

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A.443 of 96

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

KANAK BHUSAN BANERJEE

VS

UNION OF INDIA & ORS

For the petitioner : Mr. B.Chatterjee, counsel

For the respondents : Mr. C.Samadder, counsel

Heard on : 20.9.96 : Order on : 17.10.96

O R D E R

M.S.Mukherjee, A.M.:

This is a petition u/s 19 of the A.T.Act, 1985, in which the petitioner is aggrieved that despite his vacating the railway quarter at Asansol on 1.1.93 prior to his retirement on 31.3.95, the entire amount of his DCRG has not been released by the railway authorities.

2. The facts which are not in dispute are that the petitioner while working as Electric Shunter at Asansol under the administrative control of Chief Traction Foreman (Running) TRS, was allotted a Type II railway quarters bearing No. T-3 at Traffic Colony, Asansol, by an allotment order dt. 23.7.81. He was subsequently transferred from Asansol Division to Sealdah Division w.e.f. 31.12.88. The petitioner, however, continued to occupy the railway quarter at Asansol upto 31.12.92 and he vacated the said quarter as already stated on 1.1.93.

3. The petitioner alleges that for his continued occupation of the quarter at the old station at Asansol, the respondents have illegally realised penal/damage rent from his monthly salary from January 1989 to December 1992 without following the procedure laid down in Public Premises (Eviction of Unauthorised Occupants) Act, (PP Act for short) or

giving him any prior notice. After his retirement also his DCRG amount to Rs. 59,730/- has been forfeited by the respondents illegally. The petitioner has, therefore, prayed for a direction on the respondents to release the entire amount of his DCRG immediately with interest for delayed payment as well as refund of the amount of penal/damage rent deducted from his monthly salary in the past.

3. The respondents have contested the case by filing a written reply. Their case is that when the petitioner had been transferred to the new station in the Sealdah Division on 31.12.88, under the normal rules and instructions, he could retain the quarter at the old station at Asansol for only first two months after transfer on payment of normal rent. Thereafter on request of the employee, the period of his retention of the quarter at the old station ^{could} ~~may~~ be extended by the authorities for a further period of six months on academic ground of wards/children or sickness of eligible members of the family, but by paying double the amount of normal rent or 10% of the emoluments whichever is higher. The petitioner, however, never even made any request for retention of the quarter at the old station. Accordingly, the railway authorities ^{have} ~~shave~~ treated his occupation of the quarter at Asansol as unauthorised one from 1.3.89 (after excluding preceding two months as permissible ^{period} under the rules) till 31.12.92. For such period of unauthorised occupation, in accordance with the extant rules and orders issued by the Railway Board, the total rent including damage rent payable by the petitioner has been assessed as Rs. 75,543/-. Therefore, the DRM, Asansol by his letter dt. 15.3.95 addressed to the DRM, Sealdah advised the latter to recover the said amount of Rs. 75,543/(including Rs. 195/- as Electricity charges) from the settlement dues of the petitioner. An amount of Rs. 45,648/- has been recovered from the DCRG of the petitioner on account of damage rent after adjusting an amount of Rs. 195/- as electricity charge and Rs. 2600/- towards Railway Employee Liberalised Health Scheme. This being the



case, according to the respondents, the petitioner is not entitled to the relief he has prayed for. The respondents have thus prayed for rejection of the case.

4. We have heard the learned counsel for the parties and have gone through the documents produced. Since the matter relates to recovery from settlement dues like DCRG, we propose to dispose of the case at the stage of admission itself.

5. Mr. Balai Chatterjee, the ld. counsel for the petitioner has also submitted a short note on 27.9.96 citing certain ^{further} case laws in support of his contentions. We have also considered the same.

