

In the Central Administrative Tribunal  
Calcutta Bench

CA No.721 of 1997

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

Manindra Ch. Karmakar

... Applicant

- VS -

1. Union of India, service through the General Manager, Eastern Rly., Calcutta.
2. The Sr. Divisional Personnel Officer, Eastern Railway, Asansol Division, P.O. Asansol, Dist: Burdwan.

... Respondents

For the Applicant : Mr. B. Mukherjee, Advocate

For the Respondents: Ms. R. Basu, Advocate

Heard on : 30-7-99

Date of Judgement : 30-7-99

ORDER

The question of dispute in this case is whether respondents are justified to recover damage rent of Rs.75,915/- from the salary of the applicant on account of unauthorised occupation of the quarters at Andal vide notification dated 11.10.96 (Annexure A-7 to the application). According to the applicant, he has been transferred to Asansol from Andal in the year of 1988 and he joined Asansol on transfer on 16.5.89. According to the applicant, on transfer to Asansol he is entitled to retain the quarters at earlier station at Andal as per Railway Circular issued from time to time. Accordingly, the applicant along with other staff filed a joint application to the authority i.e. the Chairman, Railway Board, Rail Bhawan, New Delhi (Annexure A-3 to the application) on 1-5-90. Subsequently, on 14.3.93 the order was passed by the authority stating that for running staff quarters allotment to be done on priority basis. According to the applicant,

as per said order of the authority penal rent has been recovered from the applicant upto 31.7.95 from 14.7.89 which would be apparent from the letter dated 16.4.97. Now the respondents issued fresh show-cause notice under Sub-Section (3) of Section-7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 demanding damage rent amounting to Rs.75,915/- from the salary of the applicant. So, feeling aggrieved by and dissatisfied with the said order applicant approached the Tribunal for getting appropriate direction in this case.

2. Respondents filed written statement denying the claim of the applicant and allegation made therein. It is stated by the respondents that in the meantime applicant joined Asansol on transfer from Andal on 16.5.89 but he did not apply for quarters at Asansol and he retained the quarters at Andal from 14.7.89 to 31.7.95 without seeking any permission from the competent authority. Thereby, he retained the quarters unauthorisedly and for that he is liable to pay damage rent under Rule. Accordingly, damage rent was assessed to the extent of Rs.75,915/- for unauthorised retention of the quarters for the period from 14.7.89 to 31.7.95. So, application is devoid of merit and is liable to be dismissed.

3. Lt. Advocate Mr. Mukherjee on behalf of the applicant has drawn my attention to the letter dated 16.4.97 (Annexure A-10 to the application) and submits that if the said order dated 16.4.97 is read with the order dated 9.6.93 (Annexure A-4 to the application) it can be said that applicant was permitted to retain the quarters subject to payment of penal rent. Thereby, applicant is not liable to pay the damage rent for alleged unauthorised occupation of the quarters for the period from 14.7.89 to 31.7.95. Mr. Mukherjee also has drawn my attention to the various circulars of the Railway Department i.e. letter dated 22.11.90 (Annexure A-2), letter dated 31.5.97 (Annexure A-11) and Railway circular bearing No.E(G)85QR1.9 dated 15.1.90 (Annexure A-5) and submits that there is a clear instruction in the circular that "An employee posted at a station in the electrified suburban area of a Railway may on transfer to another station in the

same electrified suburban area, may be permitted to retain the railway quarters at the former station on payment of normal rate/flat rate of licence fee/rent provided

If the Railway Administration is satisfied and certifies that the concerned employee can conveniently commute from the former station to the new station for performance of duty without loss of efficiency".

So, according to the 1st Advocate Mr. Mukherjee, respondents cannot assess the damage rent without serving any prior notice to the applicant. But in the meantime the respondents had assessed the damage rent of Rs.75,915/- before serving any notice as required under the said Rule (3) of Rule 7 of Public Premises(Eviction of Unauthorised Occupants) Act, 1971. Thereby, the impugned notification i.e. show cause notice dated 11.10.96 (Annexure A-7) and letter dated 16.4.97 (Annexure A-10) are liable to be quashed.

