

A.F.R

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 26th DAY OF FEBRUARY, 2001

Original Application No.381 of 1999

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI, V.C.

Sant Prasad, C.T.T.I,
S/o Shri Bhrgunath Ram,
R/o 268-A, Dairy Colony,
N.E.Railway, Gorakhpur.

... Applicant

(by Adv: Shri B.Tiwari)

Versus

1. Union of India through
General manager, N.E.Railway
Gorakhpur.
2. Divisional Rail Manager,
Varanasi, N.E.Railway, Gorakhpur.

... Respondents

(By Adv: Shri G.P.Agarwal)

✓ Alongwith OA No.475 of 1994

Ghanshyam Singh, son of
Shri Ram Adhar Singh, residing
in Quarter No.T/2D, Railway
Colony, Deoria.

... Applicant

(By Adv: Shri Bashist Tiwari)

Versus

1. Divisional Railway Manager
N.E.Railway, Varanasi.
2. Union of India through
General Manager, N.E.Railway
Gorakhpur.

... Respondents

(By Adv: Shri Govind Saran)

O R D E R (Reserved)

JUSTICE R.R.K.TRIVEDI, V.C.

In both the aforesaid two cases questions of fact and

law involved are similar and they can be disposed of by a common order against which the learned counsel for the parties have no objection. O.A. No.381/99 shall be the leading case.

The facts in short giving rise to this application are that applicant Sant Prasad while posted in the year 1987 as C.T.T.I at Gorakhpur was allotted quarter No.268-A Dairy Colony, N.E.Railway Gorakhpur and the normal rent fixed for the quarter was Rs.55/- per month. On 13.6.1994 applicant was transferred to Chapra. It is claimed that as no quarter was allotted to him at Chapra he retained the possession of Quarter No.268-A. For unauthorised occupation respondents started recovery proceedings from the applicant @ 968/- per month as penal rent and arrears for penal rent for the past. Challenging the aforesaid recovery applicant has filed this OA and has claimed the following reliefs:

- i) to issue an order or direction setting aside recovery proceedings from the salary of the applicant by means of damage rent.
- ii) to issue an order or direction commanding the respondents to return the deducted amount by means of damage rent to the applicant with 18% interest.
- iii) to issue an order or direction declaring Railway Board's letter dated 15.1.1990 as Unconstitutional and Ultravires.

Resisting the claim of the applicant counter affidavit has been filed by the respondents. It is stated that the occupation of the applicant of Railway Quarter No.268-A at Gorakhpur is unauthorised so the recovery is being made as per terms and Rules. It is also claimed that the

respondents are fully authorised under law to recover damages rent from the applicant after his possession become unauthorised.

The facts in OA No.475/94 are that while applicant Ghanshyam Singh was posted as Senior Booking Clerk at Deoria he was allotted Railway Quarter No.T/2D, Railway Colony, Deoria on a normal rent of Rs.55/- per month. In the month of August 1991 applicant was transferred from Deoria to Bhatpar. However, in February 1993 he was again transferred to Deoria from Bhatpar. It is claimed that the allotment order in favour of the applicant was not cancelled and it is still subsisting in the name of the applicant. However, without giving any opportunity of hearing respondents started recovery of the penal rent @Rs660/- per month from the salary of the applicant. It is claimed that since allotment in favour of the applicant was not cancelled the penal rent could not be charged. In any case before fixing the financial liability applicant ought to have been given opportunity of hearing. Reliance has been placed in the judgement of this Tribunal dated 30.8.1993 in OA No.1004 of 1992 Awadhesh Kumar Vs. union of India and Others.

Counter reply has been filed justifying the recovery of the penal rent on the ground that the applicant was transferred from Deoria but he did not vacate the house. Thereafter cancellation of allotment and after show cause notice to him Railway Administration started charging damage rent for the unauthorised period. Reliance has been placed on the Railway Board's order dated 15.1.1990. It has been further submitted that the Para 1711 of Indian Railway Establishment Manual Vol-II further authorise charging a rent in excess of 10% of the emoluments

whose occupation became unauthorised. Copy of the letter dated 16.2.1993 has been filed as (Annexure 5 to the CA) by which applicant was given notice to vacate the accommodation without delay as from 2.10.1991 on which date he was relieved from Deoria for joining at Bhatpar his possession became unauthorised. A copy of the letter dated 22.2.1994 has also been filed as (Annexure 6) by which applicant was informed that he continued in unauthorised occupation of the quarter from 2.10.1991 to 18.2.1993 and the damage rent is being charged from his salary.

