

10

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.134 OF 2005
CUTTACK, this the 14th day of November, 2007**

Smt. E.V.Laxmi

..... Applicant

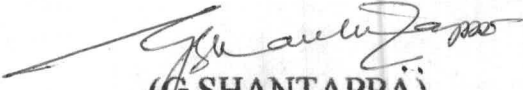
-Versus-

Union of India & Others

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? — Yes —
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? — Yes —


(G.SHANTAPPA)
MEMBER(JUDL.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.134 OF 2005
(CUTTACK, this the 14th day of November, 2007)**

CORAM:

HON'BLE SHRI G.SHANTAPPA, MEMBER(JUDICIAL)

Smt.E.V.Laxmi, aged about 35 years, W/O. Late E.Munuswamy, Permanent resident of C/O. M.Basudev Rao, House No.581, Rameswar Nagar, Near Sitalamata Mandir, PO:Biragaon, District:Raipur (Chhatisgarh), At present working as Peon, Under the Senior Assistant Financial Advisor, Carriage Repair Workshop, East Coast Railway, Mancheswar, Bhubaneswar, District:Khurda.

.....Applicant

Advocates for the Applicant

.....M/S. B.S.Tripathy,
M.K.Rath & J.Pati.

Versus:

1. Union of India represented through the General Manager, East Coast Railway, At/PO:Chandrasekharpur, Rail Vihar, Bhubaneswar, District:Khurda.
2. The Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway, Mancheswar, At/PO:Mancheswar Railway Colony, Bhubaneswar, District:Khurda.
3. The Financial Advisor & Chief Accounts Officer (F.A &C.A.O.), East Coast Railway, At/PO:Chandrasekharpur, Rail Vihar, Bhubaneswar, District:Khurda.

12

4. The Senior Assistant Finance Advisor, Carriage Repair Workshop, East Coast Railway, Mancheswar, At/PO:Mancheswar Railway Colony, Bhubaneswar, District:Khurda.
5. The Deputy Financial Advisor and Chief Accounts Officer (Dy.F.A. & C.A.O), South Eastern Railway, Kharagpur, At/PO:Kharagpur, Dist:Midnapure, West Bengal.
6. The Senior Divisional Engineer (Head Quarters), South Eastern Railway, Kharagpur, At/PO:Kharagpur, Dist:Midnapure (West Bengal).
7. The Senior Assistant Financial Advisor (Workshop), Kharagpur, South Eastern Railway, At/PO:Kharagpur, Dist:Midnapure, West Bengal.
8. The Estate Officer, South Eastern Railway, Kharagpur, At/PO:Kharagpur, Dist:Midnapure (West Bengal).
9. Mr.A.R.Khan, T.No.53222, Technician, Grade-II, presently working under the Deputy Chief Electrical Engineer (Workshop), South Eastern Railways, Kharagpur, At/PO:Kharagpur, Dist-Midnapur (W.B.)

..... Respondents

Advocate for the Respondents

.....Mr. P.C.Panda.

ORDER

HON'BLE SHRI G.SHANTAPPA, MEMBER(JUDL.):

I have heard M/s.B.S.Tripathy, M.K.Rath and J.Pati for the applicant and Mr.P.C.Panda, Ld.ASC for the Respondents.

2. The above O.A. is filed under Section 19 of the AT Act, 1985 seeking the following relief:

- "a) To pass appropriate orders quashing the order in Letter dated 05.02.2005 in Annexure-a/14.
- b) To pass appropriate orders directing release of DCRG amount of Rs.38,698/- in favour of the applicant.
- c) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this Original Application with costs."

3. The brief facts of the case according to the applicant are the husband of the applicant was working as Peon at Kharagpur on 07.10.1994. He was allotted the Railway quarters bearing No.520/C-18 on 05.04.95 and he immediately occupied. Subsequently on 01.06.97, he was transferred to Mancheswar and joined at Mancheswar on 07.10.97 after vacating the said quarters. The applicant was not aware of her husband's whereabouts from 01.06.97 to 06.10.97, but she was residing at her native place at Raipur (Chatisghar). The husband of the applicant died in an accident on 2.1.98 while in service. The service particulars of her Late husband is at Annexure-A/1. Subsequently, on 25.04.2000 the payment of family pension was given to the applicant. Thereafter she applied for appointment on compassionate ground




and she got an appointment on 07.11.2000 thereafter she was allotted a Railway quarters on 08.03.01.

