

In the Central Administrative Tribunal
Calcutta Bench

OA No.1084 of 1997

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

Bhim Chandra Pal

.... Applicant

- VS -

- 1) Union of India, through the
General Manager, Eastern
Railway, Calcutta.
- 2) The Divisional Rly. Manager,
E. Rly., Asansol.

For the Applicant : Mr. B. Chatterjee, Advocate
Mrs. B. Mondal, Advocate

For the Respondents: Mr. C. Samaddar, Advocate

Heard on : 16-12-98

Date of Judgement : 16-12-98

ORDER

Heard Id. Advocates of both the parties.

2. It is found that the respondents filed reply to-day. But no document has been annexed as annexure in the reply. Now the question before me is whether the respondents are justified to withhold DCRG money payable to the applicant on retirement on superannuation w.e.f. 31.8.97. According to the applicant, he retired as Fitter Gr.I on superannuation on 31.8.97 and thereafter pensionary benefits were duly calculated vide Annexure A to this application and that was finalised at Rs.55,909/-. But that was not paid without assigning any reason to the applicant. It is stated by the applicant that DCRG money cannot be withheld by the respondents on retirement without any valid reason whatsoever. Since DCRG money was withheld illegally and arbitrarily, thereby he is entitled to get the DCRG money with interest and the applicant cannot be said to be an unauthorised occupant of the quarters on the basis of the statement made by the respondents in their reply.

3. Respondents resisted the claim of the applicant by filing written statement stating, inter-alia, that on 30.4.82 the applicant, Shri B.C. Pal unauthorisedly occupied a railway quarters bearing No. 1191/A at Demohani Rly. Colony of Asansol. On 4.8.97 Shri Pal vacated the said quarters and thereafter he retired from service w.e.f. 31.8.97. It is mentioned that the aforesaid railway quarters was allotted in favour of one Shri S.K. Majumdar, Clerk. But on his refusal to accept the said quarters, the quarters was allotted in favour of another staff Shri R.B. Roy, Clerk. As reported by Shri Roy, Shri B.C. Pal (Applicant) did not allow Shri Roy to occupy the said quarters and Shri Pal continued to occupy the aforesaid quarters unauthorisedly till 4.8.97 and in the meantime vide letter dated 23.8.94, the Estate Officer was requested to assess the damage rent as well as to take appropriate step for eviction of the applicant from the said quarters after retirement of the applicant. An amount of Rs.95,563/- was assessed as damage rent in this case from 1.5.82 to 4.8.97 out of which an amount of Rs.14,559/- was already recovered from the regular salary bill of the applicant and balance amount of Rs.81,004/- has been recovered from the DCRG money of the applicant which stood at Rs.98,819/- as per recommendation of the 5th Pay Commission. After recovering an amount of Rs.81,004/- from the DCRG money of the applicant, the balance amount of Rs.15,470/- has been passed for payment vide order dated 12.8.98. Thereby, applicant is not entitled to get any relief in this case and application should be summarily dismissed.

4. Id. Advocate Mrs. Mondal on behalf of the applicant submits that applicant was not apprised the fact of recovery of damage rent. But respondents did not offer any reasonable opportunity of being heard to the applicant before realisation of the damage rent from the DCRG money which is admissible to him on retirement on superannuation from the department. Id. Advocate further submits that applicant is entitled to get the entire DCRG money from the respondents since the alleged unauthorised occupation of the quarters has no nexus with the alleged withholding of DCRG money of the applicant. So, necessary direction upon the

respondents should be issued to make payment of DCRG money of the applicant with interest.

5. In order to controvert the submission of the Id. Advocate Mrs. Mondal, Id. Advocate Mr. Samaddar on behalf of the respondents submits that the applicant was never allotted the said quarters and he unauthorisedly occupied the quarters from 30.4.82. But subsequently unauthorised occupation of the quarters by the applicant was regularised by the respondents w.e.f. 30.4.82. So, in view of the provision of 8.22 of Master Circular No.49, RBE No.12/93 at page 8 of Railway Board's orders on Establishment, 1993, the respondents are authorised to realise damage rent from the applicant since the applicant occupied the quarters without approval of the authority for the period indicated above. So, in view of the aforesaid provision of 8.22 of the Master Circular No.49 the Estate Officer assessed the damage rent on the basis of the report made by the respondents against the applicant. So, application should be dismissed. Id. Advocate Mr. Samaddar also produced copies of the order of Estate Officer dated 23.8.94 in support of his case, though, these were not annexed with the reply.

