

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.317 of 1996

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

Lowakesh Kumar, S/O Late Ramswarup Singh
working as Head Weigh Clerk, with Hd. Qr.
at Dhanbad, at Bhanora in the Dist. of
Burdwan and residing at Rly. Qr.No.256/B
Sitarampur Dist. Burdwan

... Applicant

VS

1. Union of India, through the General
Manager, Eastern Railway, 17, N.S. Road,
Calcutta-1

2. The Divisional Railway Manager,
Eastern Railway, Dhanbad-826 001

... Respondents

For the Applicant : Mr. Balai Chatterjee, counsel
Ms. B. Mondal, counsel

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

Heard on 29.6.1998

: : Date of order: 29.6.1998

O R D E R

The applicant, Lowakesh Kumar, Head Weigh Clerk has approached this Tribunal by this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the validity of the order relating to realisation of damage rent from his salary from the month of December, 1992 at the Rate of Rs.675/- per month issued by the respondents. The case of the applicant in short is that while he was working at Sitarampur as weigh clerk, he was transferred to Parasia Weigh Bridge under Dhanbad Division by an order dated 8.10.92 by the competent authority. He joined at Parasia with effect from 23.10.92. But he did not vacate the quarters allotted to him at Sitarampur on being transferred from Sitarampur to Parasia. The respondents realised the normal rent from him till the month of November, 1992. Thereafter, the applicant has been transferred from Parasia to Bhanora Weigh Bridge under Dhanbd Division by an order dated 15.7.94 issued by the competent authority. But the respondents suddenly started to

recover the damage rent with retrospective effect from the month of December, 1992 at the rate of Rs.675/- per month without serving any showcause notice to him. Though the recovery started from the applicant from the month of December, 1992, the applicant had approached this Tribunal only in the year of 1996 by filing this application and challenging the validity of the action taken by the respondents for the purpose of recovery of damage rent due to overstaying in the quarter on his transfer from Sitarampur to elsewhere, as mentioned above. According to the applicant, the impugned order transferring him from Sitarampur to Parasia cannot be termed as a transfer in view of the provision of Rule 103, Sub-rule (51) of the Indian Railway Establishment Code, Vol.I, 5th Edition, 1985 which envisages that transfer means the movement of a railway servant from one headquarter station in which he is employed to another such station, either (a) to take up the duties of a new post, or (b) in consequence of a change of his headquarter. It is also alleged by the applicant that the impugned order of recovery of penal rent has been issued without serving any notice upon the applicant and thereby, the action of recovery of penal rent from the salary is violative of the principle of natural justice, since the applicant is entitled to get prior notice of showcause before assessment of damage rent as done in this case. It is also alleged by the applicant that the respondents realised the normal rent for the period he remained on unauthorised occupation at Sitarampur and thereby, it is presumed that he was allowed to retain the quarters by relaxing the rules which are applicable to him on transfer and the respondents are now estopped to realise the damage rent from the applicant since they realised the normal rent from the salary upto December, 1992. According to the applicant, he made representation to the authorities and constantly issued reminders to the authorities, but no action has been taken by the respondents. Since no action has been taken by

the respondents on his representation, he had to approach this Tribunal by filing this application for getting appropriate relief. It is found from the record that on an application made by the applicant before this Tribunal a stay order was granted by this Tribunal for realizing the damage rent from his salary as well as from vacating the quarter, as asked for.

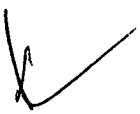
2. The respondents have resisted the case by filing a written reply. They have denied the case of the applicant stating interalia that the applicant was transferred from Sitarampur to Parasia Weigh Bridge under Dhanbad Division in the year of 1992 by an order dated 8.10.92, as issued by the competent authority while he was working as Assistant Weigh Clerk. He joined at Parasia on 22.10.92 and normal rent was recovered upto November, 1992 and damage rent at the rate of Rs.675/- per month has been started to be recovered with effect from December, 1992 as per rates prescribed vide CPO/CCC's letter No. E.886/0/Vol.V dated 8.8.89, Annbexure/R-1. He has not taken any permission for retention of Qr. No.250/B at Sitarampur as per CPO/CCC's letter No.E.886/0/Vol.V dated 6.3.87, Annexure/R-2 to the application. It is stated that the applicant was again transferred from Parasia Weigh Bridge to Bhanora Weigh Bridge in the year of 1994 by an order dated 15.7.94, Annexure/R-3 and he reported there on 28.7.94 and he is still working there and he has not taken permission for quarter retention. So, according to the respondents, as per CPO/CCC's letter No.E.886/0/Vol.VI dated 16.7.92 (Annexure/R-4) a Railway staff is liable to vacate the Railway quarter immediately on taking charge in the new station unless he seeks permission for retention of the quarters as per rules. On the expiry of the permissible period if he does not vacate the quarter the same will be treated as unauthorised retention and prescribed damage rent for unauthorised retention will be recovered. It is also stated that the action taken by the respondents is in accordance with the law and they have

