

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

O.A. No. 556 of 1992.

Kamala Pd. Srivastava ..... Applicant.

Versus.

Union of India and others ..... Respondants.

Hon'ble Mr. K. Obayya, A.M.

Hon'ble Mr. A.K. Sinha, J.M.

(By Hon'ble Mr. A.K. Sinha, J.M.).

The applicant, who has retired on 31.7.88 from Railway Service as senior clerk from the office of the Chief Mechanical Engineer (C.M.E), N.E. Railway, Gorakhpur, has filed this application under Section 19 of the Administrative Tribunal's Act, 1985 with a prayer for issuance of directions to the respondents declaring circular dated 24.4.82 issued by the Railway Board (Annexure I) as unconstitutional being violative of Article 14 of the Constitution of India and further for a direction to the respondents to give compensatory passes and release all the gratuity and other retiral dues with interest at the rate of 20%.


2. Shorn of unnecessary details, the short facts giving rise to this application are as follows:

The applicant who retired from Railway Service on 31.7.88 was allotted Qr. No.689-B at Krishna Nagar Railway Colony, Gorakhpur, while in service. He vacated the said quarter on 17.9.91 after about a little over two years and odd months and consequently his compensatory passes besides the gratuity amount Rs.28,000/- were withheld in view of circular dt.24.4.82(Annexure I), which is violative of Article 14 of the Constitution. It was stated further that the quarter in question which was allotted to the applicant could not be said to be unauthorisedly occu-

occupied by the applicant so long the allotment was not cancelled and as such the act of the respondents withholding his gratuity money and compensatory/complimentary passes was illegal and not permissible under law. It would appear that the Estate Officer had issued notices under the provision of the Public Premises (Eviction & Unauthorised) Occupation Act, 1971 and by its order dated 5.1.90 (vide Annexure II) had directed the applicant for obtaining the extension of retention of the quarter in question in view of the sickness of his wife from the competent Authority and to inform him accordingly. It further transpires that the applicant had also prayed for allotment of the quarter in favour of his son who is also working as Store Cashier in the scale of pay of Rs. 950-1500/- and this fact is also mentioned in the order of the Estate Officer (Vide Annexure II). It is stated further that the applicant had by his representation dated 27.1.92, 29.1.92 & 7.2.92 had requested the C.M.E. to release his retiral benefits without any delay but nothing was done although the applicant had vacated the quarter in question on 17.9.91 and that the Estate Officer had dropped the eviction proceedings against the applicant. It was submitted that after issuance of clearance certificate (Annexure V) dt. 19.9.91 by the Dy. C.M.E. in favour of the applicant, there was no justification for withholding the amount of gratuity and compensatory/complimentary passes in favour of the applicant.

3. On these averments, the applicant has prayed for the above reliefs.

4. The respondents have appeared on notices and filed their counter affidavit repudiating the claim of the applicant stating inter-alia that the applicant has already been paid (i) leave encashment Rs. 13,432/-,(ii)



Group Insurance amount Rs.1604/- as per extent rules. The retirement gratuity amount and compensatory passes were withheld due to non-vacation of Railway Quarter in terms of Rly. Board's letter dt.19.8.87 and 16.8.87. It was stated that the applicant had retained Rly. Quarter No. 669-B Krishna Nagar Railway Colony, Gorakhpur, from 1.4.89 to 16.9.91 and as such the rent of the quarter besides electric charges for the said period of occupation of the applicant was worked out as per rules which comes to Rs.33,879/- and the after retirement gratuity of the applicant which was withheld comes to Rs.24,750/-. Therefore, it was sought to be contended that after setting off the dues of the applicant there remained nothing to be paid to him towards the amount of gratuity. The respondents have, in this regard, given a detailed chart of calculation in paragraph 4 of the counter affidavit.

5. As regards circular of the Rly. Board dated 24.4.82 was concerned, the contention of the learned counsel for the respondent was that it has got a statutory force and does not in any view violates the Constitutional provisions muchless Article 14 of the Constitution. On all these grounds, it has been sought to be urged on behalf of the respondents that as per calculation according to the extent rules, the outstanding dues in respect of house rent and electric dues were set off from the gratuity amount of the applicant and there was nothing left to be paid to the applicant towards his gratuity and as such the application has got no merit and fit to be dismissed.

