

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 229 of 1996

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman
Hon'ble Mr. M.S.Mukherjee, Member (A)

N. N. GHOSH

VS

UNION OF INDIA & ORS

For the petitioner : Mr. Balai Chatterjee, counsel

For the respondents : Mr. P.K.Arora, counsel

Heard on : 1.5.96 : Order on : 4-7-1996

O R D E R

M.S.Mukherjee, A.M.:

This is an application under section 19 of the Administrative Tribunals Act, 1985, in which the petitioner is aggrieved by the action of the respondents in deduction of monthly amount of Rs. 950/- from his salary for continued retention of the quarters at Andal even after his transfer to Asansol.

2. The facts of the case are that the petitioner had been appointed as Clerk at Andal under the TFR/TRS/UDL on 22.6.87 and that he was allotted a railway quarters being No. 816/1/398 at Damodal Colony at Andal and he occupied the said quarter on 1.4.89. Subsequently, the petitioner was transferred from Andal to Asansol and he joined his new station on 1.12.90. The petitioner's contention is that since the transfer order did not stipulate that he was to vacate the quarter at Andal on transfer to Asansol, this implied allowing him to retain the quarters at Andal. The petitioner contends that upto December 1995, he was charged only normal rent for his occupation of the quarter at Andal and that by an order dt. 12.9.94 he was directed to vacate the quarter at Andal. He submitted a reply on 14.9.94 which has not been replied to. Thereafter also only normal rent was charged

from him and hence it is to be presumed that he was permitted to retain the quarter at Andal. He has also contended that since Andal and Asansol belong to the same ^{head} ~~quarters~~ he is entitled to retain the quarter at Andal as there has been no change of headquarters.

3. In filing this petition, the petitioner has prayed for a direction on the respondents to refund to him the amount that has been deducted from him in excess of normal rent by way of damage rate of rent/outsidser rent and to direct them further not to deduct any excess amount beyond normal rent for his occupation of the quarter at Andal.

4. The respondents have contested the case by filing a written reply. Their case is that on transfer from Andal to Asansol, the petitioner was required to vacate the quarter at Andal ^{normally} on expiry of the ^{permitted} period of 2 months as per rules. But the petitioner neither applied for retention of the quarter at Andal further nor has he vacated the same. Therefore, the petitioner has been rightly treated to be as on unauthorised occupation of the quarter at Andal and the competent authority passed orders for deduction of rent as per damage rate from the salary of the petitioner from December 1995 onwards. It is further stated that only damage rate has been charged from the petitioner and not of outsider rate as alleged by the petitioner. The respondents further state that on 20.3.92, the authorities formally advised the petitioner to vacate the quarter at Andal vide Annexure-R1 to the reply but he disregarded the said advice. In such circumstances, no illegality has been committed by them in charging damage rate of rent from the petitioner. They have, therefore, urged for the rejection of the petition.

5. In response to the reply, the petitioner has filed a rejoinder.



6. We have heard the learned counsel for both the parties. Thereafter, Mr. Balai Chatterjee, the 1d. counsel for the petitioner has also submitted his written arguments. Since the matter pertains to financial recovery from salary, we propose to dispose of the case at the admission stage itself.

7. On painstakingly going through the petition, the rejoinder and the written arguments filed by the learned counsel for the petitioner, we find that these are replete with the mention of a large number of rulings. ~~The rejoinder which runs for only 6 pages mentions 36 rulings and the written arguments running for 4 pages with annexures mentions 31 rulings.~~

8. In brief, the contentions of the learned counsel for the petitioner can be broadly categorised as follows :

- i) Since the petitioner continued to occupy the quarter at the old station at Andal, this cannot be treated as unauthorised as the petitioner has been charged only with normal rent by the respondents for many months in the beginning.
- ii) During the said period of occupation of the quarter at Andal, the petitioner has not been paid any HRA by the authorities. Therefore, his occupation of the quarter cannot be treated as unauthorised.
- iii) Since the transfer order to Asansol did not indicate that the petitioner had to vacate the quarter at the old station at Andal and as the allotment of the quarter at Andal has not been formally cancelled by the competent authority, his continued occupation of the same cannot be treated as unauthorised one.
- iv) The recovery of amount in excess of normal rent is illegal as the petitioner had not been given any prior notice for this.

v) Such recovery is also illegal as the respondents have not followed the statutory provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1976 (for short PP Act) and the attempt of the respondents to recover this amount by virtue of the Railway Board's circular and instruction is illegal.

vi) The respondents cannot recover the amount as damage rate or damage rent as no such terminology is available in the statutory rules or in the PP Act.

vii) It will be impermissible to justify the action of the respondents by relying on the judgement of this Tribunal in the case of Shankar -vs- UOI, 1994(26)ATJ 278, since a large number of judgements by various Benches of this Tribunal holding contrary view are there, including the one in J.K.Chatterjee-vs- UOI as reported in 1995(1) ATJ 229.

viii) The judgement in the case Shankar (supra) is the solitary judgement of this type which has to be treated as judgement in per incuriam.

ix) On the other hand, the judgement of the other Bench of this Tribunal in J.K.Chatterjee's case (supra) is binding inasmuch as the same has been upheld by the Hon'ble Supreme Court while considering an SLP filed by the railways(respondents in that case) and the SLP has been dismissed.

