

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 1394 of 96

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

Sri Sudhir Kumar Das, son of Late S.C. Das,
Ex. Electric Driver in scale of Rs.1600-2650/-
retired from service on 31.12.91 from the office
of Divisional Rly., Manager (TRS), Eastern Railway
Sealdah, residing at 24, Bidya Sagar Road, P.O.
Badiapara, Calcutta-700 077.

...Applicant.

- v e r s u s -

1. Union of India represented by the General Manager
Eastern Railway, 17, Netaji Subhas Road, Calcutta
2. The Chief Personnel Officer, Eastern Railway,
17, Netaji Subhas Road, Calcutta-700 001.
3. The Divisional Railway Manager, Eastern Railway,
Sealdah.
4. Sr. Divisional Personnel Officer, Eastern Railway,
Sealdah.
5. Sr. Divisional Electrical Engineer TRS, Eastern
Railway, Sealdah.

...Respondents.

For the applicant : Mr. B.C. Sinha, counsel.

For the respondents : Mr. C. Samaddar, counsel.

Heard on 12.8.98

Order on 12.8.98

O R D E R

D. Purkayastha, JM

The applicant Sri Sudhir Kumar Das, Passenger Driver, who retired on superannuation with effect from 31.12.91 from the Office of the Divisional Railway Manager (TRS), Eastern Railway Sealdah challenged the validity of the impugned letter No.Pen/Sdah/67015 dated 6.9.96 (Annexure-D to the application) which has been modified by the authority by a subsequent letter dated 7.10.96 (Annexure-F to the application) ~~and~~ directing the respondents to deposit the amount of Rs.68,801.69 to the Chief Cashier, Fairlie Place, Calcutta within one month from the date of issue of this letter failing which full amount of relief of pension will be stopped till recovery of the outstanding dues and also prays for direction upon the respondents to cancel the impugned orders dated 6.9.

(Annexure-D) and 7.10.96 (Annexure-F) forthwith and to pay gratuity with interest at the rate of Rs.18% to the applicant. According to the applicant he retired on superannuation on 31.12.91. But the respondents did not take over the possession of the quarter after his retirement till 3.7.96. Therefore, he was not liable to pay any damage rent. It is also stated by the applicant that assessment of damage rent was done by the respondents in violation of the section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 since no authority except Estate Officer can assess the damage rent on unauthorised occupation in view of the section 7 of the said Act. Thereby respondents are directed to release D.C.R.G. money and other settlement dues with interest without making any deduction of damage rent as done, in this case.

2. The case of the applicant is resisted by the respondents by filing written reply. It is stated in the reply that applicant on his retirement on 31.12.91 has been received all settlement dues except D.C.R.G. money due to non-vacation of the railway quarter. It is also stated by the respondents that due to non-vacation of the railway quarter after permissible limit prescribed by the Rule, he was deemed to be unauthorised occupant of the quarter and respondents are authorised to assess damage rent in accordance with the rule and realised the same from the D.C.R.G. money payable to the applicant. Accordingly damage rent was assessed by a letter dated 6.9.96 and that was subsequently modified by an order dated 7.10.96. The said order was passed in accordance with the provision of the rule and applicant should not have any grievance in this case. Thereby application is liable to be dismissed.

3. The applicant also filed rejoinder in this case to the reply filed by the respondents. Mr. Sinha, Id. counsel for the applicant has firstly drawn my attention to the letter dated 27.11.91 (Annexure-A) to the rejoinder submits that the said letter indicates that applicant was authorised to retain the quarter till the possession of the quarter is taken by the respondents on the basis of the allotment. So, applicant cannot be said to be ^{can} _{not} unauthorised occupant on expiry of the permissible limit prescribed by the rules after his retirement w.e.f. 31.12.91.