6. The question for consideration is whether the applicant is entitled to the relief claimed ?

7. We have heard the arguments of the rival parties at length and also perused the pleadings and the documents filed by them. It is to be noticed that the applicant retired from service on 31.7.88 but as yet his

gratuity amount has not been paid which is his statutory right to get immediately after his retirement. Admittedly, the applicant was in occupation of the quarter which he continued to occupy even after his retirement which he vacated on 17.9.91, ie, after about a little over two years of his retirement. Admittedly, he was permitted to retain the quarter for about eight months which fact is borne out from the order dated 5.1.90 (vide Annexure A-II) passed by the Estate Officer before whom the proceedings for eviction under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was taken out against the applicant by the respondents. On perusal of the order dt. 5.1.90 (Annexure A-II) of the Estate Officer, it would be seen that considering the case of the parties, the Estate Officer had observed thus:

"Keeping in view the sickness of the defendant's wife (applicant's wife), the court is of the view the case may be reconsidered for allotment of this quarter in the name of Shri Gopalji Srivastava who is the son of the defendant as a special case or otherwise the extension for retention of the quarter for further period may be obtained from the competent authority keeping in view the sickness of his wife. The defendant has to see the competent authority along with the certificate of the sickness of his wife."


The decision taken in the matter may be communicated for knowledge of the court for further necessary action".

The Estate Officer had also observed in his earlier paragraph of his order dt. 5.1.90 quoted above that from hearing and seeing the papers, the applicant's son who is also working as Store Chashier in the scale of Rs. 950-1500/- in the Railways and the applicant had requested manytimes for share-accomodation in the above quarter but the same could not be alloted to him. It appears that the applicant, as per observation of the Estate Officer, had met the C.M.E. with his application dt. 19.1.90 with a request to regularise the quarter in the name of his son Gopalji Srivastava but the same was not accepted by the C.M.E and accordingly the applicant was informed vide C.M.E.'s letter dt. 12.2.90

4


It was contended by the learned counsel for the respondent that as the son of the applicant is a casual labour in the railways and, therefore, he could not be accommodated in the quarter in question occupied by the applicant. This contention of the learned counsel for the respondent as spelt out in paragraph 11 of the counter affidavit does not appear to be correct inasmuch as the order of the Estate Officer dated 5.1.90 would, on perusal, show that the Estate Officer had, on perusal of the relevant papers in this regard and hearing the parties in the eviction proceeding had observed that the son of the applicant namely Gopali Srivastava is working as Store Cashier in the scale of pay of Rs.900 -1500 and, as such, it could not be said that the son of the applicant was or is a casual labour and that the quarter in question could not have been allotted to him considering the special case of the applicant that his wife was sick.

8. The various circulars and guidelines issued by the Railway Board which the respondents have filed as Annexures CA-1, CA-2, CA-3 and CA-4 relating to 'prompt payment of pension & gratuity to the superannuating railway employees', 'unauthorised retention of Railway Quarters by retired railway officers/staffs and steps to be taken for vacation', 'retention of railway accommodation by railway employees' and 'rates of damages for unauthorised occupation of railway accommodation to be charged' would show that through these guidelines issued from time to time, the railway administration desires that prompt steps be taken regarding payment of pension and gratuity to its retiring employees and before so doing the administration should ensure that the quarter etc. in occupation of the employees should be vacated and the dues etc. in this regard or damages regarding unauthorised occupation of the quarters by the retired employees should be realised in time but that does not override the general law regarding eviction and realising the damages etc. from the retired railway employees.



as enshrined in the Public Premises (Eviction Of Unauthorised Occupation) Act, 1971 under which steps had already been taken against the applicant as indicated in the order of the Estate Officer dt. 5.1.90 passed in Eviction Case No. 29 of 1989.

9. The position of an employee in occupation of a railway quarter is not that of a tenant but a licensee and certainly the position of a licensee is insecure as compared to that of a tenant on expiry of the lease because such a tenant cannot be said to continue in 'lawful possession' if such possession was not otherwise protected statutorily. In such a situation where the lease of a licensee expires or comes to an end by virtue of his ceasing to be in the employment either by death, retirement or transfer as the case may be and if the employee or his family continues to occupy the quarter or the premises in question, his possession in such a situation may be termed as 'juridical possession' which is protected by law against wrongful dispossession though it cannot be equated with 'lawful possession'. It is a part of concept of 'rule of law' that no body can claim to a right to dispossess by use of force or coercion without recourse to procedure in accordance with law which is recognised and countenanced by Courts. In that view of the matter where the Railway Authorities took recourse to coercive methods by passing 'held back' orders in respect of retiral dues of the retired employees for getting eviction from the quarter which he continued to occupy even after his retirement and beyond permissible period in a circumstances not within his control and without giving him opportunity to be heard and explain the circumstances, it must be held that such coercive orders, on the basis of the impugned letter of the Railway Board dt. 24-4-82 (Annexure A-1), suffers from the vice of arbitrariness and unreasonableness and against the principle of natural justice 'audi alteram partem' and cannot be sustained in the eye of law.