4. 1st. Advocate Ms. Basu on behalf of the railway respondents contended that applicant did not apply for retention of the quarters at Andal on his transfer till 10.1.94 and applicant was not permitted to retain the quarters at Andal on transfer from Andal to Asansol. Since applicant was not permitted to retain the quarters at Andal thereby on expiry of the permissible limit prescribed by the Rules applicant would be automatically declared as unauthorised occupant in the said quarters. Respondents allotted the quarters to the applicant at Asansol on his transfer on 31.7.95 and applicant retained the quarters at Andal even after the allotment of quarters on 31.7.95. Applicant has no authority to retain the quarters after the allotment of quarters at Asansol w.e.f. 31.7.95 and order of assessment has been done in accordance with the Rules since applicant was treated as unauthorised occupant of the said quarters at Andal after joining at Asansol on 10.5.94. It is also stated by Ms. Basu that from the application of the applicant it is found that he is not entitled to retain the quarters at Andal on transfer since his case does not come within the category of the circular as relied upon by the 1st Advocate of the applicant. According to the respondents, staff at

Asansol cannot be technically said to be residing within the suburban areas and that has not been granted to the applicant. So, applicant has suddenly challenged the order of assessment made by the authority vide letter dated 11.10.96 (Annexure A-7) So, application is devoid of merit and is liable to be dismissed.

5. In view of the divergent arguments advanced by Ld. Advocate of both the parties on that point of issue I have gone through the records and considered the submissions of Ld. Advocate-s of both the parties. It is admitted fact in this case that staff of the Asansol Division does not come within the category of suburban areas for retaining the quarters at Andal. But facts remain that applicant applied for retention of the quarters at Andal along with other staff vide letter dated 1.5.90 (Annexure A-3 to the application) and from the said letter it is found that applicant along with others applied for extension of the benefit of the circular in respect of retention of quarters after transfer from Andal to Asansol. It is found from the records that one authority vide order dated 8.6.93 directed the concerned authority to assess penal rent till quarters is allotted on priority basis. From that facts it is found that respondents had already recovered penal rent from the applicant to the extent of Rs.35,143/- for the period from 14.7.89 to 31.7.95 <sup>before</sup> ~~after~~ assessment of damage rent of Rs.75,915/-. Now the question comes if the applicant was permitted to retain the quarters on payment of penal rent, ~~then~~ whether the applicant can be said to be unauthorised occupant for the purpose of assessment of damage rent under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Ms. Basu submits that penal rent has been assessed on the basis of the circular dated 1.12.93. And the said circular bearing No.F(X)(i)/93/II dated 1-12-93 issued by the Director of Finance indicates that revision of rate of damage for unauthorised occupation of the railway accommodation has been revised. If the order containing <sup>in September</sup> ~~the report~~ issued by the authority on 9.6.93 (Annexure A-4) is read with the letter dated 16.4.97 (Annexure A-10) it can be said that respondents realised the penal rent of Rs.35,143/- and applicant was permitted to retain the

quarters subject to payment of penal rent till allotment of quarters at Asansol. <sup>It is been that</sup> ~~admittedly~~ applicant was allowed to retain the quarters subject to payment of penal rent. Thereby, applicant cannot be said to be unauthorised occupant of the quarters till 31.7.95. So, question of damage rent for the said period from 14.7.89 to 31.7.95 did not arise. Id. Advocate Ms. Basu submits that applicant did not apply for quarters till 10.1.94. Thereby he is required to pay damage rent. But it is found that applicant was permitted to retain the quarters subject to payment of penal rent. Accordingly, he paid the penal rent. But another point in this regard is that the damage rent has been assessed to the extent of Rs.75,915/- before serving notice to the applicant and after assessment of the damage rent, notice of show-cause has been issued by the authority on 11.10.96 (Annexure A-7 to the application). Accordingly, Section 7 of the said clause(3) of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 no assessment of the damage rent can be made without prior notice to the employee concerned. In the instant case I find that the damage rent has been assessed before serving notice. Thereby, order of assessment of damage rent to the extent of Rs.75,915/- is contrary to the provision of the said Act and any decision contrary to the rules is not tenable in law and is liable to be quashed. Accordingly, I set aside the order of assessment and notice of show-cause. In view of the aforesaid circumstances, I set aside both the orders (Annexures A-7 & A-10) and application is allowed awarding no costs.

*30/7/99*  
( D. Purkayastha )  
Member (J)