6. After thoroughly going through the petition, reply and the submissions of both sides including the short note submitted by Mr. Chatterjee, we note that a large number of rulings have been cited by the ld. counsel for the parties. Briefly speaking the arguments advanced by Mr. Chatterjee can be broadly classified as follows :

i) Since the petitioner had never been asked to vacate the quarter at the old station at Asansol after his posting in Sealdah Division, his continued occupation of the said quarter at Asansol cannot be treated as unauthorised one. Incidentally, he had not also been allotted any quarter at the new station of posting.

ii) No penal rent/damage rent can be recovered by the respondents without following the procedure laid down in the P.P.Act and therefore the action of deduction either from the salary or from the DCRG of the petitioner is illegal.

iii) Before starting deduction, the petitioner had not been given any show cause notice and any penal action like deduction without such prior show cause notice is arbitrary and illegal.

iv) The ruling of the Calcutta Bench in the case of J.K.Chatterjee-vs-UoI & ors as reported in ATJ 1995(1) 229 clearly lays down that the railway authorities' action to recover penal rent/damage rent in pursuance of the Railway

Board's circulars and not following the PP Act procedure is illegal.

v) There is a large number of similar rulings given by various Benches of the Tribunal supporting the aforesaid contention of the ld. counsel for the petitioner except the judgement in the case of Shankar -vs- UOI as reported in (1994) 26 ATC 278 (Calcutta Bench) which is the solitary judgement favourable to the respondents and that the judgement in Shankar's case has to be treated as a judgement per incuriam applicable only to that case.

vi) No amount of DCRG money can be forfeited except through Presidential order under the provisions of Rule 2308 of Indian Railway Establishment Code, Vol.II and even in such case the Presidential power to forfeit any or whole part of pension or gratuity is limited only in respect of pecuniary loss caused to the Govt. and if in any departmental or judicial proceedings the pensioner has been found guilty of grave misconduct or negligent during the period of his service. These are not facts in the present case.

In support of the aforesaid contentions Mr. B. Chatterjee, the ld. counsel for the petitioner has cited a large numbr of rulings during oral arguments as well as through the written note and also through the petition itself. The major ones are as follows :

- i) J.K.Chatterjee -vs- UOI ..1995(1) ATJ 229
(Decided by Calcutta Bench on 7.10.94)
- ii) UOI -vs- RJP Verma ..ATJ 1993(2) 84
- iii) UOI -vs- RR Hingarani ...AIR 1987 SC 808
- iv) Neelam Malik -vs- UOI ..1994 ATC(26) 176
- v) Awadesh Kumar -vs- UOI -- 1994(1) ATJ 59
- vi) Madan Mohan -vs- UOI .. 1990(2) AISLJ 56
- vii) P.K.Kutty -vs- UOI ..1994 ATC(28) 622
- viii) Bhagawati Amma -vs- UOI .. 1994(1)
- ix) K.S.Mann -vs- UOI ... 1995(1) ATJ 481.
- x) U.N.Swamy -vs- UOI ... 1994 ATC (27) 366
- xi) All India Rserve Bank Retired Officers Assn -vs- UOI ... AIR 1992 SC 767
- xii) Anirudh Pandey -vs-Bihar State Road Transport Coprn. -vs- UOI .. 1995(29) ATV 21
- xiii Deoki Nandan Prasad -vs- UOI .. AIR 1984 SC page 1560

8. But as its, the above contentions and rulings cited by Mr. Chatterjee through the petition and during arguments have already been considered by us in a number of cases in the recent past and more particularly and very comprehensively in the case of -

Benoy Kr. Rarhi -vs- UOI (OA 35 of 1995) which has been decided by us on 7.6.96. The other such cases are as follows :

- i) M.S.Banerjee -vs-UOI .. 1996(1) ATJ 307
decided by Calcutta Bench on 15.11.95
- ii) Jagabandhu Sahu -vs- UOI .. 1996(1) ATJ 335
decided by Calcutta Bench on 9.1.96
- iii) Ranjit Kr. Banerjee -vs- UOI . 1996(32) ATC 761
- iv) Sudha Iswar Rao -vs- UOI .. 1995(29) ATC 279