4. Mr. Samaddar, Id. counsel for the respondents refers to para 8.19 and also para 8.22 of the Master Circular No. E(G)86 QR 1-6 dated 30.9.1986 (Bahri's RBO 1986, 216 (RBE 179/86) published at page 12 to 19 of Bahri's Railway Board's Orders on Establishment (including Finance Directorate), 1993 Vol.I. Referring to this provision and paragraphs of the said circulars, the Id. counsel Mr. Samaddar submits that subject matter or dispute is no longer res-integra since it has been settled finally by the Full Bench of the Tribunal, Allahabad in Ram Poojan's case reported in 1994-1996 Administrative Tribunal Full Bench Judgments, page 244. So, realisation of damage rent by the authority is permissible without adopting procedure, envisaged in section 7 of the Public Premises (Eviction and Unauthorised Occupant) Act, 1971. Mr. Sinha, Id. counsel for the applicant submits that in a judgment reported in 1996 Vol.II ATJ 252 P.K. Gangadharan Vs. Union of India and Ors. the Hon'ble Bench of the CAT, Ernakulam Bench decided the case otherwise he also relied on the judgment reported in 1997 Vol.II ATJ 90 S.S. Roy Vs. Union of India & Ors. Para 8.19 of the said circular ~~under section of the Public Premises (Eviction and Unauthorised Occupant) Act, 1974~~ runs as follows:-

A Railway employee on retirement including voluntary retirees may be permitted to retain the railway accommodation for a period of 4 months on payment of normal rent/flat rate of licence fee/rent and the next 4 months on payment of normal rent/flat rate of licence fee/rent and the next 4 months on payment of special licence fee, i.e. double the normal rent or double the flat rate of licence fee/rent."

The para 8.22 of the said circular also runs as follows:

"On expiry of the permissible/permited period indicated in all the above cases, the allotment of quarter in the name of the employee at the old station will be deemed to have been terminated automatically. Retention of quarter by the employee after expiry of the permissible period will be treated as unauthorised. During the period of unauthorised occupation the employee should be required to pay damages rate of rent in respect of the railway quarter. Realisation of damages rate of rent should not be pended on the ground that the employee has appealed or the case of the employee has been referred to the Ministry of Railways for regularisation of the excess period of retention. If the appeal of the employee succeeds he will be allowed refund as due."

Mr. Samaddar, Id. counsel submits that the said two paras of the statutory order of the Railway Department is enforceable. But Mr. Sinha, Id. counsel for the applicant submits that those are administrative instructions thereby the same do not have statutory force.

5. I have considered the submission of Id. counsel for both the parties over that controversy. It is seen that admittedly applicant retired from service on 31.12.91. So, permissible limit of holding quarter after retirement on 31.12.91 in ordinary course as per rules, is four months; thereafter another four months the quarter can be retained by the employee on exceptional circumstances mentioned therein. Thereby no employee can retain quarter after expiry of the 8 months. In the instant case, applicant failed to produce any letter from the Department to show that he was given permission to retain the quarter after expiry of the period of eight months or four months, whatever may be in this case. An employee who is allotted a Govt. accommodation is normally permitted to retain the same till it is surrendered by him or he ceases to occupy the residence or allotment is cancelled/deemed to have been cancelled for any reason by Director of Estates. Admittedly, after retirement, he ceased to be Railway servant. In this case the applicant did not vacate the quarter after retirement and thereby his allotment shall be deemed to have been terminated on expiry of the said permissible period since beyond permissible limit cancellation of quarter is automatic. The stand taken by the applicant that he has right to continue in the quarter on the basis of the letter dated 27.11.91 (Annexure-A to the application) does not hold good in this case. Thereby the applicant in this case was rightly treated as unauthorised occupant in the quarter after expiry of the permissible limit as prescribed by the rule on his retirement on superannuation w.e.f. 31.12.91.

