

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

W.O.A. 1455/1996

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

NETAI PADA BISWAS

VS.

1. UNION OF INDIA, SERVICE THROUGH THE GENERAL MANAGER, EASTERN RAILWAY, FAIRLIE PLACE, CALCUTTA-1.
2. GENERAL MANAGER, EASTERN RAILWAY, FAIRLIE PLACE, CALCUTTA-1.
3. CHIEF PERSONNEL OFFICER, EASTERN RLY., FAIRLIE PLACE, CALCUTTA -1.
4. DIVISIONAL RAILWAY MANAGER, EASTERN RAILWAY, MUGHALSARAI, U.P.
5. SR. DIVISIONAL PERSONNEL OFFICER, EASTERN RAILWAY, MUGHALSARAI.

For the applicant : Mr. Samir Ghosh, counsel

For the respondents : Mr. R.M. Roychoudhury, counsel

Heard on : 20.7.99

Order on : 20.7.99

O R D E R

Heard 1d. counsel for both sides.

2. The case of the applicant in short is that, he retired from service superannuation w.e.f. 31.1.95 as Station Superintendent Gr.II at Gaya under Eastern Railway. It is stated by the applicant that after retirement, he has been paid all his retiral benefits except his DCRG money. According to the applicant, during his long service period he was posted and transferred at different railway stations, and from February, 1991 to June 1994 he worked at Rafiganj railway station as Station Superintendent Gr.II on transfer from Gaya. Since no quarter was allotted in his favour at Rafiganj, he retained his quarter at Gaya ~~and~~ during the intervening period as mentioned above. Thereafter he was again tranferred to Gaya and worked there till his retirement. He vacated the quarter at Gaya on 10.1.95 i.e. about three months prior to his date of retirement. Now the grievance of the applicant is that the respondents wanted to recover the

amt of Rs.69,404.00 from his DCRG money vide order dated 5.4.95, as penal rent for unauthorised occupation of Govt. quarter at Gaya for the period from February, 1991 to June, 1994. It is stated by the applicant that he made representation to the authorities challenging the said impugned order of recovery of damage rent for Qtr. No.160/A at Gaya which was occupied by him during the period of his service at Rafiganj on transfer from Gaya, vide letter dated 14.3.96(Annexure 'A' to the app.). The said representation was disposed of by the respondents vide letter dated 10.6.96 without proper consideration of his case.

3. Feeling aggrieved by and dissatisfied with such action of the authorities, the applicant approached this Tribunal for getting relief. According to the applicant he paid licence fee for occupation of the quarter No.160/A at Gaya for the period from 16.2.91 to 19.6.94 and thereby the respondents should not recover any damage rent from his DCRG money and the amount of DCRG should be released with interest.

4. Respondents filed written reply denying the claim of the applicant. It is stated by the respondents that the applicant, Netai Pada Biswas joined the Railway service as an Assistant Station Master w.e.f. 16.5.58 and finally he retired from service w.e.f. 31.1.95 as Station Superintendent Gr.II in the scale of Rs.2375-3500/-. After his transfer at Gaya during his service period he was allotted a railway quarter/^{bearing} No.160/A w.e.f. 7.1.87/wherefrom the applicant was transferred to Rafiganj in the month of February, 1991. But after his transfer and posting at Rafiganj, he ^{vacated} neither lived in the said railway quarter of Gaya nor he took permission from the authorities to retain the same and therefore he was treated as unauthorised occupant of the said quarter after expiry of permissible limit as per extant rules. Thereafter, he was again transferred to Gaya and on his transfer at Gaya, the competent authority allotted the said quarter bearing No.160/A in favour of the applicant w.e.f. 20.6.94. According to the respondents, on account of his unauthorised occupation of the railway quarter, as aforesaid,

from 16.2.91 to 19.6.94 ~~damage rent or damage rental~~ was assessed as Rs. 42,318.00 and besides the said damage rent, Electric charge of Rs. 21,566.00 and E.C.C.S. Bank Loan of Rs. 5,520.00 were also to be paid by the applicant. Thus the total amount of Rs. 69,404.00 was to be recovered from the applicant out of which only ~~Rs. 65,750~~ Rs. 65,760.00 could be recovered from his settlement dues i.e. his DCRG money and leave salary. For balance amount of Rs. 3644.00 (Rs. 69,404 - ~~65,750~~) the Manager, State Bank of India, Krishna-nagar(Nadia) has been advised to recover the same from the applicant's relief to pension. So, the respondents acted in accordance with the rules in this matter and therefore the application is devoid of merit and liable to be dismissed.

