

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 582 of 2002

Allahabad this the 6th day of May, 2005

Hon'ble Mr. A.K. Bhatnagar, Member (J)

Kishan Lal Agarwal, S/o Late Shri Pratap Chand Agarwal, Aged 56 years, R/o Officer Colony, N.E. Railway, Gorakhpur.

Applicant

By Advocate Shri S.K. Om

Versus

1. Union of India through Secretary, Railway Board, New Delhi.
2. General Manager, Eastern Railway, 17, Netaji Subhash Road, Kolkata.
3. General Managder, N.E. Railway, Gorakhpur.

Respondents

By Advocate Shri Anil Kumar

O R D E R

By Hon'ble Mr.A.K. Bhatnagar, Member (J)

By this O.A. applicant has prayed to quash the order of recovery-dated 25.01.2002 and 11.02.2002 passed by respondent no.1 and 2 respectively. He has further sought for direction to respondents to refund the amount recovered from the salary of the applicant with 12% interest.

2. The brief facts, as per the applicant, are that he was posted as Chief Electrical Services Engineer/Chief Electrical Engineer (Planning) from January 1996 to December 1999 in the Office of General Manager, Eastern Railway, Calcutta. Thereafter he was transferred to N.C. Railway, Gorakhpur and joined there on 24.01.2000. During this period he was allotted quarter no.1/D Type V at New Alipur Railway Officer Colony, Kolkata. On his transfer, he was allowed to retain the said quarter for 2 months from 27.12.1999 to 26.02.2000 on payment of flat rate on transfer ground. He was further allowed to retain the said quarter from 27.02.2000 to July, 2000 on special license fee on educational ground of his children. Thereafter, he again requested vide his application dated 04.12.2000 for retention of the said quarter for six months more on the ground that his wife was undergoing treatment for some heart problem for which she was operated upon also at All India Institute of Medical Sciences, New Delhi (annexure A-1). An eviction notice dated 16.03.2001 was served on the applicant and the applicant informed the respondents that he will vacate the quarter on 30.09.2001. However, he has vacated the quarter on 14.08.2001. In the meanwhile, respondent no.2 referred the dispute to the Estate Officer, who decided the case in favour of the respondents granting them liberty to proceed with other consequential issues as per extant rules. He further requested the Secretary, Railway Board, New Delhi to allow him for waiver of damage rent from 01.08.2000 to 13.08.2001 (annexure A-3), which was rejected vide impugned order dated 25.01.2002 (annexure A-4). Thereafter as per order of Railway Board, Senior DGM, Eastern Railway, Kolkata requested the General Manager, North Eastern Railway, Gorakhpur to deduct

the damage rent i.e. Rs.12,096/- per month from the salary of the applicant for the period 01.08.2000 to 13.08.2001 vide his letter dated 11.02.2002(annexure A-5). The applicant again sent a representation to Hon'ble Minister of Railways on 20.03.2002(annexure A-6) for waiver of damage rent. When no action was taken, he filed this O.A.

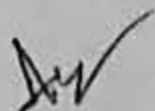
3. While pressing the grounds given in paragraph no.5(1) to 5(8) of the O.A., learned counsel for the applicants submitted that the entire action of the respondents in issuing recovery is wholly illegal, arbitrary and violative of principles of natural justice, as such, the same is liable to be quashed. Learned counsel further submitted that in exactly similar circumstances Railway Board had relaxed the rules and converted damage rent into standard rent, in cases of large number of employees, but in the case of applicant it has deviated and has not relaxed the rules ~~and~~ as such, the same is violative of article 14 of the Constitution of India. Learned counsel for the applicant further submitted that the circular dated 01.06.2001 on which the respondents are relying, has no retrospective operation and even if it is assumed that the circular dated 01.06.2001 is applicable, then the applicant would be deemed to be liable for damage rent only from 01.06.2001 to 13.08.2001 in as much as he vacated the quarter on 14.08.2001. ~~and~~ ⁷ therefore, before 01.06.2001 this circular would not apply. Learned counsel further contended that the respondents initiated the case against the applicant to Estate Officer, Kanpur with a prayer to charge the damage rent. The Estate Officer vide order dated 12.09.2001 dismissed the proceedings as infructuous due to vacation of quarter by petitioner and the Estate Officer did not grant the relief of recovery of damage rent against

