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Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 3rd DAY OF AUGUST, 2007
Original Application No.107 of 2006

CORAM

HON.MR.JUSTICE KHEM KARAN, V.C.

Vijay Bahadur, aged about 58 years,
Son of Late Ram Saran, R/o C/o Raj
Kumar Singh, Adarsh Nagar Colony, Rauza,
Shahjahanpur.

.. Applicant

(By Adv: Shri T.S. Pandey)

VERSUS

1. Union of India through the general Manager, Northern Railway, Baroda House, new Delhi.
2. The Divisional Railway Manager, Northern railway, Moradabad Division, Moradabad.
3. The Station Superintendent (RAC), Northern Railway, Rauza.
4. Shri S.K. Malhotra, the then Station Supdt., Rauza, C/O DRM, Northern Railway, Moradabad Division, Moradabad.
5. The Divisional Operating Manager, Northern Railway, Moradabad Division, Moradabad.

.. Respondents

(By Adv: Shri Prashant Mathur)

ORDER

JUSTICE KHEM KARAN, V.C

The applicant Vijay Bahadur has prayed for the following reliefs:

- (a) Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 12.7.2002 and 16.8.2002 as well as the alleged recovery order (not communicated to the applicant) with the further order and direction in the nature of mandamus commanding the respondents to refund a sum of Rs.37640/- along with 12% interest recovered from the pay of the applicant from June, 2004 till January, 2006.
- (c) Award costs to the applicant from the respondents.

© Issue any other and further writ, order or direction which this Hon'ble Tribunal deem fit and proper in the circumstances of the case, but may have not been impleaded by the applicant

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and is found just and appropriate to this Hon'ble Tribunal, be also provided to the applicant from the respondents.

Undisputedly while being posted as Guard Goods at Railway station Rauza in Northern Railway, applicant was allotted railway quarter No.L-35/B and on his transfer in November 2001 to Lucknow, he had to vacate the same within the period provided under the relevant rules. He was relieved on 11.11.01 from Rauza and he joined at Lucknow on 11.12.01. He says no railway quarter was allotted to him at Lucknow therefore he applied for retention of the said quarter for some time more and vide order dated 25.1.2002 (A-3) respondents No.3 permitted him to retain the said railway quarter till 30.6.02. It appears, that he wanted to continue in the said quarter even after 30.6.02 and moved applications but the same was declined vide impugned letter dated 12.7.02 (A-1) and 16.8.02 (A-2). Applicant did not give up the hope of getting the permission for retaining the house after 30.6.02 so he continued his efforts by giving one representation or the other. There is no dispute that he vacated it on 19.1.04. He became worried when an amount of Rs.1882/- was deducted from his salary for the month of June 2004, towards damage rent to the tune of Rs.94140/- for unauthorized occupation of the said quarter from 1.7.2002 to 19.1.04. He alleges that the authorities were not legally justified in turning down the request for retaining the quarter after 1.7.02 as one Shri Girdhar Ram was allowed to retain railway quarter at Rauza till quarter was allotted to him at the new station. He has also tried to say that his request for regularizing the occupation was to be considered by the Chairman of Railway Quarter Allotment Committee but the same was not done by him till filing of the OA. He complains that he was never communicated about the imposition or recovery of damage rent and so it was in violation of Rule 15 of Chapter VII of Railway Quarter Allotment Rules.

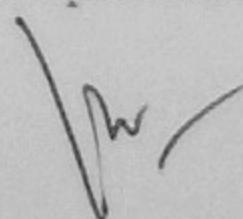
2. The respondents have filed written reply contending interalia, that the OA is highly time barred and in view of the law laid down by the Apex court in Ramesh Chandra Vs. Udhamp Singh Kamal, 2000 SCC (L & S) Pg.53, Govt. of India Vs. S.M.Gaekwad 1995 SCC (L & S) pg 1148, Union of India and Ors Vs. Shanker 2000 (8)

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SC pg 77 and K.R. Mangal BVs. R.P. Singh 1986 (4) SCC pg 531, it deserves to be dismissed without going into the merits. According to them, applicant was permitted to retain the said railway quarter till the end of the academic session and under the rules no further retention was possible. They say that in view of Railway Board's Circular letter dated 17.1.01, the applicant is liable to pay damage rent for unauthorized occupation of the said quarter from 1.7.02 to 19.1.04. They go on to state that applicant was advised vide letter dated 12.7.02 to vacate the quarter immediately but he paid no heed and could vacate as late as on 19.1.04 and so the respondents were perfectly justified in recovering the penal/damage rent for an unauthorized occupation as per the instructions contained in Railway board's letter dated 15.1.1990 (A1 & A2 to the reply). They say in para 5 that there is no provision under the rules for any statutory appeal and so the applicant cannot take benefit of delay in disposal of appeal, for reckoning the period of limitation prescribed under Section 21 of the Act of 1985. They say that the applicant cannot claim parity with others, who were allowed to retain railway quarter.