I have heard Shri Bashist Tiwari learned counsel for the applicants in both the cases and Shri G.P. Agarwal learned counsel for the respondents in OA No.381/99. In OA 475/94 Shri Govind Saran learned counsel appearing for the respondents submitted his arguments in writing on 13.2.2001.

Shri Bashist Tiwari learned counsel appearing for the applicants has submitted that the penal rent/damage rent cannot be charged from the applicants without giving a show cause notice and without providing an opportunity of hearing. It is also submitted that the occupation of the allotted quarter cannot become unauthorised automatically unless an order in writing cancelling allotment and requiring allottee to vacate the accommodation is served. learned counsel has submitted that the Railway Board's direction contained in letter dated 15.1.1990 are in direct conflict with the view expressed by the Hon'ble Supreme Court in many judgements. Learned counsel has further submitted that judgements of two Full Benches of this Tribunal in 'Ram Poojan case and 'Wazir Chand's case are inconsistent to each other and the controversy is required to be resolved by a Larger Bench. Learned counsel has referred following judgements in support of his submission.

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- i) East India Commercial Co;Ltd Vs. Collector of Customs Calcutta, AIR 1962 SC pg-1893
- ii) Harbhajan Singh Sood Vs. Union of India & Ors 1973(1)S.L.R pg305 Delhi High Court.
- iii) Un reported judgement of a Division Bench of this Tribunal dated 4.5.1994 in OA No.23/93 Rajeshwar Nath Singh Vs. Union of India & ors
- iv) Un reported judgement of this Tribunal dated 30.8.1993 in OA No.1004/92 Awadhesh Kumar Vs Union of India and Ors.
- v) Shangrila Food Products Ltd and another Vs Life Insurance Corporation of India & Anr (1996) 5 SCC pg-54
- vi) Anamallai Club Vs. Govt. of Tamil nadu & Ors (1997) 3 SCC-169
- vii) Wazir Chand Vs. Union of India & Ors Full Bench Judgement of Central Administrative Tribunal Vol-II pg-287
- viii) Full Bench Judgements 1994-1996 Ram poojan Vs. Union of India and Ors, Full bench Judgements (1994-96) pg-244.

Shri G.P. Agarwal learned counsel for the respondents, on the other hand submitted that on the undisputed facts of the present case that applicant was transferred from Gorakhpur to Chapra and even after transfer he retained the possession of Railway quarter, ^{His} possession was unauthorised as per Railway Board's order dated 15.1.1990. It is submitted that it was not at all necessary to give a notice to the applicant indicating that the possession was unauthorised after transfer. Learned counsel has submitted that there is no conflict in Full Bench Judgements in 'Wazir Chand & Ram poojan's case. Controversy in this application has already been settled by Full Bench in Ram Poojan's case. Learned counsel has

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has further submitted that Hon'ble Supreme Court in case of 'Amitabh Kumar and Another Vs. Director of Estates and Another A.I.R 1997 Sc 1308 has clearly held that allottee remaining in unauthorised occupation must pay penal rent.

Shri Govind Saran learned counsel appearing for the respondents in OA 475/94 submitted that in the present case applicant was informed in writing about his unauthorised occupation of Railway quarter which was not vacated hence he is liable to pay penal/damage rent for the period he was in unauthorised occupation namely 2.10.1991 to 18.2.1993.

I have carefully considered the submissions made by the counsel for the parties. From the submissions made, in my opinion following questions are required to be determined by this Tribunal for deciding the present OAs.

- i) Whether occupation of the Railway Quarter become unauthorised from the date Railway employee is transferred to some other place.
- ii) Whether opportunity of hearing is legally required to be given to the Railway employee before the recovery of penal rent/damage rent is started from his salary.
- iii) Whether Railway Board's Circular dated 15.1.1990 is illegal and ultravires being ⁱⁿcontravention of the provisions contained in Public Premises(Eviction of unauthorised Occupants) Act,1971 and Payment of Wages Act and the judgements of Hon'ble Supreme Court.
- iv) To what relief if any, the applicants are entitled in the present cases.