Mr. Balai Chatterjee, the ld. counsel for the petitioner in the present case was also the ld. counsel for the petitioners in all the aforesaid cases. After detailed analysis of the similar contentions of Mr. Chatterjee with reference to the rulings cited by him, all his contentions were rejected by us with reasons and while delivering the judgements in those cases, particularly in the case of Benoy Kr. Rarhi (supra), this Bench also considered inter alia other judgements, some of which has also been mentioned by Mr.C. Samadder, the ld. counsel for the respondents in this case as well. Some such cases are as follows :

- i) Shankar -vs- UOI .. 1994(26) ATC 278
Decided by Calcutta Bench on 16.9.93
- ii) Sushil Chander Bhatnagar -vs- UOI .. 1994(2)
AISLJ 67
- iii) Nirod Chandra Roy -vs- GM,NF Rly AIR 1967
Assam 44
- iv) Shiv Charan -vs- UOI .. 1992(19) ATC 129 (SC)
- v) R. Kapoor -vs- UOI .. 1994(2) ATJ 679

9. In the context of the above, we do not propose to analyse and discuss the similar contentions raised by Mr. Chatterjee in this judgement in order to avoid repetition and for the sake of brevity. We only hold that the contentions raised by Mr. Chatterjee are not tenable.

10. In the present case, Mr. B. Chatterjee, the ld. counsel for the petitioner, in the course of his argument has also relied on some ^{Additional} ~~other~~ rulings as well. These are briefly dealt with as follows :

i) Amar Nath Dhupal -vs- UOI as reported in 1996(33) ATC 809 (PB). Mr. Chatterjee has submitted through his written note that through the aforesaid ruling, the Principal Bench of this Tribunal has held that DCRG can only be withheld but not forfeited after the quarter has been vacated. We are unable to appreciate this contention of the learned counsel for the petitioner. The said ruling has been delivered by the Principal Bench on 24.11.95. But prior to that our own Bench in the case of Ranjit.K.Banerjee -vs- UOI, 1996 (32) ATC 761 (decided on 2.11.95 after relying on and distinguishing the Hon'ble Supreme Court's judgement in R.Kapoor -vs- UOI, 1994(28) ATC 516 (SC) has held as follows :

"The Supreme Court's judgement in Shiv Charan's case (supra) allows withholding ((i.e. delaying the release of) the payment of the entire amount of DCRG, as long as the retiring employee does not vacate the Govt. quarter and does not pay at least the normal rent. But once the quarter has been vacated and normal rent paid, the withholding of entire amount of DCRG will be impermissible under the Supreme Court's judgement in R.Kapur's case (supra). But the Supreme Court judgement in R.Kapur's case does not stand in the way of the Deptt. from recovering from the DCRG the exact amount of Govt. dues resulting from penal rent/damages as levied under the rules and paying to the retiree the balance amount of gratuity. An employee's rights and duties, privileges and obligations go hand in hand. It is not reasonable that an employee would only expect his rights to be honoured by the Govt. (in the form of payment of his entire amount of DCRG), while he can throw to the winds his own obligation to pay to the Govt. their dues. Any such assertion amount to his claiming licence not to pay to the State the amounts he owes to he same as rent, penal rent, damages for Govt. quarters he has been in unauthorised occupation. To expect that Govt. would have to pay to him his gratuity promptly, without any question and he would enjoy the luxury of paying to the Govt. his dues only through expensive and dilatory civil proceedings to be pursued by the Deptt. separately and independently, is nothing but being unfair to all concerned. This is because the employee's claim to DCRG and his liability to pay rent/penal rent/market rent/damages for different kinds of occupation of a Govt. quarter - all arise out of the service conditions, as part of the service rules/regulations or instructions."

11. This ruling of the Calcutta Bench had not been considered by the Principal Bench while delivering judgement in Amar Nath Dhupal's case. Therefore, the said ruling is not binding on us as contended by the ld. counsel for the petitioner.