4. The applicant was paid all the dues of her husband except DCRG, for that she has submitted a representation dated 12.11.01 (Annexure-A/4) requesting to release of the DCRG amount of Rs.38,698/- in her favour. Vide Annexure-A/5 dated 28.11.01, the applicant came to know the outstanding claims if any to be recovered from the husband of the applicant, that the allotted Railway quarters at Kharagpur was not vacated by her husband, it was not possible to release the DCRG in her favour. But no action was taken on her representation dated 28.1.02. One more detailed representation dated 08.02.02 (Annexure-A/6) was submitted. On 07.04.02, the Res.No.5 requested the Sr.Divisional Engineer to make an enquiry and furnish a report. The Res.No.5 has also requested the ADEN(Settle), Kharagpur to take over the quarters from Sri A.R.Khan, who had occupied the quarters forcibly and issue clearance certificate in order to enable him to release the DCRG in favour of the applicant. Sri A.R.Khan the employee of the Railways who was over staying in the quarters in question which was found during the enquiry by the Respondents. Sri A.R.Khan has also made an application on 30.05.03 requesting therein to take over the quarters and issue clearance certificate so that the payment of the DCRG of the applicant can be made. On 10.09.03, AAO informed the Estate Officer (Res.No.8) to initiate the eviction proceedings against the applicant, as she has not vacated the quarters in question. A show cause notice dated 16.10.03 (Annexure-A/10) came to be issued by the Estate Officer to the applicant. The applicant submitted her



show-cause on 06.11.03 in which a specific stand was taken by the applicant that she was not in occupation of any of the quarters in question but Sri A.R.Khan was under unauthorized occupation. While the applicant waiting for the final decision of the Estate Officer, the Res.No.7 issued a letter dated 26.09.04, a recovery of the damage rent amounting to Rs.1,29,267/- towards unauthorized retention of Railway quarters for the period from 01.06.97 to 10.02.04 from the settlement dues of Late Munuswamy. A copy of the same was sent to the applicant. She submitted a representation dated 01.11.04 (Annexure-A/13) requesting to provide a copy of the award issued by the Estate Officer/KGP which has so far not been received by her. Without considering the case of the applicant, Res.No.7 directed the recovery of Rs.1,29,267/- from the settlement dues of husband of the applicant; which is impugned at Annexure-A/14 dated 05.02.05 by contending that the action of the respondents is highly illegal, against the law and arbitrary and no reasons are assigned. Res.No.7 has no competence to issue order. The Estate Officer under P.P.Act 1971 is only the authority to determine the damage rent. Hence, the impugned order is liable to be quashed and the relief as prayed in the O.A. shall be granted.

5. Per contra the Res.No.3 only has filed the objection to the O.A. taking contention that the husband of the applicant while working as peon at Kharagpur was allotted the quarter No.520/C-18 on 5.4.95. Later he was transferred to Mancheswar on 01.6.97. After transfer to Mancheswar, he did not surrender and take permission for retention of the above quarter. Subsequently, he died in harness on 02.1.98 and the applicant was appointed as a peon on compassionate ground on 07.11.2000. After the death of her



husband, she did not surrender or seek permission for retention of the said quarter.

6. After four years she made a complaint on 28.01.02 to the Sr.SEE (South Side)/KGP that some outsiders occupied the above quarters and as such she could not vacate the said quarters. A team of Sr.Section Officer and two staff of the o/o Dy.FA&CAO/ KGP inspected the said quarters on 07.9.02 and found that Sri A.R.Khan, Tech-II, T.No.53426 was residing in the said quarters. The Dy.CEE/WS/KGP was requested to advise the staff concerned to vacate the said quarter vide letter dated 05.02.03. Accordingly, Sri A.R.Khan vacated the quarters but the Sr.SE(W) concerned did not issue any clearance certificate in his favour as there is no provision to issue certificate to an outsider.

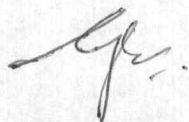
7. Eviction proceedings had also been initiated through the Estate Officer against the applicant. On 10.02.04 the applicant informed that the quarter is in vacant position and she is ready to hand over it. Afterwards the said quarter had been allotted to Sri Loknath Chowdhury, peon on 10.02.04. Hence the question of eviction proceedings against the applicant at the time of hearing stage and the question of final award from Estate Officer did not arise. The damage rent for unauthorized occupation calculated according to Railway rules and the AFA/CRW/MCS was requested to recover the damage rent amount to Rs.1,29,267/- for the period from 01.6.97 to 10.02.04 vide letter dated 12.06.04.