Am

the applicant. Therefore, in view of the order dated 12.09.2001 passed by Estate Officer, the respondents cannot claim to recover the damage rent and the action of the respondents is barred by the principles of Order-II Rule 2 of C.P.C. Learned counsel for the applicant finally submitted that the respondents have wrongly deducted the damage rent from 01.08.2000 because the Estate Officer did not pass any order for recovery of damage rent, therefore, the respondents are restrained to issue any recovery in terms of Order II R-2 of Civil Procedure Code and, therefore, the entire action of the respondents is wholly illegal and the same is liable to be quashed. Learned counsel placed reliance on Sri Swatantra Kumar Agarwal Vs. The Managing Director, U.P. Financial Corporation, Kanpur and another A.I.R. 1994 Allahabad 187 in which Hon'ble High Court has held that subsequent petition on same facts and seeking relief by using different language, is not maintainable by virtue of Rule 7 of Allahabad High Court Rules, principle of res judicata and Order 2 Rule 2 of Civil Procedure Code.

4. Resisting the claim of the applicant, the respondents have filed counter affidavit. In their pleadings, they have submitted that in view of Railway Board's directive in its Circular dated 01.06.2001 further retention of quarter beyond the permissible period has not been permitted. The relevant portion of the Circular is as under:-

"Beyond the permitted/permissible limits, however, no further extension will be allowed on any ground whatsoever. Therefore, no request or representation on this score shall be entertained. For all occupant beyond permitted period, immediate action should be taken to cancel the allotment declare the occupation unauthorized and initiate eviction



proceedings charging damage rent for the over stay."

Learned counsel further pointed out that in Writ Petition No.5057 of 1999, the Hon'ble High Court of Delhi has directed that no person will be allowed to retain the railway quarter against the existing rules, criteria and circulars on the subject. In the light of Judgment of Hon'ble High Court, Delhi, Ministry of Railways (Railway Board) would not have power for grant of permission to retain the railway quarter in relaxation to any individual case. The Railway Board circular dated 01.06.2001 does not provide for grant of any permission in retention of railway accommodation beyond the laid down period. Therefore, applicant's request on this count cannot be entertained. Learned counsel further submitted that a letter dated 18.08.2000 was issued by respondent no.2, declaring applicant as unauthorized occupant w.e.f. 01.08.2000 and it is further mentioned in the same letter that applicant will be liable to pay the damage rent for such period of unauthorized absence till the vacation of quarter. Vide order dated 21.01.2001 the applicant's allotment was cancelled in terms of Railway Board's letter no.E/G/99 QR 1-6 dated 20.04.2000 but the applicant has failed to evict the premises although vacation notice was served on him through letter dated 23.03.2001 of respondent no.2(annexure R-4). Thereafter, during the eviction proceedings before the Estate Officer, applicant has vacated the quarter on 14.08.2001. Learned counsel further pointed out that the applicant became an unauthorized occupant w.e.f. 01.08.2000 to 13.08.2001 for about 12 months 13 days and damage rent has been charged for that period as per rules. The applicant preferred an appeal to the Railway Board for waiver of damage rent, which was

Am

rejected by the impugned order dated 25.01.2002. In view of letter dated 25.01.2002, the respondent no.2 has issued letter dated 11.09.2002 (annexure A-5) regarding recovery of damage rate of rent at the rate of Rs.12,096/- from the salary of the applicant. Accordingly, the deduction has been started. Learned counsel finally submitted that the action of the respondents in no way is illegal or discriminatory in any manner, inviting any judicial interference by this Tribunal. Learned counsel for the respondents placed reliance on the Judgment of C.A.T. Calcutta Bench, decided on 09.08.2002 in O.A. No.786 of 2001 Dilip Kumar Sarkhel Vs. Union of India and ors.