9. In support of the contentions, during oral argument and also through the written statement and rejoinder, Mr. B. Chatterjee, the 1d. counsel for the petitioner has cited a large number of rulings ~~already indicated~~. However, the major ones are as follows :



1. J.K.Chatterjee -vs- UOI ... 1995(1)ATJ 229
(Decided by Court No. II (Calcutta Bench) on 7.10.94
2. Madan Mohan -vs- UOI ... 1990(2) AISLJ(CAT) 56
Decided by Principal Bench on 24.2.92
3. Neelam Malik -vs- UOI ..ATC 1994(26) 176
Decided by Principal Bench on 18.8.93
4. ~~R.Kapur vs UOI ... 1994(28) ATC (SC) 516~~
5. Bhargavi Amma -vs- Sub-area Commanda..1994(1) ATC453
Calcutta Bench(Court II) on 21.9.94
6. UOI -vs- RJP Verma .. 1993(2) ATJ 84
Calcutta Bench (Court II) 20.4.93
7. Rabindra Nath Bose-vs-GM,E.Rly ..1976 Lab IC 208
Calcutta High Court dated 23.4.75
8. R.R.Hingarani -vs- UOI .. AIR 1987 SC 808
9. Awadesh Kumar -vs- UOI ..1994(1) ATJ 59
Decided by Allahabad Bench on 30.8.93
10. All India Reserve Bank Retired Officers Association
-vs-UOI ... AIR 1992 SC 767
11. State of UP -vs- UP University College Pensioners'
Assocaition ..1994 (2) ATJ 415
12. Anirudha Pandey -vs- Bihar State Road Transport Corp.
...1995(29) ATC 21
13. Menaka Gandhi -vs- UOI .. AIR 1978 SC 597
14. Deoki Nandan Prasad -vs- UOI .. AIR 1984 SC 1560
15. Wazir Chand-vs-UOI ..Bahri Bros. FB, Vol.II p.295-97
10. But as it is, these very contentions and the rulings
cited by Mr. Chatterjee have already been considered by us in a
number of cases in the recent past and more particularly and more
comprehensively in the case Benoy Kumar Rarhi -vs- UOI & Ors (OA
No. 35 of 1995) which has been decided by us on 7.6.96. Mr. Balai
Chatterjee, the 1d. counsel for the petitioner in the present
case has also represented the petitioner in OA 35 of 1995. After
detailed analysis of the contentions of Mr. Chatterjee with
reference to the rulings cited by him, all the contentions were
rejected by us with reasons in that case and while delivering the
said judgement this Bench also considered inter alia other
judgements, some of which have also been mentioned in this case
as well :

1. Shankar -vs- UOI .. 1994(26) ATC 278
Calcutta Bench on 16.9.93

2. Sushil Chander Bhatnagar -vs- UOI .. 1994(2) AISLJ 67
Principal Bench dt. 26.7.94

3. Inderjit Singh -vs- UOI .. 1993(25) ATC 446
Principal Bench dt. 13.5.93

4. Jagabandhu Sahu -vs- UOI .. 1996(1) ATJ 335
Calcutta Bench dt. 9.1.96

5. M.S.Banerjee -vs- UOI .. 1996(1) ATJ 307
Calcutta Bench dt. 15.11.95

6. Nirod Chandra Roy -vs- GM, NF Rly .. AIR 1967, Assam 44

7. UOI -vs- Santi Kr. Banerjee .. AIR 1967 CAL 129

8. Ranjit Kr. Banerjee -vs- UOI .. 1996(32) ATC 761
Calcutta Bench dt. 2.11.95

9. Shiv Charan -vs- UOI .. 1992(19) ATC 129 (SC)

12. Sudha Iswar Rao -vs- UOI .. 1995(29) ATC 279

13. Rasila Ram -vs- UOI .. Full Bench 1989(10ATC 737

14. Ganga Ram -vs-UOI.. Karla's FB Judgements 1991-93 103

15. CVK Naidu -vs- UOI .. ATR 1989(2) (CAT) 465 (FB)

16. ~~Mr. Kapoor vs. UOI. 1994(28) ATC (SC) 516~~

11. In view of the above, we do not propose to discuss these contentions and the judgements again in order to avoid repetition. We only hold that the contentions of Mr. Chatterjee are not tenable.

12. In the instant case, Mr. Chatterjee has, however, made a new point that transfer of the petitioner to Asansol from Andal does not involve any change of headquarters and as suchs he can continue to occupy his quarter allotted to him at the old station at Andal.