8. The applicant received all the retirement benefits except DCRG amount as Railway quarter which was allotted to her husband was not vacated. She has submitted a representation to the Respondent stating therein that she was not in possession of the Railway quarter but some other person was residing over the said quarter. Accordingly the applicant has not made out the case for grant of relief and requested for rejection of O.A.

9. After receiving the reply statement, the applicant has filed the rejoinder taking the contention that after the transfer of the husband of the applicant, he has joined as peon at Mancheswar on 07.10.97. After his transfer, he had vacated the allotted Railway quarters and his family members (the present applicant and her minor daughter) were residing at their native place at Raipur, Chhatisghar. After a long gap of two years the family pension was fixed on 25.4.2000. The authorities have never intimated anything relating to the allotted quarters of her late husband. After a long gap of more than 4 years, the authorities found that the said quarters was in unauthorized occupation by one of the staff Sri A.R.Khan, peon. The applicant is innocent and not liable for the mistakes committed by the authorities. The applicant was kept in dark.

10. After hearing the counsel for the Respondents, the Respondents are directed to produce the original file relating the eviction proceedings as directed by this Tribunal on 04.01.06. Accordingly they produced the file of eviction proceedings.



11. After perusal of the pleadings and the submissions made from either side, a short question that arises for my consideration is;

“Whether the impugned order dated 05.02.05 at Annexure-A/14 is sustainable in the eye of law?


12. It is an admitted fact from either sides that the husband of the applicant was allotted a quarters No.520/C-18 at Kharagpur on 05.04.95. Subsequently he was transferred to Mancheswar on 01.06.97. The Respondents have appointed the applicant on compassionate ground on 07.11.2000. She was not granted with the DCRG for that she had submitted her application for grant of DCRG as per the Annexure-A/4 dated 12.11.01. The Respondents have processed her application and raised objection that since the husband of the applicant did not surrender the allotted quarters, the DCRG amount has been withheld. The applicant submitted another representation dated 08.02.02 as per Annexure-A/6 in which she has stated that the quarters in question has been unauthorizedly occupied by Mr.A.R.Khan. Based on the submission, an enquiry Committee was appointed. The Committee inspected the quarters and came to know that one Sri A.R.Khan, T.No.5322 has occupied the quarters. Subsequently on direction of the higher authorities, eviction proceedings were initiated against the applicant as per the Annexure-A/10 dated 16.10.03. After receiving show cause notice, applicant submitted her representation as per Annexure-A/11 in which also she has taken the ground that she was not aware of the allotted quarters and Sri A.R.Khan has occupied the quarters. When she is not in possession of the quarters, she was not able to hand over the quarters in question. Subsequently a



communication dated 26.09.04 issued by the AFA(CRW), EcoR/MCS indicating therein to recover the amount Rs.1,29,267/- towards damage rent; for that the applicant had submitted a representation dated 01.11.04 filing the objection as well as asking for a copy of the award issued by the Estate Officer. The Ld.Counsel for the Respondents submitted that the applicant has surrendered the quarters on 10.02.04 and she has given a letter i.e. a memo of evidence dated 10.02.04 (see page-20 original file) in which she has vacated the quarters. Based on the submission made by the applicant, the eviction proceedings were closed. From beginning her stand was, she is not in occupation of the quarters, how can she give a letter dated 10.02.04 stating that she has vacated the quarters. Immediately after vacating the quarters of the allottee, the Estate Officer has to record the proceedings of taking over the quarters. From the file, such a proceeding is not available. She might have influenced by the officers, to get DCRG, early, if she write a letter of handing over the quarters. She might have given such a letter.

13. The Respondents have taken the ground that since the husband of the applicant did not surrender the quarters, others have occupied the quarters unauthorisedly from 01.6.97 to 10.02.04 for that the applicant is liable to pay the damage rent for that recovery proceedings were initiated. Ld.Counsel for the Respondents has not pointed out the proceedings followed by the Railways and is not able to produce the rules also.