3. Applicant has filed Rejoinder affidavit saying that authority who declared the occupation of the applicant as unauthorised was not competent to do so and so the recovery deserves to be quashed. In para 7 of his rejoinder he says that in cases of regularization of railway quarters in favour of Shri S.K. Mishra, Shri Girdhari and Shri Suresh Giri the respondents acted in a different manner whereas in the case of the applicant they refused to do so. Reference to new instructions dated 15.2.1999 of the Railway Board has also been made in this context. He says non-regularization of applicant's occupation of the said railway quarter is violative of Article 14 of the Constitution.

4. I have heard the parties counsel and have perused the entire material on record. First we should deal with the point of limitation. Applicant has moved one application for condonation of delay and it is averred in para 4 of the affidavit filed in support of it that since the applicant heard nothing from the respondents about his appeal dated



5.10.04, so he kept waiting and after making arrangements he contacted his counsel and filed this OA. The respondents have clearly stated in their preliminary objection that OA against letter dated 12.7.02 and 16.8.02 (A1&A2) is clearly time barred. It transpires from perusal of Tribunal's order dated 16.5.06, that point of limitation was pressed into service and the Tribunal considered the same in the light of the judicial pronouncements placed before it. It observed: "limitation does not apply in this case as recovery is still being made and it form a continuing cause of action every month. The applicant is drawing his depleted salary. Thus case of M.R.Gupta (1995) 5 SC pg 628 comes into play". What I gather from it is, that the Tribunal has already expressed a view that OA is not time barred. I don't think it will be permissible for me to go into that question again. It is never the contention of the respondents that order dated 16.5.06, turning down the plea that the OA was time barred by law of limitation, was assailed in higher forum or that will not prevent me from going into the question again. I think decision on preliminary points such as limitation, arrived at, at an earlier occasion and not challenged before higher forum, will prevent the court or the tribunal from deciding the same again or taking a different view. Though I feel that OA against letters of 2002 is apparently time barred but since the Tribunal has already held that the applicant has a continuing cause of action so it is difficult to dismiss it on the point of limitation.

5. Shri T.S.Pandey appearing for the applicant does not dispute that allotment, occupation and retention of railway quarters by servants of the railway is regulated by a set of rules. Railway quarter allotment rules revised Edition 2000 is placed on record as (A2). Rule 8 (i) of the said rules provides 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 former station of posting for a period of two months on payment of normal rent and on request of the employee on educational or sickness etc the period of retention may be extended for a further period of six months on payment of double the rent or double the normal rent of 10% of the emoluments which ever is highest. It says that further extension beyond the aforesaid period may be granted on

educational ground only to cover the current academic session. I have not been able to find anything in these rules which empowers any authority to permit the retention of the railway quarter by the railway servants beyond the period mentioned in Rule 8(i). Contrary to it, Rule 15 of the said rules says that no railway employee shall occupy any railway quarter in absence of proper allotment to him and if any one is found occupying railway quarter without proper authority or continuing in occupation beyond the period is specifically permitted by the railway administration, will be dealt with as detailed in that rule. Procedure given in rule 15 is that notice will be issued to the employee for immediate vacation of the quarter giving ten days time by the controlling officer and if the employee does not vacate positive action may be taken under the DAR for getting the quarter vacated and administration may also take action under para 138 of Indian railway Act or under Public Premises (Eviction of unauthorized occupants) Act, 1971.

6. Railway Board's circular dated 15.2.1999 to which reference has been made in the rejoinder is annexed as (A1 to the rejoinder. A reading of this circular dated 15.2.1999 makes it clear that it is confined to employees of the N.F. Railway. It says that railway employees posted to N.F. railway, who desire to keep their family at the last station of posting may be permitted to retain the quarter at normal rent. The letter says that these orders will take effect from 16.7.1998 and remain valid upto 30.6.1999. In other words, these do not appear to be relevant in the context of employees transferred from one station to another in the same zone other than N.F.Railway.