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submitted that the application is devoid of merit and it should be dismissed.

3. Mr. Chatterjee, learned counsel firstly argued before me that initially the order of posting of the applicant at Parasia from Sitarampur on promotion cannot be treated as transfer in view of Sub-rule (51) of Rule 103 of Indian Railway Establishment Code, Vol.I, 5th Edition. And he further submits that since it is mere an order of posting at Parasia from Sitarampur and not a transfer, so the applicant could not be asked to vacate the quarter on the expiry of the period of two months from the date of posting at Parasia. He also submits before me that the distance between the new place of posting at Parasia and Sitarampur is about 4/5 Kms and thereby he is entitled to perform the duty from Sitarampur and both the places are within Dhanbad which is treated as Headquarter of the applicant. Mr. Arora, learned advocate, on the other hand, has drawn my attention to the orders of transfer dated 8.10.92, Annexure/R1 and submits that since the distance between the two places - old station, i.e. Sitarampur and new station, i.e. Parasia are more than 20 Kms thereby, it was treated to be a transfer in public interest and it would be apparent from the order dated 8.10.92(Annexure/R1 that the applicant was granted transfer allowances as admissible to him on his transfer from Sitarampur to Parasia. Mr. Arora has also drawn my attention to Annexure/A3 to the application which is a subsequent order of transfer of the applicant from Parasia to Bhanora in the year of 1994 and the said order itself shows that it is a case of transfer from one station to another station having a distance of more than 20 kms. So, both the orders are orders of transfer in the public interest and the applicant was allowed to enjoy the transfer allowance as admissible to him. So, the applicant should not have a grievance in this case stating that it was not a case of transfer but a mere posting from one office to another office.

4. In order to resolve the divergent arguments of the learned advocates of both the parties, I have considered the submission of both the parties on that score. The word 'transfer' under the Railway Establishment Code has been defined to mean the movement of a railway servant from one headquarter station in which he is employed to another such station, either to take up the duties of new post, or in consequence of a change of his headquarter. There is no dispute in this case that the applicant was employed at Sitarampur and transferred on promotion from Sitarampur to Parasia to officiate in the higher scale as Weigh Clerk and the letter of transfer (Annexure/R1) itself shows that the distance between the two stations are more than 20 kms and for which the applicant along with others who were posted or transferred or appointed to new places were granted TA as admissible to them as per rules. I have gone through the letter dated 15.7.94, Annexure/A3 to the application and I find that the order has been passed stating that the following Weigh Clerks in scale Rs.1200-2040/-(RP) are transferred on their same pay, grade and capacity and posted at the Weigh Bridges as noted against each and in the order of transfer (Annexure/A3) the name of the applicant is at Sl. No.12 and he has been transferred from Parasia to Bhanora against the existing vacancy in that office. So on the face of the said letter, there cannot be any doubt that he moved from Sitarampur to Parasia and subsequently from Parasia to Bhanora for discharging duty in new station. The distance between two places, i.e., old station where he was employed and the new place where he took up the duty of a new post are more than 20 Kms. According to order (Annexure/R3), the distance is more than 20 Kms. It is not a case of the applicant that he was sent from Sitarampur to Parasia on temporary duty. ~~That~~ That place falls within the 8 Kms. from Sitarampur. The applicant admittedly was working as Asstt. Weigh Clerk at Sitarampur and he has been transferred from Sitarampur to Parasia to take up the



duty of a new post. ~~The distance between the two places is 20~~

~~Kms. On the face of the order itself and thereby in the absence~~
~~In absence -~~

of any documents from the learned advocate of the applicant it is very difficult on my part to accept the submission made by Mr.

