

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NOS. 166 AND 201 OF 2003
Cuttack, this the 6th day of May, 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

In OA 166/2003

Prabhudata Behera, aged about 33 years, son of Lalit Mohan Behera, Qr.No.T/8-G, Type All, Railway Colony, College Square, Cuttack, working as TPM'A' under Station Manager, S.E.Railway, Cuttack

..... Applicant

Vrs.

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Kolkata (W.B.).
2. Divisional Railway Manager, South Eastern Railway, Khurda Road, P.O. Jatni, Dist. Khurda.
3. Senior Divisional Personnel Officer, South Eastern Railway, At-Khurda Road, P.O.Jatni, Dist.Khurda.
4. Asst.Operation Manager, South Eastern Railway, Khurda Road, P.O.Jatni, Dist.Khurda.

..... Respondents

Advocates for the applicant - M/s P.K.Chand & Dsatpathy

Advocate for the respondents - Mr.B.K.Bal, Panel Counsel(Railway)

In OA 201/2003

Bijan Kumar Mishra, aged about 40 years, son of Charu Chandra Mishra of village/PO Mouda, P.S.Mahanga, Dist.Cuttack, presently working as Goods Guard, S.E.Railway, at Cuttack, Town/Dist.Cuttack

..... Applicant

Vrs.

2 19

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Kolkata (W.B.).
2. Divisional Railway Manager, South Eastern Railway, Khurda Road, P.O. Jatni, Dist. Khurda.
3. Senior Divisional Personnel Officer, South Eastern Railway, At-Khurda Road, P.O. Jatni, Dist. Khurda.

..... Respondents

Advocates for the applicant - M/s Bimbisar Dash, S.K.Nayak, Kishore Swain and M.R.Nayak
Advocate for the respondents - Mr. T.Rathl, Panel Counsel(Railway)

O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN

Having grounded on the identical facts involving common questions of law, both the Original Applications are being disposed of by this common order.

2. For appreciation of the facts and submissions made in both the O.As., I proceed to refer to the detailed pleadings of the parties and the submissions made in O.A.No. 201 of 2003.
3. Applicant Shri Bijan Kumar Mishra, presently working as Goods Guard, East Coast Railway (formerly S.E.Railway), Cuttack, has filed O.A.No.201 of 2003, seeking the following reliefs:

- “A. The Original Application may be allowed.
- B. The illegal deduction towards damage rents under Annexure-5 may be quashed.
- C. The Respondents may be directed to allow the applicant to draw his salary as usual and to refund the deduction already made.
- D. The initiation of proceeding under Annexure-1 may be quashed having been based on a manufactured document.

E. And such other order(s)/direction(s) may be given in giving complete relief to the applicant."

4. The case of the applicant is that the Respondents have initiated disciplinary action against him in utter violation of the principles of natural justice. Although a charge-sheet has been issued to him, he has not been supplied with the documents based on which the charges have been framed. Though the applicant has denied the charges, the Respondents have appointed an inquiring officer. He has further stated that although the enquiry has not been started, let alone been completed, Respondent No.3 has started recovery of damage rent from his pay in gross violation of the principles of natural justice. It is also his allegation that the Respondents are acting in contravention of the rules and regulations regarding recovery of damage rent from the applicant. Further facts of the case reveal that Railway quarters No. MISC/2/A TypeB at Cuttack was allotted to the applicant. The allegation against him is that he had sublet the said quarters to another Railway employee, namely, Shri K.C.Das, Guard, Khurda Road, which was found during surprise check carried out by the Joint Enquiry Committee, Cuttack, on 17th and 18th October, 2002. The applicant has denied that any surprise check was conducted either on 17th or on 18th October, 2002. In the circumstances, the applicant has submitted that the Respondents have acted arbitrarily and illegally and have harassed the applicant by colourable exercise of power.

5. The Respondents have resisted the Original Application. They have opposed the O.A. on the ground that the applicant has made two distinct and

different prayers, i.e., one for quashing of the recovery of damage rent, and the other for quashing of the charge sheet (Annexure 1). They have submitted that as the grievance of the applicant is against imposition of damage rent, which is governed under the Public Premises (Eviction of Unauthorised Occupants), 1971 (hereinafter referred to as 'PP(EUO)Act, 1971'), and as a specific remedy is available under the aforesaid Act, the Original Application is not maintainable. They have further stated that the other grievance of the applicant relates to initiation of departmental proceeding. It is to be considered whether the O.A. is maintainable as the applicant has rushed to the Tribunal without exhausting the departmental remedy available under the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as 'Rules').

6. The Respondents have also referred to the order dated 18.8.2004 passed by this Tribunal in OA No. 158 of 2003. On the facts of the case, the Respondents have stated that on receiving complaints that Railway quarters are being misused, a Committee was set up by Respondent No.2 to carry out surprise check to find out the veracity of the complaints of subletting of Railway quarters. In that process, the Committee so set up carried out on-the-spot inspection, in course of which the Committee reported that the quarters allotted to the applicant was sublet. Respondent No.2, after considering all the facts and taking into account the gravity of the allegation, passed an order directing all the Branch Officers to take action against the erring employees. As the Committee had found that the applicant was not residing in the quarters and had sublet it to Shri K.C.Das, Guard of Khurda Road, it was decided to

initiate disciplinary action and also realise damage rent from the applicant in terms of Estt. Sl.No.62/95.

7. The learned counsels for the rival parties have placed before me in details the provisions made in Estt.Sl.No.62/95 with regard to the question of subletting and action to be taken against the erring Railway servants under the Rules and the instructions contained in Estt.Sl.No.51/97 and Estt.Sl.No.150/98.