10. We notice that the applicant vacated the quarter in question on 17.9.91 and he was granted a no due certificate in respect thereof vide Annexure A-V dt.19.9.91 by the Dy. Chief Engineer, Gorakhpur. On perusal of the 'no due certificate' issued to the applicant on 19.9.91, it was clearly mentioned that the applicant had vacated the quarter no.689B, Krishna Nagar Colony on 17.9.91 and thus nothing is due to him in respect of this unit. The learned counsel for the applicant submitted that as long as the order of allotment of quarter to him was not cancelled by the competent authority it could not be said that the occupation of the applicant of the quarter in question was unauthorised. His further submissions is that the applicant had been perusing the matter for the allotment of the quarter in favour of his son as also on the ground of sickness of his wife and when he could not persuade the authorities to pass favourable order in this behalf, he vacated the quarter and obtained the clearance certificate and, therefore, it was sought to be urged that as the allotment order in respect of the quarter was not cancelled during the period of his retention, it could not be said that his possession was unauthorised. In our view, there appears to be merit in the contention of the learned counsel for the applicant. Since the applicant had been allotted the said accommodation by name for which no cancellation order was issued, hence the question of imposition of penal rent does not arise. It is true that as per Railway Board's letter dt.15.1.90 (Annexure CA-3), it is mentioned that on the expiry of the permissible/permitted period indicated in all the above cases, the allotment of quarter in the name of the employee at the old station would be deemed to have terminated automatically and the retention of the quarter after expiry of the permissible period will be treated as unauthorised. But it is necessary that an order in this regard communicated to the occupier of the quarter be passed and unless that is done, the occupant

4

occupant of the quarter may not know that his allotment has been cancelled and that his occupation will be deemed to be unauthorised and such is the provision also contemplated under chapter XVII of the Indian Railway Establishment Manual at ~~rule~~ <sup>para</sup> 1711 (b)(v) <sup>for</sup> charging of rent in excess of 10% of the emoluments from a railway servant who does not vacate the residence after the cancellation of the allotment. In that view of the matter also, it cannot be said that the occupation of the applicant of the quarter was unauthorised and hence the question of any penal rent does not arise.

11. The learned counsel for the applicant drew our attention towards the decision of the division bench of this Tribunal dated October 1, 1991 passed in O.A. No. 922 of 1992 where in similar facts and circumstances it was held that since the applicant has been allotted the said accommodation in his name for which no cancellation order has been issued, hence the question of eviction and penal rent does not arise. It was further held that the respondent's action to withhold the amount of gratuity in full measure of punishment was not justified. The facts of that case referred to above was almost on all fours as that of the present case.

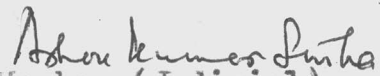
12. Similar view was also taken by the Principal Bench of this Tribunal in O.A.2382 of 1990 decided on 21.2.92 in the case of Suraj Ram Vs. U.O.I. In that case the applicant was switchman in the railways. He sought voluntary retirement with effect from 1.1.87. The applicant had been in occupation of the railway quarter also. The respondents withhold the D.C.R.G and the post retirement passes of the applicant on the ground of non-vacation of the railway accommodation, as has been done in the present case, and it was held as follows:-

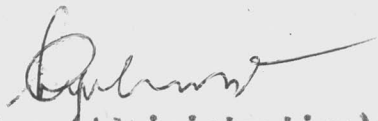
" The apex court has treated the payment of rent including panel rent electrical compensation for the delayed payment of gratuity as distinct and separate.

Similar matters was considered in detail by the Hon'ble Supreme Court in O.A.2002 of 1990, U.O.I Vs. Shivcharan and D.V. Kapoor Vs.U.O.I., 1990(4) S.C.C.page 314".

13. In that view of the matter and the above discussions, we allow the application and direct the respondents to pay the entire amount of gratuity to the applicant with interest @ 12 % per annum till the date of payment and release the post retirement/compensatory passes in favour of the applicant within two months from the receipt of the copy of this order. There will be, however, no orders as to cost.

14. It is, however, made clear that the respondents shall be free to proceed against the applicant in accordance with law for realising compensation/damage for retention of railway quarter excluding the permissible period of eight months at the rate of ten percent of the salary last drawn by the applicant.

  
Member (Judicial).

  
Member (Administration).

Dated: May 4<sup>th</sup> day of May 1993.