12. The next ruling relied on by Mr. Chatterjee is that of Rajendra Singh Chauhan -vs- UOI delivered by Jodhpur Bench of the Tribunal on 24.7.95 and reported in 1995(31) ATC 598. We also fail to understand as to how this ruling is of any help to the petitioner of the present case, as this case relates to the withholding of DCRG to recover dues from the retired railway servant due to non-rendition of account of stores in his cusoty while he was in service. In that case the amount of such dues had not been quantified within 3 months from the date of superannuation of the petitioner and it was held by the Jodhpur Bench of the Tribunal that in the circumstances the DCRG could no longer be withheld on ground of such outstanding dues. Clearly the facts of the present case are totally distinguishable.

13. At the stage of argument, Mr. Chatterjee made ^{an} articulate submission that the acting Chairman of the Tribunal in the case of P.K.Gangadharan -vs- UOI as reported in 1996(2) ATJ 252 has recently decided that deduction of penal rent/damage rent without issuing any prior show cause notice to the employee is illegal. This decision was given after considering the judgement of the Calcutta Bench in Shankar's case (supra). ^{It also a very}

14. We have duly considered the aforesaid ruling which was delivered on 10.6.96 by the Hon'ble Vice-Chairman of Ernakulam Bench sitting as part of the two-member Division Bench of Ernakulam Bench of the Tribunal. The said ruling mentions two rulings cited by the railway respondents in that case viz. one by the Bangalore Bench of the Tribunal and the other by the Calcutta Bench of the Tribunal in the case of Shankar -vs- UOI (supra). While the Calcutta Bench decision in the case of Shankar -vs- UOI has been very briefly dealt with,

the Bangalore Bench decision has not been discussed nor even the citation of the said case ~~has been~~ given in the judgement for independent examination of the Bangalore Bench views on the subject. In the context of the above and in view of the fact that our own Bench in Shankar's case ^(Srinan) as also independently in a number of subsequent rulings viz. M.S.Banerjee, Ranjit Banerjee, Benoy Kr. Rarhi etc. ^(Srinan) etc. has held that no prior notice is necessary for recovering ^A penal/damage rent for unauthorised occupation of railway quarters in accordance with the Railway Board's circulars on the subject, we are bound to follow our own decisions. Our views in the aforesaid decisions has also been subsequently upheld by the Full Bench of the Tribunal at Allahabad in the case of Ram Poojan -vs- UOI as reported in 1996(1) ATJ 540 which was delivered on 22.2.96. It appears that the Ernakulam Bench did not consider this prior judgement of the Full Bench in Ram Poojan's case. Hence the ruling of Ernakulam Bench is also not binding.

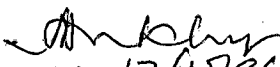
15. Under the circumstances, we do not find any merits in this petition and it is liable to be dismissed and it is dismissed. However, in R.K.Banerjee's case, we have held that the respondents while recovering the specific amount of dues on account of damage rent/panel rent/market rent for unauthorised occupation of the railway quarter must pay forthwith the balance amount of DCRG. There is no indication that the railway authorities have formally communicated to the present petitioner the amount of gratuity he would be entitled to after his retirement and the exact amount of penal rent/damage rent due from the petitioner for his unauthorised occupation.

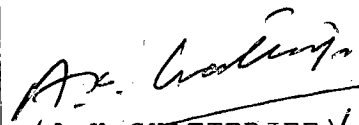
16. Under the circumstances, we dispose of the petition with this order that the railway respondents shall within one month from the date of communication of this order, shall furnish the above particulars to the petitioner. We also find that prior to his retirement, while still in service, certain amount was deducted from the monthly salary of the petitioner towards penal rent/damage rent. So, while supplying the

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particulars as aforesaid to the petitioner, the respondents shall also indicate the exact total amount deducted from the salary of the petitioner towards such penal/damage rent for information of the petitioner. The balance amount of DCRG, if any, after recovering all these dues inclusive of adjustment of recovery previously made through salary, shall be paid to the petitioner within 3 months from the date of communication of this order and in addition interest at the rate of 18% per annum for such balance amount, if any, shall also be paid to him within the said 3 months for the period from the date of petitioner's retirement till actual payment.

There will be no order as to costs.


17/10/96
(M.S. MUKHERJEE)
MEMBER(A)


17.10.96
(A.K. CHATTERJEE)
VICE CHAIRMAN