

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 80/2007

This the 24th day of October, 2013**Hon'ble Sri NavneetKumar , Member (J)**

Krishna Nath Chaturvedi aged about 45 years son of Chhotey Lal Chaturvedi r/o Quarter No. LD-52 D, Running Shed , Railway Colony, Alambagh, Lucknow

Applicant

By Advocate: Sri A.Moin

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway manager, Northern Railway, Hazratganj, Lucknow.
- 3, Senior Section Engineer (General), Northern Railway, Diesel Shed ,Alambagh, Lucknow.
4. Senior Section Engineer (Loco) Running Shed , Northern Railway, Alambagh, Lucknow.

Respondents

By Advocate: Sri B.B.Tripathi

(Reserved on 18.10.2013)**ORDER****BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)**

The present Original Application was originally heard and decided by the Tribunal vide order dated 19th February, 2010, wherein the Tribunal after setting aside the order dated 1.2.2007, allowed the O..A.

2. The respondents feeling aggrieved by the said order, preferred the writ petition before the Hon'ble High Court vide Writ Petition No. 908 (SB) 2010 and the Hon'ble High Court decided the writ petition on 8.12.2010 whereby the impugned judgment and order dated 19.2.2010 passed by the Tribunal in O.A. No. 80/2007 was quashed and the matter was remanded back to the Tribunal to consider and decide the issue afresh in light of the answer given by full bench of Tribunal. While deciding the writ petition , the Hon'ble High Court has



taken cognizance of reference made to the Full Bench judgment in the case of **Ram Pujan Vs. Union of India and others reported in 1996 (1) ATJ 540**, wherein the full bench has considered the letter/circular of the Railway Board dated 15.1.1990 and answered two questions.

3. Learned counsel appearing on behalf of the applicant has pointed out that initially when the applicant was posted at Lucknow, he was allotted a quarter and subsequently he was promoted as Driver Goods and transferred to Raibareilly. This order was passed on 28th May, 1999. Thereafter, in February, 2001, i.e. on 7.2.2001, the applicant came back to Lucknow and on 10.4.2001, he has made a request for regularization of his quarter which was in his occupation before his transfer to Rai-bareilly. The respondents have not asked for vacation of the Railway quarter and only on 3.2.2006, the applicant was asked to vacate the said quarter. Prior to that, the respondents have imposed a penal rent vide order dated 18.3.2005 for which the applicant had preferred an O.A., which was decided by the Tribunal vide order dated 12th September, 2005, in which it was directed to the respondents to consider his case for regularization of the residence at Lucknow. Apart from this, learned counsel for the applicant has also pointed out that the Tribunal has clearly observed that after transferring back to Lucknow, no orders of cancellation of the allotment was issued by the respondents. Learned counsel for the applicant has also pointed out that vide order dated 17.5.2006, he was asked to vacate the quarter and the said quarter was allotted to some other persons. Soon thereafter, the applicant vacated the quarter and by means of order dated 1.2.2007, the respondents have imposed the penal rent upon the applicant whereby the damage rent was claimed for different spells from 28.1.2000 to 5.5.2006. It is also pointed that when the applicant was posted at Rai-bareilly, he was allowed to retain the said quarter on normal rent from 28.5.99 to 27.7.99 and thereafter from 28.7.99 to 27.1.2000 on double the licence fee. The learned counsel has also



pointed out that the impugned order is bad in the eyes of law since as per the circular of the Railway Board dated 1.6.2001 which was not placed before the Hon'ble High Court while deciding the writ petition No. 908 (SB)/2010 and as per the said circular, the Railway Board has framed a guidelines regarding the retention of Railway Quarter on transfer, deputation, retirement etc.

4. The learned counsel appearing on behalf of the respondents has pointed out that the Hon'ble High Court while deciding the writ petition has taken the cognizance of the Full Bench Judgment of the Tribunal in the case of Ram Pujan Vs. UOI and others, wherein the full bench of the Tribunal has answered the two questions in regard to requirement of specific order of cancellation of order on expiry of the permissible /permitted period of retention of the accommodation beyond the permissible period can automatically be considered as unauthorized without any specific order of cancellation of allotment. It is also pointed out by the learned counsel for respondents that while deciding these two questions, the full bench of the Tribunal has clearly said that no specific order is required for cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention and retention of the accommodation beyond the permissible period would be taken to be unauthorized occupation and there would be an automatic cancellation of an allotment and penal rent/ damage rent can be levied according to the rates prescribed from time to time. As such, it is pointed out by the respondents that no specific order is required for cancelling the allotment of the accommodation.