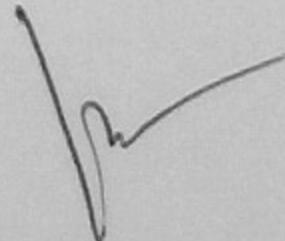
7. This much is clear that applicant was not permitted to retain the said railway quarter after 1.7.02. Shri Pandey has not been able to show any specific rule providing for appeal against refusal to retain the railway quarter. When the respondents had communicated to the applicant, as back as in July and August 2002 that he should vacate the accommodation and no further retention was possible, he should have vacated the accommodation. It cannot be said that the applicant did not know the consequences of retention of the railway quarter beyond the permissible limits. He kept quiet and woke up

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on 5.10.04 so as to prefer the said appeal to the respondents no.2. Shri Pandey has contended that applicant was discriminated in the matter of retention of the government quarter as few others were permitted to retain the same. Firstly, we have no exact details of the cases of those persons as to under what circumstances and for what period they were permitted to retain the quarters at the previous place of posting. Secondly, if the applicant had any grievance, that others were being permitted and he was not being permitted he should have approached the appropriate authority or the Tribunal or the court then and there. Why he kept waiting, why he allowed the situation to worsen so as to land him in the liability to pay damage or penal rent. The charge of official discrimination does not appear to be well founded nor it is going to help the applicant in getting rid of the liability to pay the penal or damage rent.

8 Relying on Union of India Vs Parvat Kumar Das, reported in Administrative Total Judgments 2001 (1) 294 (Kolkata High Court) and on Sri Ram Lal Mehta Vs. Union of India & Ors reported in Administrative Total Judgments 2001 (3) pg 371 (decided by Principal bench of this tribunal), Shri T.S.Pandey has tried to submit that the respondents could not have decided to saddle the applicant with the liability of paying penal or damage rent for unauthorized occupation of the railway quarter for the period from 1.7.02 to 19.1.04, without having recourse to the provisions contained under Public Premises (Eviction of unauthorized occupants) Act 1971 (for short, the Act of 1971). Shri Mathur has argued that in view of the Full Bench decision of this Tribunal in Ram Poojan vs. Union of India and Ors reported in (1996) (34) Administrative Total Cases pg 34, the respondents were not under legal compulsion to have recourse to the provisions of Act of 1971, for recovering the penal/damage rent from the applicant.

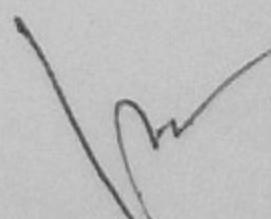
9. In Parvat Kumar Das's case (Supra) issue was not as to whether for recovering the penal/damage rent from the employee concerned recourse to the provisions of the Act of 1971 was necessary. The main emphasis was as to whether such damage rent or penal rent would be recovered from retrial benefits. Their Lordships after, referring to Section



60 of the Code of Civil Procedure and to rule 9 of the Central Civil Services (Pension) Rules, 1972 took the view that without recourse to the provisions of 1971 no such damage rent etc could be recovered from pension etc. I don't think the said case can be applied to the case in hand. Here the employee is still in service and recovery is not being made from his retirement benefits but from his salary. Ram Lal Mehta's case (supra) was also not directly on this point. More over, we have a Full bench decision of this Tribunal in Ram Poojan's case followed recently in decision dated 5.4.07 in OA No.869/02 Ram Pyare Vs. Union of India and Ors (Alld). So it is difficult to accept submission of Shri Pandey that orders for recovering penal/damage rent from the applicant for alleged unauthorized occupation of the said railway quarter could not have been passed without having recourse to the provisions to the Act of 1971, cannot be accepted.

10 Second submission of Shri T.S. Pandey, is that according to Rule 15 of the allotment Rules recourse should have been had to Section 138 of Indian Railways Act. It says that if railway servants discharged or suspended from his office or dies, absconds or absents himself and he or his wife or his widow or any of his family or representatives refuses or neglect after notice in writing for that purpose, to deliver up the railway administration or to a person appointed by the Railway Administration in this behalf, any station, dwelling house, office or other buildings with its appurtenances or any books any Magistrate of the 1st class may on application made by or on behalf of the Railway Administration order any police officer with proper assistance, to enter upon the building and remove any person found therein and to take possession thereon.

11. A plain reading of the above provisions makes it clear that it has nothing to do with the recovery of penal/damage rent. It deals with the vacating of the accommodation etc. In the case in hand, this Tribunal is confined to the question as to whether the respondents are justified in recovering penal/damage rent from the applicant for



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occupation of the railway quarter from 1.7.02 to 19.1.04. Here the respondents have not passed any eviction order nor the applicant is seeking any relief for restraining them from evicting him and in fact he has already vacated the accommodation on 19.1.04.

12. Thus O.A. being devoid of merits, deserves to be dismissed. It is accordingly dismissed but with no order as to costs. Stay order granted earlier is discharged.

VICE CHAIRMAN

Dated: , 2007

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