14. When the eviction proceedings were initiated against the applicant and that were also closed, how the respondents have come to the conclusion that the applicant is liable to pay the damage rent amounting to Rs.1,29,267/-?, that is available from the original file. The Ld.Counsel for the applicant



submitted that when the eviction proceedings were initiated and under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, a copy of the notice was served on the applicant for that she has filed the objection of notice at Annexure-A/10 but no award was passed. Subsequently, the impugned order came to be passed. I have to rely on the proceedings initiated by the Respondents i.e. Estate Officer. The signatory to the impugned order is not the Estate Officer, the Officer is the Sr.AFA (W)/KGP for Dy.FA&CAO(W)/KGP. The Ld.Counsel for the Respondents submits that the impugned order has not been passed by the Estate Officer. If the impugned order is passed by the Estate Officer, this Tribunal has no jurisdiction to entertain this O.A. On the submission made by the Ld.Counsel for the respondents that impugned order is passed by other than the Estate Officer then I have to decide the case on merits. Accordingly I have gone through the proceedings followed by the respondents. While coming to the conclusion for recovery of damage rent under the impugned order, the respondents have not referred any of the provisions in the impugned order. Based on the submission made by the Ld.Counsel for the respondents the damage rent was calculated based on the documents which are enclosed in the reply statement. The document produced along with the reply statement i.e. Estt. Srl.No.66/2001 which relates to withholding of DCRG etc. in the case of post-retirement retention of quarter. According to the said rule 8(e), dispute, if any, regarding recovery of damages or rent from the ex railway employee shall be subject to adjudication by the concerned Estate Officer appointed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971). The said provision relates to the retired employees of Railways. In the present case, the applicant is working under the Railways. The Estt.Srl.No.22/98 relates to the revised rates for damages for unauthorized occupants of Railway



2 accommodation for ABC and other class of cities w.e.f. 1.11.97. The Estate Officer did not take steps against the husband of the applicant, the applicant was not the allottee of the quarters in dispute, when such being the position, neither the 7th respondent nor the 5th respondent have competence to pass impugned order. The Counsel for the respondents relied on the same document of revised rates of damages for unauthorized occupation of Railway accommodation. In another document Estt.Srl.No.93/02 dated 13.08.02 which relates to the rates of damages effective from 1.11.99 to 30.4.02 and subsequently revised the rates of damage effective from 1.5.02. The Respondents have come to the conclusion while passing the impugned order that the husband of the applicant did not surrender the quarters. Subsequently the applicant was occupied but she did not take permission for retention of the quarters. The respondents have not produced the documents to show that the applicant was in occupation of the quarters in question. The applicant informed the respondents that no eviction proceedings were initiated against Mr.A.R.Khan who was occupied the quarters unauthorisedly. As on the date of passing the impugned order, the respondents were aware that the husband of the applicant was transferred to Mancheswar on 7.10.97 but no steps were taken against the husband of the applicant by the Estate Officer. It is the duty of the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act,1971 to initiate proceedings against the occupant in the quarters subsequent to the license period is over. When the applicant submitted her representation for retirement benefits on 12.11.01 (Annexure-A/4) then only the respondents opened their eyes, it came to know that the husband of the applicant did not vacate the quarters nor the applicant has not surrendered the quarters nor she has taken permission for retention of the quarters. The Estate Officer has not taken steps to issue notice to initiate eviction

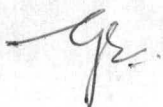


proceedings against the husband of the applicant or any other persons who have occupied the quarters. From 7.10.97 to 12.11.01 the Estate Officer who is the concerned officer to take care of the quarters, kept quite. The respondents did not object at the time of settlement of pension. It is the negligence on the part of the Estate Officer. Only to save the skin of the Estate Officer, he has issued the notice for eviction on 16.10.03 (Annexure-A/10). When the Estate Officer has not taken steps to take action on any of the persons who are staying in the quarters in question, they are finding fault with the applicant. As per the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 under Section 2(3)g relates to the unauthorized occupation. It is relevant to extract the same:

“ ‘Unauthorised occupation’ in relation to any public premises means the occupation by the person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy by the premises has expired or has been determined of any reason whatsoever.”

15. To know the person who is the unauthorized occupant of quarters, the Enquiry Committee headed by the Sr. Section Officer under the Crew Staff were appointed. They have inspected the quarters in question and they have submitted a report of unauthorized occupation by Sri A.R.Khan. After coming to know that Sri A.R.Khan was staying in the quarters, no steps were taken under Section 4 of the said Act.