6. Id. counsel Mr. Singh for the applicant submits that the respondents were not authorised to determine the damage rent in view of the provision of section 7 of the Public Premises (Eviction and Unauthorised Occupants) Act, 1971. As per rule 7 of the said Act, Estate Officer is only the Competent Authority to assess the damage rent. Since the respondents did not take resort of the said provision of section 7 of the said Act,

thereby assessment order passed by the authority and communicated the same to the applicant by a letter dated 6.9.96 (Annexure-D) and subsequently modified letter dated 7.10.96 are illegal and without jurisdiction. On perusal of the para 8.22 of the Master Circular as referred to above, I find that an employee is liable to make payment of damage rent on expiry of the permissible limit. ~~Since the applicant was treated to be an unauthorised occupant, the question is that who is to assess the damage rent.~~ According to Mr. Samaddar, Id. counsel for the respondents, the Department did take action under Public Premises (Eviction and Unauthorised Occupants) Act 1971 for the purpose of eviction only not for assessment of the damage rent. Mr. Samaddar, Id. counsel also relied on circular on the subject "Revision of damage rates for unauthorised occupation of Railway accommodation, located in class 'B' and 'C' cities" vide No. F(X)I-93/11/2, dated 18.8.1994 published in Railway Board's Order on Establishment Matters including Finance Directorate published by Bahri Brothers. I find that the authority to realise damage rent is no longer res integra in this case. The power to assess the damage rent is vested upon the respondents Authority in view of the provision of para 8.22 of the circular as referred to above. In Ram Poojan's case Hon'ble Full Bench, CAT Allahabad has clearly opined ~~in~~ holding that in our considered opinion, no specific order cancelling the allotment of accommodation on expiry of the permissible/permited period of retention of the quarters on transfer, retirement or other wise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied. In Para 39 of the order, they further hold that the Railway Authorities ^{to recover penal/damage rent by} deducting the same from the salary of the Railway servant and it would not be necessary to take resort to ^{the} proceedings under Public Premises (Eviction of Unauthorised Occupants) Act 1971. So, admittedly, from the records, it is found that the respondents did not take assistance of the proceedings under Public Premises (Eviction and Unauthorised Occupants) Act, 1971 for realisation of damage rent. The case was referred to the Estate Officer for eviction as unauthorised occupants

from the quarter. I also find that the assessment of damage rent done by the authority is fully in accordance with law and as per rules in view of the judgment of the Hon'ble Apex Court in Amitabh Kumar and Another Vs. Director of Estates and Anr. reported in 1997 Supreme Court Cases (L&S) 698, where it was held that the Government employee who is an unauthorised occupation is required to pay penal rentals.

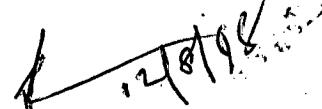
In view of the circumstances, I find that order of assessment done by the respondents with full authority. It is also found that some mistakes were noticed in the initial assessment of the damage rent (Annexure-D to the application) and subsequently the said mistake was rectified by the authority on 7.10.96 vide Annexure-F to the application and on perusal of the two letters i.e. Annexure-D and Annexure-F, I find that D.C.R.G. money payable to the applicant has been enhanced to Rs.44,757/- from Rs.38,874/- as assessed earlier. So, it was done for the interest of the applicant who cannot claim to have been prejudiced. In view of the aforesaid circumstances, I find no merit in the application. ~~Accordingly~~

~~It is dismissed.~~ It is also found that applicant has sought for relief to issue complementary passes due to applicant forthwith since he vacated the quarter, ^{✓ L on the ground that the} so stoppage of passes is illegal, arbitrary and against the rules. But it is found from the Annexure-F to the application that the applicant is liable to pay Rs.68,801.69 to the Department, as damage rent but that has not yet been paid by the applicant though he vacated the quarter on 3.7.96. But it is found from the circular at para 9(iii) of the Master Circular published at page 19 in Bahri Brothers 1993 Vol.I that-

"One set of post-retirement passes should be disallowed for every month of unauthorised retention of Railway quarters by retired officers/staff. The concerned retired officer/staff may be allowed the privilege of post-retirement passes after the period during which the forfeited passes would have been admissible, is over. A show cause notice to this effect may be issued to the retired employee before disallowing the pass."

I find the applicant has vacated the quarter on 3.7.96 and thereby he may be entitled to get the supplementary passes. However, Department may decide this claim after issuing notice to the applicant for complementary passes in accordance with the law and rules.

7. In view of the circumstances, the application is dismissed awarding no costs.


(D. Purkayastha)
Member (J)