Chatterjee that the distance between the two places is 4 to 5 Kms, whereby the order itself shows that the distance between the

two places is more than 20 Kms. So, I am of the view that the expression of the word "Headquarter" in Sub-Rule 51 of Rule 103

of the said Rules means the place where the Railway servant was permanently employed to perform duty. So, both the orders, as

stated above, are of pure cases of transfer from one station to another station having a distance of more than 20 Kms., ~~since the~~

~~applicant had to move to take up the duty of a new post.~~ Next

submission of Mr. Chatterjee, learned advocate is that since the respondents received normal rent admittedly from the applicant

from the date of posting at Sitarampur till the month of November, 1992, despite the fact that he did not vacate the

quarter on his transfer from Sitarampur to Parasia and subsequently from Parasia to Bhanora, the respondents are

estopped to realise the damage rent from his salary without serving any notice of showcause to the applicant and without

rejecting his representation at Annexure/A2 to the application.

In support of his contention Mr. Chatterjee has relied on the decision in the case of Rabindra Nath Bose vs. G.M. Eastern

Railway, Calcutta and others of Calcutta High Court, reported in 1976 LAB. I.C. 208. It is further contended by Mr. Chatterjee

that since they realised the normal rent from the applicant upto November, 1992 the occupation of the applicant in the said

quarter on his transfer from Sitarampur to Parasia cannot be regarded as unauthorised occupation. So, ~~such~~ action taken by

the respondents are wholly arbitrary, illegal and liable to be quashed. Mr. Chatterjee also submits that CPO/CCC has no

jurisdiction to frame any rule under the Railway Establishment

Code to supplant the said rules when the Railway Establishment Code remains silent. Mr. Arora, learned counsel for the respondents by refuting the arguments advanced by Mr. Chatterjee has argued before me that the dispute of realizing the damage rent on unauthorised occupation of Railway quarter has been finally settled by the Full Bench decision in the case of Ram Poojan vs. Union of India and others, reported in 1996(1) ATJ 540 (Full Bench) and after the decision of the Full Bench there need not be any controversy over the matter in issue as stated by Mr. Chatterjee in this case. But Mr. Chatterjee at Bar submits that the decision in Ram Poojan case is in-per incuriam as per judgment of the Bombay Bench of the CAT in the case of Kessu Thadharam Dudani v. Union of India and others, reported in 1996(1) (CAT) AISLJ 587 where the applicant retained the quarters for additional 8 months and DCRG was adjusted against penal rent and 8 post retirement passes were withheld but the learned Bench of the CAT, Bombay Bench relying on Wazir Chand's case held all orders of the Railway authorities were illegal and only normal rent can be recovered from DCRG and for balance, law of land to be followed.

5. I have considered the submissions of the learned counsel of both the parties and also gone through the judgments cited by both the parties. I find that the case of Rabindra Nath Bose (Supra) has been decided by the Hon'ble High Court on 23.4.1975 and that has been reported in 1976 LAB. I.C. 208. But I find that the controversy on the question as raised by Mr. Chatterjee on the score of realizing the damage rent or market rent whatever might be, has been no longer res-integra in view of the judgment of the Hon'ble Apex Court in the case of Union of India and another v. Wing Commander, R.R. Hingorani, reported in AIR 1987 SC 808, when in para 7 the Hon'ble Apex Court has held as below:

"It is difficult to sustain the judgment of the High Court or the reasons therefor. The construction placed by the High Court on the two provisions contained in SR

317-B-22 and SR 317-B-25 is apparently erroneous. It is plain upon the terms of SR 317-B-22 that the liability to pay damages equal to the market rent beyond the concessional period is an absolute liability and not a contingent one. ..."

It is also found that similar question has been considered by the Full Bench of the Allahabad Bench of Central Administrative Tribunal in Ram Poojan case and in the said judgment the Full Bench has considered the two judgments of the Division Bench of CAT, Calcutta - (i) Shanker and Ors. vs. Union of India and Ors., reported in 1993(2) ATJ 553 and (ii) Suda Iswar Rao vs. Union of India and Ors., reported in (1994)2 ATJ 539. After elaborate consideration and discussion of the two judgments the Full Bench held as below:

"In respect of a railway employee in occupation of a railway accommodation, in our considered opinion, no specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied."