6. I have heard the learned counsel for the parties and perused the record.

7. There is no dispute that the applicant was in possession of railway quarter no.1/D Type V at New Alipur Railway Officers Colony, Kolkata. It is also not disputed that on his transfer he was allowed to retain the said quarter for two months from 27.12.1999 on payment of flat rate on transfer grounds. He was further allowed to retain the accommodation on special license fee on the educational ground of his children. It is also not disputed that a case for eviction of Govt. accommodation was filed before the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, which was decided on 12.09.2001 and during the proceedings the applicant had vacated the quarter in question on 14.08.2001. The following order was passed by the Estate Officer:-

"One thing is being observed by this Court that the petitioner restricts its prayer only on the point of vacation of the quarter in question

AW

other consequential benefits have been prayed for.

Now since the only issue has already been achieved by the aggrieved petitioner, as appears apparently from fact of the record, the case becomes infructuous and hence dismissed. However, the hands of this Court are tied to entertain any consequential issue, if arises from such relinquishment of Quarter by respondent, as it has been stopped to consider such issues. The petitioner is at liberty to proceed with other consequential issued as per extant rules."

It is also evident that the applicant was authorized to retain the house up to July 2000 on special license fee on the ground of education of his children so he became unauthorized occupant of the same house from 01.08.2000. It is also stated in paragraph no.4.10 of the O.A. that the applicant requested the Secretary, Railway Board, New Delhi vide his application dated 12.11.2001 to allow him for waiver of damage rent from 01.08.2000 to 13.08.2001 on humanitarian ground. I have also gone through annexure A-4 letter dated 25.01.2002 issued by Railway Board in which it is specifically stated that the case of the applicant has been examined. The period of unauthorized retention of railway accommodation from 01.08.2000 to 13.08.2001 may be regulated strictly in terms of instructions on the subject. I have also gone through annexure A-5 letter dated 11.02.2002. The paragraph no.3 of the same reads as under:-

"As Sri Agarwal did not vacate the flat beyond the permissible period, there is not other alternative than to treat the said flat as unauthorized occupation from 01.08.2000 by Sri Agarwal and Eviction Proceedings was started against him before the Estate Officer/E. Rly./Kolkata. According to changed circumstances, during the Eviction Proceedings, Sri Agarwal vacated the Rly. Flat on 14.08.2001."

W

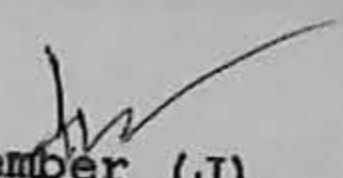
I find force in the arguments of learned counsel for the respondents and have no hesitation in coming to the conclusion that applicant was under unauthorized occupation of accommodation in question from 01.08.2000 to 13.08.2001, as the period from 27.02.2000 to July 2000, ~~which~~ was covered under Special License fee on the educational ground of the children. The full Bench of this Tribunal in the case of Ram Poojan Vs. Union of India and others 1996 (1) ATJ 540 C.A.T. Allahabad has held that a railway servant on transfer, retirement or otherwise, if does not vacate the railway accommodation even after the expiry of permissible period it is not necessary to issue any specific order canceling the allotment of accommodation and further retention of the accommodation by the railway servant would be unauthorized and penal/damage rent can be levied. It is also observed that it is open to the railway administration to recover penal/damage rent by deducting the same from the salary of the applicant-not necessary to take resort to proceedings under P.P.Act. I have also seen the order passed by the Estate Officer on 12.09.2001 in which the respondents (applicants) were granted a liberty to proceed with other consequential issues as per extant rules. The above case was dismissed as infructuous as the applicant has vacated the quarter on 14.08.2001, in between the proceedings. Under the above facts and circumstances, the case law cited by the applicant counsel does not give any help to the applicant. As the applicant has rightly been treated as unauthorized occupant from 01.08.2000 till the day he vacated the quarter. So the respondents have done nothing illegal in declaring the applicant as



unauthorized occupant from 01.08.2000 to 13.08.2001 and further by deducting the damage rent from his salary as per extant rules.

8. Under the above facts and circumstances, and in view of the law laid down in the case of Ram Poojan Patel (supra), I find no merit in the case of the applicant, which is dismissed. No order as to cost.

/M.M./


Member (J)