

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
O.A. 555 OF 1997

Present: Hon'ble Mr. D. Purkayastha, Member(J)  
Hon'ble Mr. B.P.Singh, Member (A)

Narayan Chandra Halder,  
Ex. Senior Accounts Officer,  
E.Rly. Fairlie Place,  
R/o Flat No. 612, 6th Floor,  
Rail Vihar Purbanchal,  
480, Mduradha, Calcutta-78

Vs

1. Union of India through the  
General Mannager, E.Rly.  
17, N.S. Road, Calcutta-1
2. Chief Accounts Officer,  
(Admn.), E.Rly.  
17, N.S.Road, Fairlie Place,  
Calcutta-1
3. Chief Personnel Officer,  
E.Rly. Fairlie Place,  
17, N.S.Road, Calcutta-1

For the applicant : Mr. P.C.Das, Counsel

For the respondents: Mrs. K.Banerjee, Counsel

Heard on : 5.7.2001 : Order on : 06.9.2001

O R D E R

D.Purkayastha, J.M.:

In this OA, the applicant, who retired as Sr. Accounts Officer, E.Rly. has challenged the order dt. 17.1.97 issued by the General Manager, E.Rly, charging damage rent for his stay in the railway quarter beyond the admissible period after his retirement and recovery of the same from his DCRG.

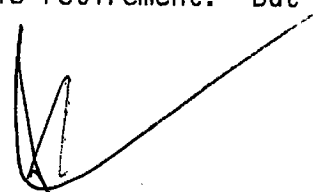
2. The case was initially heard by a Single Member, the subject matter being a single bench case, on 15.5.2001 and the order was dictated in open court. But before the order could be typed and signed, the ld. counsel for the applicant mentioned the matter and produced certain Division Bench judgement of Ernakulam Bench favouring his case and prayed for re-hearing of the case by a Division Bench after reviewing and recalling the order already dictated. In view of his submission, the order dt. 15.5.2001 though not signed, was

recalled and the matter was referred to a Division Bench for further hearing. Accordingly, the matter was heard again by the present Division Bench on 5.7.2001.

3. Briefly stated the facts of the case are that while the applicant was working under the Eastern Railway, he was allotted a railway quarter at Flat No. 5/M, New Alipour Officers' Colony, Calcutta-38. He retired from service as Sr. Accounts Officer w.e.f. 31.5.94. Thereafter, he was allowed to retain the said quarter for a total period of eight months ( four months from 1.6.94 to 30.9.94 on payment of flat rate of licence fee and another four months from 1.10.94 to 31.1.95 on payment of special licence fee on grounds of his wife's sickness vide annexures-R3 collectively to the reply). The applicant, however, did not vacate the quarter from 1.2.95 i.e. on expiry of the admissible period of eight months after his retirement and continued to occupy the same and he finally vacated the quarter on 30.10.96.

4. Meanwhile, the respondents by an order dt. 27.9.95 (annexure-R) cancelled the allotment of the quarter in favour of the applicant. Thereafter the impugned order dt. 17.1.97 (annexure-D to the OA) was issued on behalf of the General Manager treating the overstay of the applicant in the quarter for the period from 1.2.95 to 30.10.96 as unauthorised one and ordering that damage charges for such unauthorised occupation as per prescribed rates would be recovered from his settlement dues. The applicant has contended that a sum of Rs. 72,000/- has been recovered by the respondents from his DCRG towards such damage rent. He has challenged such recovery as illegal and arbitrary and has prayed for quashing the impugned order dt. 17.1.97 and to refund him the deducted amount of DCRG along with 18% interest.