Before entering into consideration of the questions formulated above, it appears necessary and expedient to consider the nature of possession of a Railway employee, of a Railway Quarter after his transfer to a place, other than where the Railway quarter is situated. On the nature of possession of the railway employee of the Railway Quarter the Railway board's letter dated 17.12.1983 is very relevant which provided "that a Railway Servant on transfer from one station to another which necessitates change of residence, may be permitted to retain the Railway accommodation at the former station of posting for a period of two months on payment of normal rent. On request by the employee on educational ground or ground of sickness the period of retention of Railway accommodation may be extended for the further period of six months on payment of double the assessed rent or double the normal rent or 10% of the emoluments which ever is the highest. It also provided that on request of the Railway employee the total period of retention may be extended upto six months. First two months on payment of normal rent and the next four months or till recovery which ever is earlier on payment of double the assessed or double the normal or 10% of the emoluments whichever is the highest. Thus, the similar provision is contained in the Railway board's letter dated 15.1.1990. Thus, the possession of the quarter becomes unauthorised after the aforesaid stipulated period. The possession of the Railway employee is on the basis of licence granted in the allotment order. This allotment is for the period till Railway employee continues at the particular station. After transfer ~~except~~ for the period of two months where he is entitled to retain the possession on normal rent and for the extended period under the specific order he may continue in authorised possession. Thereafter after expiry of the period it becomes

unauthorised. The Full Bench of this Tribunal in 'Ram Poojan's case has dealt with this aspect of the matter in detail and concluded that in respect of a Railway employee in occupation of Railway accommodation, no specific order cancelling the allotment of accommodation, on expiry of the permissible/permitted period of retention of the quarter on transfer, retirement or otherwise, is necessary and the further retention of the accommodation by the Railway servant would be unauthorised and penal/damage rent can be levied.

Learned counsel for the applicant cited authorities and submitted that the damages could be recovered from the Railway employee only under the provisions of Public Premises(Eviction of unauthorised occupants)Act,1971. However, the contention appears to be misconceived ~~by~~ "the Act provides only an alternative mode for recovery of possession and damages. In the present case recovery of possession by the force or otherwise is not involved. The penal rent or damage rent is being charged only for retaining the quarter even after transfer. In my opinion, I do not find any good ground to take a different view on the basis of the judgements relied on by the counsel for the applicant. Full Bench in 'Ram Poojan's case has considered in detail about the nature of possession and held that possession shall be unauthorised.

The second related and important question is whether an opportunity of hearing is legally required to be given to the Railway employee before the recovery of penal rent/damage rent is started from his salary. Full Bench in 'Ram Poojan's case concluded that the retention of the accommodation beyond the permissible period in view of the Railway Board circulars would be deemed to be unauthorised occupation and there would be an automatic cancellation of

an allotment and penal rent/damage rent can be levied according to the rates prescribed from time to time in the Railway Board's circular. So far as the question of giving opportunity of hearing is concerned, there is no doubt that an order entailing serious civil consequences cannot be passed against the person effected without affording him reasonable opportunity of hearing. The ^{"chaperone"} ~~observations~~ of the principles of natural justice in such situation is mandatory. The ^{"however"} ~~rigor~~ of this Rule has been relaxed by various judgements of Hon'ble Supreme Court in certain circumstances. One of the circumstances, is, that if upon admitted or ^{"undisputable"} facts only one conclusion was possible then in such case, the principle that breach of natural justice was ^{"in itself"} ~~a~~ ^{"prejudice"}, would not apply. In other words, if no other conclusion was possible on admitted or ^{"undisputable"} facts, it is not necessary to quash the order which was passed in violation of the natural justice. In the present case the ^{"undisputable"} facts are that applicants were transferred and they retained the Railway quarter beyond the permissible limits for the periods in question. The Railway employees are supposed to be well aware of the provisions contained in Railway Board circulars issued under Paragraph 1711 of the Indian Railway Establishment Manual. The opportunity of hearing in such cases could only lead to delay and may give rise to prolong litigation.

Hon'ble Supreme Court in case of 'S.L.Kapoor Vs.Jag Mohan (1980) 4 SCC pg- 379,

'K.L.Tripathi Vs. State Bank of India,(1984) 1 SCC-pg- 43;

'State Bank of Patiala Vs.S.K.Sharma (1996) 3 SCC-pg-364,

'Rajendra Singh Vs. State of M.P. (1996)

5 SCC-460 and

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'M.C.Mehta Vs.Union of India (1999) 6 SCC-237 , has mentioned various circumstances in which observance of principles of natural justice shall not be necessary as no prejudice is caused. In the present case also the action of the Railways in recovery of the penal rent from the applicants did not cause any prejudice to the applicants as on undisputable facts possession of the applicants was unauthorised and in such facts and circumstances the observance of principles of natural justice cannot be ~~rendered~~ ^{rendered} obligatory on the Railway Department.