5. Heard the learned counsel for the parties and perused the record.

6. As per the observation of the Hon'ble High Court as well as the decision of Full Bench, only short question is to be decided at this stage after remand of the case, whether the case of Ram Pujan is applicable in the case of the applicant or not because the Hon'ble High Court remanded the matter only on the point that the Tribunal to consider



and decide the issue afresh in the light of the answers given by the full bench.. The applicant who is a Railway employee, allotted a quarter in Lucknow and was transferred on promotion to Rai-bareilly in May 1999 and subsequently, he was transferred back to Lucknow on 7.2.2001. Soon thereafter, coming back to Lucknow, he has applied for regularization of his railway accommodation in 2001 and suddenly the respondents have passed an order in 2005 whereby the penal rent was claimed. The applicant preferred an O.A. No. 196/2005 and the said O.A. was disposed of by the Tribunal directing the respondents to consider the case of the applicant. After that, the applicant was asked to vacate the quarter vide order dated 3.2.2006 and subsequently vide order dated 23.5.2006, he was again asked to vacate the quarter and the quarter in question was allotted to some other person. Soon thereafter, the applicant vacated the said quarter. After vacation of the said quarter, the respondents imposed the penal rent upon the applicant, whereby, he was asked to deposit Rs. 2,26,247/- for different spells from 28.1.2000 to 5.5.2006 and the period which was shown was from 28.1.2000 to 30.4.2002, 1.5.2002 to 30.11.2004 and 1.12.2004 to 5.5.2006. The learned counsel for the applicant has placed reliance of the Railway Board circular dated 1.6.2001 which provides for retention of Railway quarter on transfer, deputation and retirement etc. and para 1(a) of the said circular reads as under:-

“1 Permanent Transfer:

(a) A Railway employee on transfer from one station to another which necessitates change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of two months on payment of normal rent or single flat rate of licence fee/rent. On request by the employees, on educational or sickness account, the period of retention of railway accommodation may be extended for a further period of six months on payment of special licence fee, i.e. double the flat rate of licence fee/rent. Further extension beyond the aforesaid period may be granted on educational ground only to cover the current academic session on payment of special licence fee.



Beyond the permitted/ permissible limits, however, no further extension will be allowed on any ground whatsoever. Therefore, no request or representation on this score shall be entertained. For all occupations beyond the permitted period, immediate action should be taken to cancel the allotment, declare the occupation as unauthorized and initiate eviction proceedings, charging damage rent for the over-stay.”

7. The averment of the learned counsel for applicant to the extent that since he was not allotted any quarter at Rai-Bareilly, therefore, he is permitted to retain the quarter for a period of 2 months on normal rent and for a period of 6 months, double of the licence fee. It is also pointed by the applicant that since after being transferred back to Lucknow in 2001, he has made a request for regularization of quarter in his possession but the respondents have not passed any orders and kept the matter pending with him for decision. The questions which were referred before the Full Bench are as under:-

(a) Whether in respect of a railway employee in occupation of a railway accommodation a specific order cancelling the allotment of accommodation on expiry of permissible / permitted period of retention of the quarters on transfer, retirement or otherwise is necessary before further retention of the accommodation can be considered unauthorized and penal/damage rent can be levied or;

(b) Whether the retention of accommodation beyond the permissible period can automatically be considered as unauthorized without any specific order of cancellation of allotment and the penal/ damage rent levied accordingly.

The full bench after consideration answered the questions as under:-

(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

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retention of the accommodation by the railway servant would be unauthorized and penal/damage rent can be levied.

(b) Out answer is that retention of accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorized 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."

8. As per the circular of 2001 which is relied upon by the learned counsel for the applicant, the retention of railway quarter can be made maximum for a period of 8 months , two months on payment of normal rent and further 6 months on payment of special licence fee i.e. double the flat rate of licence fee/rent. It is also said in the circular that beyond the permissible/permitted limits, no further extension will be allowed on any ground and immediate action should be taken to cancel the allotment , declare the occupation as unauthorized and initiate eviction proceedings, charging damage rent for the over stay. Not only this, the full bench has also relied upon special orders which were passed by the Railway Administration in regard to occupation of unauthorized Railway Quarter and has observed as under:-

(1) Ministry of Railway (Railway Board) letter No. E(G)83-RN2-6 dated 17.12.1983, copy of this letter was forwarded for information and necessary action to all Divisional Railway Manager, FA and CAO and other Railway authorities through letter dated 5.9.84.