It is also held as follows:

"Our answer is that retention of accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorised occupation and there would be an automatic cancellation of an allotment and penal rent/damage can be levied according to the rates prescribed from time to time in the Railway Board's circular."


In para 39 of the said judgment it was further held as below :

"It would be open to 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 proceedings under Public Premises (Eviction of unauthorised Occupants) Act, 1971. We also hold that resort to proceedings under the said Act is only an alternative procedure which does not debar recovery as per the provision of the Railway Board's circulars."

Recently, the Hon'ble Apex Court in Amitabh Kumar and another v. Director of Estates and another, reported in 1997 SCC(L&S) 698 decided the similar question. In that case of son of voluntarily retired officer applied for allotment of house in substitution of his father on the ground of being in government service

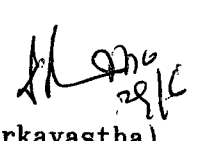


notwithstanding the pendency of such application, after the expiry of the permitted time-limit, such applicant, was held, to be an unauthorised occupant and therefore, he was charged to pay penal rent. In that case the Hon'ble Apex Court decided that Govt. servant is liable to pay penal rent, if he overstayed in the quarter, after expiry of the permissible period. So, in view of the judgment of the Hon'ble Apex Court, reported in AIR 1987 SC 808 (UOI & Ors. v. R.R. Hingorani), 1997 SCC(L&S) 698 and as well as the decision of the Full Bench of Allahabad (CAT), I have no doubt that the applicant failed to make out a case that he is entitled to get any notice of showcause as claimed in this application. It is now well settled law that recourse to P.P. Act is not necessary, nor it is required to issue a showcause notice before charging penal rent, because Railway servant is aware of the provision of allotment, that he shall have to vacate the quarter after expiry of the permissible limit. For the retention of the quarter beyond the prescribed permissible limit, he shall be deemed to be an unauthorised occupation and he cannot be allowed to retain the quarter under normal rent after the expiry of the permissible limit. The respondents relied on the CPO, Eastern Railway Circular No.139/89 dated 20.12.89. From the said circular it is found that the ^{apote} damage rent has been prescribed in the circular itself and that circular at Annexure/R1 has specifically stated that a Railway servant may be permitted to retain the quarter on transfer for 6 months only on payment of normal rent. Thereafter he has no right to stay in the quarter without permission from the competent authority. The authority was authorised by the rules/law to take action for eviction in accordance with the procedure prescribed by the rules. Mr. Chatterjee also submits that order at Annexure/R1 issued by the CPO was without jurisdiction and that order is not valid in the eye of law and CPO is not authorized to pass such order. But when I peruse the application of the applicant I find



that no whisper was made by the applicant in the application challenging the authority of the CPO. Moreover, I find that the circular contained the decision taken by the Railway Board under the heading "Regularisation/out of turn allotment of Railway quarter in the name of eligible dependent of a Railway servant who retires or dies while in service - rental liability for retention of Railway quarter." Mr. Chatterjee, learned counsel further argued that the letter does not prescribed any market rate or damage rent ~~for Sitarampur~~. I find that this point has been decided by the Hon'ble Supreme Court in Hingorani case ^{stating that} Damage rate is equal to market ^{rate} ~~rent~~. So, damage ret has been prescribed in clause (ii) of the circular at Annexure/R1 to reply. Therefore, I find that the argument advanced by Mr. Chatterjee is a fallacious one and not sustainable.

6. However, I am of the view that everybody has a right to make representation and has legitimate expectation to get a reply ~~has a right to get a reply on the representation made from the~~ ^{on the} ~~from the~~ Railway authorities. I do not find any reason as to why the Railway authority remained silent over the representation filed by the applicant, in this case, when the question of law involved ^{in this} ~~within~~ is no longer a res-integra. However, the non disposal of the representation of the applicant would not make the administrative action taken in accordance with the law ineffective and thereby I find that the application is devoid of merit and it is dismissed awarding no costs. The interim order passed in this case is hereby vacated.


(D. Purkayastha)

MEMBER (J)

29.6.1998