6. I have gone through the records as well as the pleadings and written reply filed by the respondents. It is settled law that no party can travel beyond his pleading. I have gone through the reply filed by the respondents. No whisper has been made by the respondents in the written reply stating that eviction proceeding had been initiated against the applicant by the department vide letter dated 23.8.94 of the Estate Officer. Id. Advocate Mr. Samaddar on behalf of the respondents produced one letter which shows that eviction proceeding as well as for assessment of the damage rent was maintained against the applicant in the year 1994. That letter dated 23.8.94 of the Estate Officer does not indicate that the copy of the said letter dated 23.8.94 of the Estate Officer has been furnished to the applicant. However, I have gone through the letter dated 23.8.94 of the Estate Officer for the interest of justice and for the appropriate adjudication of this case. I find that respondents suppressed the material facts and come with a wrong statement that quarters was never

allotted to the applicant by the respondents. From the para 2 of the said letter dated 23.8.94 of the Estate Officer it is found that the said quarters was allotted to the applicant Shri B.C. Paul for the purpose of residing on payment of usual rent as per rules in vogue from time to time w.e.f. 30.4.82. But respondents could not produce any records before me to show that the said order of allotment had been cancelled by the authority at any time as stated in the reply to the O.A. In this connection, I like to refer to the relevant provision of para 8.22 of Master Circular No.49 of Bahari's R.B.E.No.12/93 dated 19.1.1993. The provision of 8.22 of the said Master Circular runs as follows :-

"On expiry of the permissible/permitted 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".

On perusal of the said provision of the para 8.22 of the Master Circular No.49 as mentioned above, it is clear that in order to bring the case of automatic termination of order of allotment of quarters within the purview of para 8.22 of the said Master Circular, it is to be established by the respondents that the govt. employee occupies the quarters after permissible limit or after retirement or resignation or

the department till the date of retirement. It is not the case of the respondents that applicant was transferred in between the period of 1982 to 1997. It is also not the case of the respondent that the applicant was removed from service in between the period mentioned above. Case of the respondent is that the applicant retained the quarters in his possession without any order of allotment. Ld. counsel Mr. Samaddar on behalf of the respondents submits that initially the applicant got the quarters without approval and subsequently allotment of quarters was regularised w.e.f. 30.4.82. So, provision of para 8.22 does not help the respondents since they failed to bring the case of ~~allotment of quarters~~ within the purview of automatic termination of allotment of quarters of the applicant. In absence of reasons stated in para 8.22 of the Master Circular No.49 as mentioned above order of cancellation of allotment is required as per allotment rules. Respondents miserably failed to produce any paper to show that allotment of the quarters was cancelled by the competent authority. When it is admitted by the respondents that the order of allotment of the quarters was regularised w.e.f. 30.4.82 subsequently. In absence of the order of cancellation of allotment of the quarters, the applicant, under the aforesaid circumstances, cannot be said to be an unauthorised occupant of the quarters.

7. In view of the aforesaid circumstances, I fail to understand how the authority under the Public Premises (Eviction of unauthorised person) Act, 1971 assessed the damage rent against the said alleged unauthorised occupation of the quarters when the allotment was regularised. Ld. Advocate, Mr. Samaddar submits that though the quarters was regularised in favour of the applicant, applicant did not pay any licence fee to the department till the date of vacation of the quarters

on 4.8.97. As per rules of the Railway Administration it appears that licence fee is to be recovered from the monthly salary of the railway employee payable to him. I find that there is laches on the part of the respondents for realisation of the licence fee from the applicant as per rules after regularisation of the quarters w.e.f. 30.4.82. There is no evidence from the side of the respondents that they took action against the applicant for realisation of the licence fee after regularisation of the allotment or allotment was cancelled for violating any provision of Rules of Allotment. Here, the applicant was in service till 31.8.97 and he got the quarters on the basis of the allotment made w.e.f. 30.4.82 as it appears from the letter of eviction dated 23.8.94 of the Estate Officer as produced by the respondents at the time of hearing. So, applicant cannot be said to be unauthorised occupant of the quarters and DCRG money cannot be withheld by the respondents on the basis of the alleged unauthorised occupation of the quarters. Thereby, no damage rent can be charged from the applicant for an unauthorised occupation of quarters. In view of the reasons stated above, entire actions of the respondents are found arbitrary and violative of principle of natural justice and thereby, all actions of the respondents are liable to be quashed. So, the DCRG money also cannot be withheld by the respondents for the reasons stated above. Rather he is entitled to get entire DCRG money payable to him as per rules subject to deduction of normal rent payable by the applicant for the period from 30.4.82 to 4.8.97. So, the DCRG money, after deduction of normal rent, should be paid to the applicant with interest at the rate of Rs.15% per annum from the date of retirement till payment is made. With this observation I allow the application with a direction upon the respondents to make payment of entire DCRG money after deduction