(2) Deputy Director/Establishment ,Railway Board ,New Delhi letter No.E(G) 83-RN2-6 dated 27.8.1984 addressed to General Manager All Indian Railways.

(3) Railway Boards letter No. E(G)8E QR 1/90 dated 15.1.1990

In the letter dated 17.12.1983, on the subject of retention of Railway Quarter by the Railway employees on occurrence of



various events such as transfer, retirement etc. were issued by way of consolidated instructions. The relevant provision in the said letter reads as under:-

- (i) A Railway servant on transfer from one station to another which necessitates change of resident, may be permitted to retain the railway accommodation at the former station of posting for a period of 2 months on payment of normal rent. On request by the employee on educational ground or ground of sickness the period of retention of railway accommodation may be extended for a further period of six months on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is the highest.
- (ii) If a Railway employee requests for retention of the Railway quarters at the former station on the ground of sickness of self or a member of the family retention of the quarter at the former station of posting can be permitted for a total period of upto six months- first two months on payment of normal rent and the next four months or till recovery, whichever is earlier, on payment of double the assessed or double the normal or 10% of the emoluments, whichever is the highest. The Railway employee will be required to produce requisite medical certificate from the recognized medical attendant for this purpose.
- (iii) In the event of transfer during the mid-school /college academic session, as employee may be permitted to retain the railway quarters at the former place of posting for a total period of upto 8 months, the first two months on payment of normal rent and the next six months or till the current academic session ends, whichever is earlier, on payment of double the assessed rent or



double the normal rent or 10% of the emoluments, whichever is the highest.

In para 17 of the said letter it was provided as follows:-

“On expiry of the permissible period indicated in all the above cases, the allotment of quarters in the name of the employee at the old station, will be automatically terminated. Retention of quarters by the employee after expiry of the permissible period will be treated as unauthorized. During the period of unauthorized occupation the employee should be required to pay market rent in respect of the railway quarters. Realization of market rent should not be pending on the ground that the employee has appealed, or the case of the employee has been referred to the Ministry of Railways for regularization of the excess period of retention. If the appeal of the employee succeeds, he will be allowed refund as due.”

9. As such, the contention of the applicant cannot be accepted that the respondents are required to pass an order of cancellation of allotment. The learned counsel for the applicant has relied upon the decision in **writ petition No. 3120/2002 decided on 10.2.2004**, wherein it was observed by the Hon'ble High Court that recovery of penal rent for unauthorized occupation of Govt. accommodation, amount of penal rent can be recovered by institution of proceedings u/s 7 of Public Premises (Eviction of unauthorized occupant) Act, and has also pointed out that recovery towards penal rent, a proper opportunity has to be given effect before affecting recovery. Undoubtedly, in the instant case, no such opportunity is given to the applicant before passing an order of recovery.

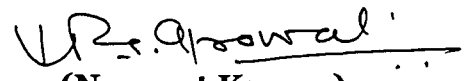
10. The learned counsel for respondents has relied upon a decision of Principal bench in **O.A.No. 2573/1989 (Wazir Chand Vs.**



Union of India and others) decided by full bench of the Tribunal on 25.10.1990. But this is in regard to withholding of gratuity for non-vacation of railway quarter. Since the applicant is in service, therefore, the question of withholding of gratuity towards recovery of unauthorized occupation is not in question.

11. Undoubtedly, as per the decision given by the full bench in the case of Ram Pujan (supra) the order of cancellation of allotment of Railway quarter is not required. Not only this, as per the Railway Board circular relied upon by the applicant, the damage rent for the over stay can be charged. As such, there appears to be no illegality in the impugned order for charging the damage rent from the applicant. However, the principle of natural justice cannot be over looked, as such the respondents are directed to first give an opportunity to the applicant and thereafter take a decision in regard to damage rent if any. The said exercise shall be done within a period of 3 months from the date of certified copy of order is produced.

11. With the above observations, O.A. is disposed of . No order as to costs.


(Navneet Kumar)
Member (J)

HLS/-