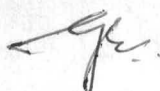
16. Ld. Counsel for the respondents submits that since Sri A.R.Khan was not allotted the quarters, he was treated as outsider. Hence, no action was taken



87

- 13 -

against the applicant. Section 4(4) of the said Act prescribes that whether the Estate Officer knows or has reason to believe that any person or any occupation of the public premises, then, without prejudice to the provision of sub-section-3, he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or any such other manner as may be prescribed. Admittedly based on the statement of the respondents no action was taken against Sri A.R.Khan. A.R.Khan vacated the quarters in the month of Feb,2003. The stand taken by the respondents in their reply statement is not convinced, hence rejected. Subsequent to vacating the quarters, the same was allotted to one Sri Loknath Chowdhury. According to the impugned order the period when Sri A.R.Khan had occupied the quarters, the said license is also directed to be paid by the applicant. When action was not taken by the concerned competent authority which shows only to save himself and to save Sri A.R.Khan. When the Estate Officer has got the information that a person is unauthorisedly occupied the public premises, no action has been taken against that person. The Estate Officer has failed to invoke the powers under Section 12 of the said Act. The stand taken by the Respondents is not correct. The Ld.Counsel for the respondents who is relying on the provisions which is annexed to the reply statement, the said provisions are not applicable to the case of the applicant; which is applicable to only retired employees but the present applicant is in service. As on the date of transfer of the husband of the applicant, he was also in service. The said provisions are not applicable to the present applicant since the applicant is not the allottee of the said quarters and she is directed to pay damage rent. The Ld.Counsel for the respondents submits that damage rent is calculated as per the Estt.Srl.No.22/98 and Estt.Srl.No.93/2000. I carefully examined the impugned order wherein no such calculation is found. The impugned order



does not refer the provisions of PP Act or any other provisions to calculate the damage rent. The Ld.Counsel for the respondents is not able to convince me that the impugned order is passed based on certain procedure and provisions. The unauthorized occupants who have occupied the quarters in question for that the applicant is not liable to pay the license amount. The stand taken by the applicant is that at the time of the transfer of her husband, she was living along with her minor daughter at Raipur (Chhatisghar). Based on the contention taken and submission made by the Ld.Counsel for the respondents, I am of the considered view that the respondents have not justified to come to the conclusion that the applicant is liable to pay the damage rent amounting to Rs.1,29,267/-. Under what basis the penal rent was calculated and from what date to what date that was also not mentioned. It is trite law that when an Administrative Authority acts in the capacity of Quasi Judicial Authority, reasons are an essence of the order, Sine qua non of an order passed in this capacity is fairness, which would not be unless there are reasons apparent on the face of the record. Though a discretion vested in Administrative Authorities has to be exercised in their own wisdom but the aforesaid exercise should be done by recording reasons by Quasi judicial Authority to have fair play in their action. It has two fold objects, firstly, it gives transparency to the order passed and facilitates the concerned to challenge the same in a judicial forum where on judicial review the aforesaid is being scrutinized, the second aspect is that once the reasons are there, the judicial forum shall be assisted and facilitated to adjudicate the controversy. For want of reasons, there seems to be non-application of mind but when there are reasons, it shows application of mind. When the respondents have not given the calculation of the penal rent and the damage rent with penal interest for the particular period, I consider that the impugned order has been passed only to recover the damage rent for sum



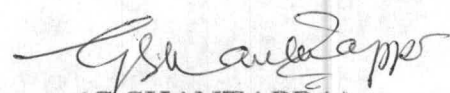
- 15 -

of Rs.1,29,267/- from the applicant and only to save the Estate Officer who is the authority under the Public Premises (Eviction of Unauthorised Occupants) Act,1971. The applicant has made out her case for grant of relief. The respondents have not justified and they have not referred any of the provisions to arrive at conclusion that the applicant is entitled to pay the amount of Rs.1,29,267/-. The stand taken by the respondents is rejected.

17. Since the Estate Officer has not invoked the powers vested in him under the Public Premises (Eviction of Unauthorised Occupants) Act,1971, the Res.No.1 i.e. the General Manager, East Coast Railways is directed to hold an enquiry in respect of the lapses on the part of the concerned officer and also to recover the damage rent for occupying the quarters unauthorisedly and recover the amount from the concerned persons who ^{were} ~~are~~ unauthorisedly occupied the quarters.

18. Accordingly, based on the reasons assigned in the preceeding paras, I am of the considered view that the impugned order is not a speaking order and no reasons are assigned, there was no adjudication, no calculation was given and on what basis the respondents have arrived at conclusion that the applicant is liable to pay damage rent of Rs.1,29,267/-. It is declared, the 7th respondent has no authority to pass an impugned order. Accordingly, the impugned order at Annexure-A/14 dated 05.02.05 is quashed. The respondents are directed to release the DCRG amount of Rs.38,698/- in favour of the applicant.

19. The O.A. is allowed. The respondents are liable to pay the cost of Rs.3,000/- to the applicant.


(G.SHANTAPPA)
MEMBER(JUDL.)