5. It is the case of the applicant that he had to occupy the quarter under compelling circumstances as he booked a flat in the Rail Vihar which he expected to take possession within the stipulated time before his retirement. But the flat was not ready and as he had

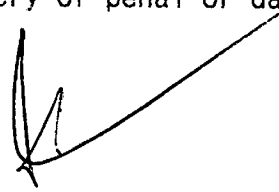


nowhere to go, he had to overstay in the said quarter and for this he also prayed for necessary permission. Besides, his wife was ill and according to advice of the doctor, she could not be removed elsewhere. Therefore, he made representations to the authorities to consider his case sympathetically and not to charge any damage rent from him for his occupation of the quarter for circumstances beyond his control.

6. The respondents have filed a reply contesting the case. Their case in short is that the applicant after his retirement on 31.5.94 was allowed to stay in the quarter upto the admissible limit of eight months although he made such prayer one year after his retirement. But even after expiry of the admissible period of eight months, he did not vacate the quarter and therefore, the authorities cancelled the allotment of the quarter as per memo dt. 27.9.95 as per Railway board's letter dt. 14.3.95. It is further stated that as per rules the damage rent with other charges for unauthorised occupation of the quarter were calculated as Rs. 91,471/- but the DCRG amount payable to the applicant was only Rs. 74250/-. This amount was realised towards damage rent as per rules. Therefore, the applicant cannot challenge such decision of the authorities, particularly, when he knew the rules very well, he being holding the post of Sr. Accounts Officer. The respondents have, therefore, prayed for dismissal of the OA being devoid of any merit.

7. We have heard the learned counsel for both the parties at length and have gone through the documents produced.

8. The ld. counsel for the applicant has mainly taken two points in challenging the impugned order. According to him, no prior show cause notice was issued to the applicant before the recovery was made and secondly, there was no compliance of Sec. 7 of the Public premises (Eviction of Unauthorised Occupations) Act, (P.P.Act. for short) was made before recovery was effected. The ld. counsel has relied on a decision of this Calcutta Bench in the case of J.K.Chattterjee & Ors -vs- UOI & Ors, (1995) 29 ATC 678 wherein it was held that recovery of penal or damage rent could only be made by

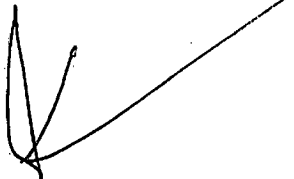


taking recourse to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and not on the basis of administrative instructions contained in IREM. He has also relied on another decision of this Bench in OA No. 1029 of 95 dated 17.4.96 (Pradip Kr. Aich -vs- UOI) which was decided relying on the earlier decision in J.K.Chatterjee's case (supra). The ld. counsel has very strenuously argued that the respondents could not recover the damage rent from the applicant without following the provisions of P.P.Act or issuing a show cause notice. He has also relied on the decision of the Eranakulam Bench in the case of P.K.Ganghadharan -vs- UOI, 1996(2) ATJ 252.

9. Ld. Counsel for the respondents, on the other hand, has relied on a number of decisions of various Benches of this Tribunal wherein contrary views were taken, viz. Shankar & Ors -vs- UOI, 1993 (2) ATJ 553, Sudha Iswar Rao -vs- UOI, 1994(2) ATJ 539, Shiv Narayan Banerjee -vs- UOI, 1994(2) ATJ 173, (all by the Calcutta Bench), Inderjit Singh -vs- UOI decided by the Principal Bench dt. 13.5.93, P.B.Nair -vs- UOI, 1994(1) ATJ 653 of Bombay bench, P.K.Kutty -vs- UOI, 1994(28) ATC 622 of Bombay Bench, as also the case of Shiv Charan, 1992(19) ATC 129 decided by the Apex Court.

10. Ld. counsel for the respondents has also referred to Railway board's orders dt. 30.1.2000 and 20.4.2000 on the subject of retention of railway quarter on transfer, retirement etc. She has also referred to a decision of the Delhi High Court in Writ Petition No. 5057/99 (contained in the letter dt. 20.4.2000) wherein the High Court has directed that no person will be allowed to retain railway quarter in violation of the existing rules, guidelines, circulars etc. Ld. counsel has submitted that the damage rent has been charged as per Rly. Board's directive dated 26.11.93 revising the rates of damages for unauthorised occupation of the quarters.