The next question argued by the applicant is that Full bench judgement of this Tribunal in 'Ram poojan's case is in conflict with the Full bench judgement in 'Wazir Chand's case. I have carefully gone through both the judgements. However, I ~~do not~~ ^{do not} find that the two Full bench judgements are in any way inconsistent to each other. In 'Wazir Chand's case consideration before Full bench where the Railway Board circulars dated 24.4.1982 and 4.5.1982 which provided for with-holding of retiral benefits particularly DCRG of retired employee who retained the Railway quarter beyond permissible limit. Full Bench in 'Wazir Chand's case held that liability to pay normal rent or penal rent for retention of the possession of Railway Quarter should not be linked with the payment of Gratuity and other retiral benefits. It has been held that the retiral benefits are required to be paid promptly within a period of three months whereas the required employee may retain the possession for four months or even for a longer period if permission is granted. In such circumstances, with-holding of the payment of gratuity is unjustified. In 'Ram Poojan case the question for consideration was entirely different

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as to whether the possession of the Railway employee on transfer and retirement shall become unauthorised after the permissible period and a specific order cancelling the allotment was not necessary. Thus the question before the aforesaid two benches were totally different and independent to each other. In my opinion as there is no conflict in the two Full Bench judgements of this Tribunal there is no necessity of referring the matter to Larger Bench. This contention has no merit.

The learned counsel has next argued that the Railway board's direction contained in circular letter dated 15.1.1990 are ultravires being in contravention of the provisions contained in Public Premises(Eviction of unauthorised occupants)Act,1971 and Payment of Wages Act and the judgements of Hon'ble S.C. Full Bench in Ram poojan's case has considered this question in detail and has upheld its availability. Full Bench also considered the provisions of the Act of 1971 and held that Act ~~is~~ ^{provides} only alternative remedy available to the Railways and on this basis the action of ^{in authority under} the Railway Board ~~in~~ ⁱⁿ circulars, cannot be challenged. In Para 19 of the judgement Full Bench considered the cases decided by this Tribunal by different benches and held as under:

..... We are unable to agree with the said view. As has been held herein above by us the Railway Board's aforesaid letters supplement the provisions of Para 1711(b) They have the same ^{course} of law as the provisions of Rule 1711 of Indian Railway Establishment Manual. Sub clause(b)(v) of Para 1711 of I.R.E.M does not provide for mode of cancellation. In our opinion the said provisions ^{does} not specify that cancellation could be only by a positive

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or cancellation of allotment can be provided and as in fact been provided to be automatic on retention of the Railway quarter beyond the permissible/permitted period indicated in the said letters. The aforesaid Railway Board's letter also provide for retention of Railway quarter beyond permissible/permitted period to be treated as unauthorised occupation and penal rent being chargeable. There is no statutory rules for allotment of a Railway Quarter. It is governed by Railway Board's letters and thus through the said letters also it was permissible to provide for automatic cancellation of the order of allotment and for retention beyond the permissible period being treated as unauthorised occupation." Thus the validity of the Railway Board's circular dated 15.1.1990 has been examined and upheld by Full Bench and it need not to be considered again. I have examined the judgements of Hon'ble Supreme Court relied by the learned counsel for the applicant and in my opinion, the judgements are not applicable in the facts of the present case. The view¹expressed by Hon'ble Supreme Court ^{are}is entirely in different set of facts and for different reasons, not available in the present case.

The learned counsel for the applicant placed much reliance on judgement of Delhi high court in case of 'Harbhajan Singh Sood Vs. Union of India and Others (Supra)'. The Hon'ble Delhi High Court only disapproved the liability to pay outsiders rent on the ground that there was no formal order of cancellation of allotment. In Para 10(7) of the judgement Hon'ble High

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Court concluded that as the rules are supposed to be known to the Railway servants, no further opportunity was necessary to be given to the petitioner before he was charged rent at a higher rate than normal rent after the expiry of the period of two months after his transfer. The question of applicability of Public Premises(Eviction of unauthorised occupants) Act 1971 does not arise as the relevant rules are operative outside the said act. In para 10(6) Hon'ble High court held that the stay of the petitioner in the quarters was unauthorised because the rules authorised stay only for a period of four months after the date of transfer. It was not necessary for the Railway Authorities or the Railway board to formally declare the stay of the petitioner as unauthorised. Thus, the judgement of Delhi High Court in 'Harbhajan Singh Sood's case also does not help applicants in any way. The view expressed also does not appear to be in conflict with the view expressed by the Full Bench of this Tribunal in Ram poojan's case.

For the reasons stated above, in my opinion applicants are not entitled for any relief. The OAs are accordingly dismissed having no merit.

However, there will be no order as to costs.

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V.C.