduction of market ^{rate of} rent, if he did not vacate the quarters. A charge-sheets was issued

to him. On 5.6.1969 the Security Officer ordered collection of penal rent with effect from 10.10.1970. On 16.12.1972 the Chief Security Officer wrote to the General Manager giving ^{the} ~~on~~ full history of the case. It was specifically stated that he was in occupation of the quarters for the last 8 years, even though unauthorisedly, and usual rent was also recovered from him and, therefore, it would be difficult to oust him and that the recovery of penal rent would place the whole family in a difficult position. The judgment of the Hon'ble Court points out that it was not disputed that the petitioner was all along entitled to be allotted with railway quarters as a railway employee. This statement is significant because this shows that in order ^{to be entitled} to occupy the railway quarters, one must be a railway employee at the place ¹⁹⁶⁶ ~~of duty~~. The facts of the above case of Calcutta are totally different from the case of the petitioner under discussion. Unlike in the Calcutta case the very basic right of entitlement to the quarters ceased in respect of the present petitioner on his transfer from Kashi to Lucknow on 13.8.1966, which was not the position in the case of Rabindra Nath Bose (supra) where the petitioner was all along entitled to be allotted quarters and his occupation of the quarters even without a specific allotment was in consequence of ^{the} ~~of~~ the acquiescence of the department for a number of years and no serious action was taken initially for evicting the petitioner in that case. It is in those circumstances that it was held that there was no unauthorised occupation in that case. There is nothing in the judgment to the effect that as a general rule, so long as a railway servant pays the rent or rent is recovered from him, he is in authorised occupation irrespective of the fact that he is transferred from the place of posting to another place.

7. The learned counsel for the respondents referred to the various provisions contained in Chapter XVII of the IREM. Para 1728 of the IREM deals with Retention of railway quarters during periods of leave, deputation, suspension, etc. Paras 1732 and 1733 provide for Retention of quarters on transfer to another

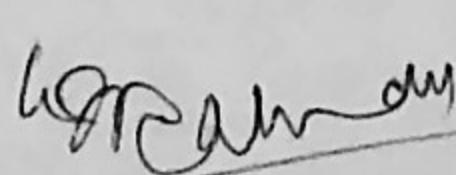
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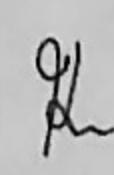
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railway or office. The first para, referred to above, states that the General Manager may, on his personal orders, permit railway servants who are transferred to another railway or office in the interest of administration, to retain their quarters on the parent railway for a period not exceeding two months. The second para, i.e. 1733, referred to above, deals with similar provision for grant of permission to railway servants transferred permanently from one station to another on the same railway to retain railway residences at the old station for a period not exceeding two months. These provisions leave no room for doubt that on transfer from one station to another ^a ~~on/regular~~ basis, the railway servant becomes disentitled to reside in the quarters allotted to him in the old station ^{to reside} ~~quarters~~ and he has no right to continue ⁱⁿ ~~such~~ ^{one} ~~station~~ after his transfer. If he applies to the appropriate authorities, they may grant permission for retaining the quarters for a short time on payment of normal rent. The Hon'ble Calcutta High Court had not/pronounced anything on these provisions which have not been declared invalid. Such provisions also seem to have a direct nexus with the object of providing quarters to railway servants.

8. In these circumstances, we find no justification for holding that the petitioner was in authorised occupation of the quarters at Kashi even after his transfer to Lucknow. The petitioner has not raised any other major contention or dispute regarding the correctness of the levy of penal rent.

9. In view of above, we find no merit in the writ petition. It is accordingly dismissed with no order as to costs.


MEMBER (A).


VICE-CHAIRMAN.

Dated: January 15, 1989.

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