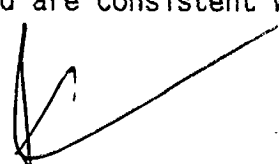
11. We have given our anxious consideration to the rival contentions of both parties. It is not in dispute that after retirement from service w.e.f. 31.5.94, the applicant was allowed to



retain the quarter for a total period of eight months as per rules. He was required to vacate the quarter thereafter w.e.f. 1.2.95 which he did not do and continued to occupy the quarter and he eventually vacated the same on 30.10.96. It appears that by an order dt. 27.9.95 (annexure-R), the allotment of the quarter in favour of the applicant was cancelled and he was intimated that the authorised period of retention <sup>was</sup> ~~had~~ already over. From annexure-R1 dt. 5.7.96 we find that the Sr. Law Officer of the Railway was intimated that the applicant had been occupying the railway quarter allotted to him unauthorisedly and that notice was served on him as per letter dt. 24.3.96 for vacation of the quarter but no response was received from him. Thereafter, the allotment was cancelled and the competent authority had decided to start eviction proceeding against the applicant. The Law Officer was, therefore, asked to take necessary action in the matter and to arrange to start eviction proceeding against him after completion of necessary formalities. Finally, the impugned order was issued by the General Manager as already stated above.

12.     Ld. counsel for the respondents has argued that the authorities are at liberty either to resort to eviction proceeding under the P.P. Act or to take action as per railway rules and circulars for charging penal rent from an unauthorised occupant. Therefore, there was no illegality in the action of the respondents in this regard.

13.     We need not, however, discuss the various contentions raised by the parties in details since the matter has already been settled by a decision of the Full Bench of this Tribunal at Allahabad bench in the case of Ram Poojan -vs- UOI & Ors reported in 1996(1) ATJ 540. It was held therein that it is open to the Railway Administration to recover penal/damage rent by deducting the same from the salary of the railway servant and that it is not necessary to take resort to proceedings under the P.P. Act. It was also held that the Railway board's circulars in this regard are consistent with the provisions of



para 1711 of the IREM and that these letters/circulars are supplemental in nature. Different divergent decisions of various benches of the Tribunal were discussed by the Full Bench including the case of J.K.Chatterjee (supra) on which the ld. counsel mainly relies.

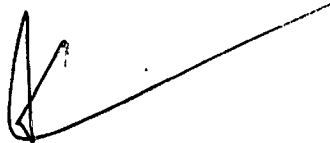
14. The relevant conclusions of the Full Bench may be quoted below for the sake of convenience :-

"38. In the light of the discussion hereinabove, our answer to the two questions formulated for our consideration in the reference order is as follows :-

(a) 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.

(b) 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 circulars.

39. We further hold that it would be open to the Railway Authorities to recover penal/damage rent by deducting the same from the salary of Railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of Unauthorised Occupations) 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



provisions of the Railways board's circulars."

15. In the instant case, allotment of quarter in favour of the applicant was cancelled by an express order dated 27.9.95 and it is also revealed from annexure-R1 that notice was also served on the applicant on 24.3.96 about his unauthorised occupation, which he did not respond. We, therefore, find no illegality or arbitrariness in the action of the respondents in charging damage rent from the applicant for his unauthorised occupation of the quarter beyond the admissible period. Since the applicant had already retired, the said amount was deducted from his DCRG as per extant rules of the railways.

16. In view of our discussions made above, we find no merit in this OA and it is accordingly dismissed. There will be no order as to costs.

*except the administrative charges Rail Board pass as per Rule*

B.P. Singh  
(B.P. SINGH) 0609 2001  
MEMBER(A)

D. Purkayastha  
(D. PURKAYASTHA) 6/9/2001  
MEMBER(J)