5. Ld. counsel Mr. Samir Ghosh appearing on behalf of the applicant submits that recovery of such outstanding dues as damage rent as claimed by the respondents is violative of principle of natural justice as the applicant was not afforded any opportunity to state his case. He submits that the applicant paid licence fees for, the period from 16.2.91 to 19.6.94 (period of retention of the quarter at Gaya on transfer to Rafiganj) and subsequently when he was retransferred to Gaya, the said quarter was regularised in his favour. So, the question of recovery of such damage rent for the said quarter does not arise. He further submits that for recovery of damage rent after retirement of the Government servant, such rent ought to have been assessed by the Estate Manager not by the controlling authority of the employee under the provisions of Public Premises(Eviction of Unauthorised Occupants) Act, 1971. So, the action of the respondents is illegal as they did not act in accordance with the extant rules. Mr. Ghosh also submits that the DCRG money of the Government employee which is payable to him on his retirement from service, comes under the purview of the definition of the word 'property' as guaranteed under Article 21 of the

stitution of India. So, such recovery of damage rent from the DCRG money of the applicant, without affording him any opportunity to state his case, is violative of Article 21 of the Constitution.

6: Ld. counsel Mr. R.M. Roychoudhury, appearing on behalf of the respondents submits that the applicant was unauthorised occupant of the said Government quarter for the period from 16.2.91 to 19.6.94 and therefore, he is liable to pay damage rent at penal rate for the quarter bearing No.160/A at Gaya. He further submits that the respondents are not obliged to issue any show cause notice to the applicant regarding recovery of damage rent against the applicant, ~~as~~ claimed by him. He also submits that such order for recovery of damage rent against the applicant, was issued in accordance with the Railway Board Circulars as issued by the Railway Board. So, the question of show cause notice before recovery of damage rent, does not arise under the law and thereby the application should be dismissed.

7. I have considered the submissions of the ld. counsels for both sides and have perused the records. I find that the respondents did not take any action regarding recovery of damage rent against the applicant before the date of his retirement. As per normal rules of pension, all efforts should be made by the respondents regarding assessment of ~~rent either penal or damage~~ before the date of retirement of the employee concerned because retirement dues are to be paid to the Government servant on his retirement but not later than two months from the date of retirement. On the other hand, it is alleged by the applicant that licence fees for the said quarter for the relevant period have been realised by the respondents while he was in service without raising any objection. Section 7 sub-section(3) of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 stipulates that :-

"No order under sub-section(1) or sub-section(2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer."

In the instant case, I find no show cause notice was issued by the respondents before issuing the order for recover of damage rent against the applicant. It be mentioned here that a Government employee has no right of retaining his quarter after the permissible period as prescribed by the allotment rules. In this case, admittedly the applicant retained his quarter at Gaya after his transfer to Rafiganj, beyond the permissible period as per rules. But the respondents did not take any trouble to issue show cause notice to the applicant before assessing damage rent for unauthorised occupation of the Government quarter and the applicant was not informed about the recovery of huge amount ~~as~~ damage rent after his retirement from service. So, under the provision of Section 7, sub-section (3) of the Public Premises(Eviction of Unauthorised Occupants) Act, 1971, a notice of show cause ~~aught~~ to have been issued to the applicant since no rent was recovered by the respondents for occupation of the quarter for the said period. ~~before his retirement~~

8. In view of the abovementioned circumstances, I am of the view that the acts of the respondents are found violative of the principles of natural justice in the light of the provisions of Section 7(3) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In view of the above reasons, the impugned order regarding recovery of damage rent vide letter dated 10.6.96(Annexure R-1) is liable to be quashed and accordingly the order dated 10.6.96(Annexure R-1) is quashed. The respondents are directed to release the DCRG Money of the applicant after deduction of Electric charge of Rs.21,566.00 and E.C.C.S. Bank Loan of Rs.5,520.00, since the applicant agreed pay to pay the same from ~~his~~ DCRG money, within two

months from the date of communication of this order.

Respondents are given liberty to assess damage rent or penal rent against the applicant after giving him reasonable opportunity to state his case for the purpose of recovery in accordance with the rules. With these observations, the application is disposed of w awarding no costs.

11/3/2017/199
(D. PURKAYASTHA)
MEMBER(J)