8. The learned counsel for the Respondents has raised two legal issues. Firstly, that the grievance of the applicant with regard to the damage rent should have been more appropriately raised by the applicant before the appropriate authority/court established under the PP(EUO)Act, 1971 and not before this Tribunal, and secondly, that his grievance, if any, against the disciplinary action, should have been raised before the departmental authority under the Rules. The learned counsel for the applicant, on the other hand, has submitted that the applicant has approached the Tribunal, being aggrieved by the fact that the Respondents on their own decided to take two-fold actions against him without following due process of law. He has submitted that it was an administrative decision to impose on the applicant the burden of additional rent for occupation of the Railway quarters allotted to him and where he was residing with his family. The Respondents were realising damage rent from his pay unilaterally and as his pay and allowances have been reduced by the Respondents without following the procedure laid down in the Rules, he had no other option but to approach the Tribunal for remedy.

9. I have carefully considered the rival contentions. The applicant has approached this Tribunal on receipt of his pay slip for the month of March 2003 wherefrom he noticed that an amount of Rs.4,139/- had been deducted from his pay towards damage rent over and above the deduction of the normal rent of Rs.90/-. This deduction in pay he faced without receiving any notice from the Estate Officer under the PP(EUO)Act, 1971. He had, therefore, no other option but to rush to the Tribunal for immediate relief and the Tribunal by its order dated 22.4.2003 had directed the Respondents not to recover damage rent from his salary, if the same had not been determined after putting the applicant to notice. In the said order, the Respondents were also given opportunity to seek leave of this Tribunal if they desired to continue to recover the damage rent from the month of May 2003. But the Respondents never came back to the Tribunal with any such prayer. It is, therefore, not known to the Tribunal as to who had decided/determined the damage rent recoverable from the applicant. From the above facts of the case, it is clear that the contentions raised by the Respondents are unacceptable, because it appears that they had not themselves followed the procedure or used appropriate forum in determining the damage rent recoverable from the applicant.

10. I have already held in order dated 7.4.2004 passed in OA Nos. 158, 159 and 160 of 2003 that the matter concerning imposition of damage rent and eviction of occupants from Government/Railway quarters are governed under the PP(EUO)Act, 1971. Under the said Act, the Respondents are to appoint authorised person for determining damage rent who alone can pass orders in

this regard. In that order I had also referred to the decision of the Hon'ble Apex Court in *Union of India v. Sh. Rasila Ram and others*, 2001 (1) ATJ 261, where it was held that matters concerning eviction, damage rent, etc., are governed by the provisions of the PP(EUO)Act, 1971 and therefore, the Respondents were duty bound under law to approach the authorised person for determining damage rent as also to determine whether the applicant had sublet his quarters. It has been clearly laid down by the Hon'ble Apex Court in *S.S.Tiwari v. Union of India and others*, Writ Petition No. 585 of 1994, decided on 29.11.1996, that it is the Estate Officer who will determine whether a Government servant has sublet the Government accommodation for a pecuniary gain. Once he comes to the conclusion that the Government accommodation has been sublet, he has the power to cancel the allotment on that ground. Once such an order is passed for cancellation of allotment of Government quarters on the ground of subletting, it at once establishes the misconduct on the part of the Government servant enabling the competent authority to initiate disciplinary action against the erring Government servant. Such procedure has been very clearly stated in Estt.SI.No.150/98. But the Respondent-Railways at field level have not acted upon these instructions in a proper way. What is clear from the instant case is that after the fact finding report of the Inquiry Committee, the matter was not referred to the Estate Officer appointed under the PP(EUO)Act, 1971 to go into the matter and to determine whether a case of subletting of Railway accommodation has taken place or not. The Respondent-Railways have failed to take note of the

law/rules that it is only the Estate Officer appointed under the PP(EUO)Act, 1971 who alone can enquire into the cases of subletting of Railway accommodation and it is he who has the authority to declare subletting of Railway accommodation by Railway servant upon which the disciplinary authority has the power to initiate action against the erring Railway servant. It is also the Estate Officer under the PP(EUO)Act, 1971 who alone is authorised to determine damage rent as prescribed under the Act.

11. Admittedly, in the instant case, the decision to impose damage rent from the applicant was an administrative decision and therefore, lacks legal force in its implementation. In the circumstances, this order must be quashed. It is also clear that the disciplinary action initiated against the applicant was also not taken under the amended Railway Servants (Conduct)Rules,1966 or IREC 1985 Edn., vide Estt.SI.No.51/97. In the circumstances, the charge-sheet dated 24.12.2002 (Annexure 1) issued against the applicant is also liable to be quashed. While passing the above order, liberty is granted to the Respondents to follow the procedure as enshrined under the PP(EUO)Act, 1971 and the Railway Servants (Conduct) Rules, 1966, as amended by insertion of Rule 15A, and the instructions issued under RBE No.136/98, while dealing with the cases of subletting of Railway accommodation, imposition of damage rent, etc., and initiating disciplinary action against the erring Railway servant.

12. In view of the above conclusions, both O.A.Nos. 166 and 201 of 2003 are allowed. The charge-sheets, at Annexure 1 of both the O.As, are quashed and the imposition of damage rent and recovery thereof are set aside.

9

19

The Respondents are directed to refund to the applicants the amount of damage rent already recovered. Liberty is granted to the Respondents to follow the established procedure while dealing with the case of subletting of Railway quarters by the applicants and initiating disciplinary action against them. No costs.

11 B. N. Soni
Vice-Chairman