13. The respondents have contested this by stating in the reply that a transfer is transfer even from one office to another without involving change of station. But the transferred staff is supposed to vacate the railway quarters if the transfer involves change of station. In the instant case, the petitioner has been transferred from Andal to Asansol which is 26 kms away.



14. Mr. Chatterjee, however, argues that it does not mean ~~any~~ change of headquarters and in terms of rule 113(51) of IREM, transfer means posting from one headquarters to another, but in the instant case both Andal and Asansol are within the same headquarters and hence, the petitioner is entitled to retain the quarters at the old station.

15. We are, however, unable to agree with this contention of Mr. Chatterjee. The term headquarters has not been defined anywhere in the rules. However, in another case viz. Jagabandhu Sahu -vs- UOI as reported in 1996(1) ATJ 335 decided by this Bench on 9.1.96, Mr. Balai Chatterjee, the ld. counsel appearing for the petitioner in that case raised similar contention, we have observed that two stations would be treated as part of the same headquarters town, if they belong to the same urban area and in terms of Urban Land Ceiling Act, urband area has been defined as the same urban agglomeration vide under section 2(4) of the Urband Land (Ceiling & Regulations) Act, 1976. Now in item No. 15 of Schedule I to the said Urban Land Ceiling Act, 1976, a catalogue of urband agglomeration in the State of West Bengal has been provided and it appears that Asansol urban agglomeration includes within its jurisdiction only 3 specific areas, viz. Asansol, outer Burnpur and Burnpur. Andal does not form part of Asansol urban agglomeration. Under the circumstances, we have to reject the contention of Mr. Chatterjee that Andal and Asansol are both part of the same urban area and same headquarters. Incidentally in the jagabandhu Sahu's case (supra) also, Mr. B.Chatterjee, had appeared for the petitioner. His contentions were rejected by our judgement dated 9.1.96, which had been delivered prior to the conclusion of the hearing of the present case.

16. Through his written arguments for this case, Mr. B.Chatterjee, the learned counsel for the petitioner has cited a number of other rulings. We do not propose to discuss them, as

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they do not make any new point or arguments. However, in the course of hearing, Mr. B.Chatterjee has submitted that since a number of rulings of this Tribunal are in favour of the petitioner, we should not decide the petition otherwise by relying upon fewer alternative rulings of the Tribunal, unless a larger bench has upheld such alternative view.

18. Well, in this regard also, we find that the Full Bench of this Tribunal at Allahabad, in a recent case, Ram Poojan -vs- UOI [1996(1) ATJ 540] pronounced on 22.2.96, has settled all these issues. That case pertained to a railway employee who on transfer from Allahabad to Mirzapur was not allotted any quarters at the new station and he continued to occupy the railway quarter at Allahabad. While deciding the case, the Full Bench held inter alia as follows :

i) If a railway employee on transfer, retirement or otherwise, does not vacate the railway quarter, even after the expiry of permissible period, it is not necessary to issue any specific order cancelling the allotment of accommodation and further retention of railway accommodation would be unauthorised and penal rent/damage rent can be levied.

ii) Such penal rent/damage rent can be levied according to the rates prescribed from time to time in the Railway board's circulars.

iii) It would be open to Railway authorities to make such recovery by deducting the same from his salary and for this it is not necessary to resort to Public Premises Eviction Act, which is only an alternative procedure.

iv) Railway board's circulars are the general or special orders permitted to be issued under para 1711 IREM. Such circulars/letters supplement the provisions of para 1711 IREM and do not supplant them.

19. *At incidentally* While deciding as above, the Full Bench had considered

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inter alia our Calcutta Bench judgements in the cases of J.K.Chatterjee (supra), Shankar and others (supra) and Sudha Iswar Rao (supra)

20. In view of the above, we find no force in the contentions of the petitioner and the petition has to be rejected.

21. However, the fact remains that the petitioner is in the initial years of his service and a lot of amount is being deducted from his monthly salary for his continued occupation of the quarter at Andal which is unauthorised. However, it is admitted by the respondents that the distance between Andal and Asansol is only 26 Kms. In such circumstances, we give liberty to the petitioner to submit, to respondent No.1 (GM, E.Rly) through proper channel, after vacating the quarter, a self-contained and detailed representation along with a copy of this order, pleading on ground of hardship and humanatarian reasons, for waiver of the maximum possible recovery under paras 1719/ ~~and~~ 1722 of IREM, Vol.II and if such representation is made, the respondent No. 1 shall suitably decide the same early and in the context of such decision, the appropriate amounts, ^{if any} be refunded.

22. Subject to the above direction, the petition is dismissed. There will be no order as to costs.

Mukherjee
(M.S.MUKHERJEE)
MEMBER(A)
4-7-96

A.K.Chatterjee
(A.K.CHATTERJEE)
VICE CHAIRMAN
4-7-96