

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 285 OF 2006

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M.A.NO.: 318 OF 2006

[Patna, this Wednesday, the 31st Day of October, 2007]C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

Tarun Kumar Das, son of Shri L.R.Das, resident of Railway Quarter No. 125
 AB, Kiul, P.O.: & P.S.: Kiul, District – Lakhisarai. APPLICANT.
By Advocate :- Shri Gautam Saha.

Vs.

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. Chief Personnel Officer, East Central Railway, Hajipur.
3. Divisional Railway Manager, Danapur Division, East Central Railway, Danapur, Khagaul.
4. Senior Divisional Personnel Officer, Danapur Division, East Central Railway, Danapur, Khagaul.
5. Senior Divisional Engineer, Co-ordination, Danapur Division, East Central Railway, Danapur.
6. Assistant Engineer, Kiul, Danapur Division, East Central Railway, Kiul.
7. Office Superintendent, Pay Bill Section, Danapur Division, East Central Railway, Danapur, Khagaul. RESPONDENTS.
By Advocate :- Shri A.K.K.Sahay, ASC.

O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- Heard the learned counsel for the applicant as well
 the learned counsel for the respondents.

2. Delay, if any, is condoned [vide M.A. 318 of 2006].
3. The applicant who is working under the Railway and had been

promoted as PWI-I has brought this application for quashing of order as contained in letter dated 17.05.2000 which is at Annexure-A/1, and for directing the respondents to refund the amount recovered as damage house rent, total being Rs.52433/-, with interest and for holding that the applicant under the circumstances of the case was entitled to continue in that house.

4. This case contains a number of factual aspects which have also been replied to in the written statement of the respondents. In view of the order that this Tribunal is going to pass on a legal point, this Tribunal does not intend to enter into the merits of the application in this regard which ultimately has to be decided by the concerned Estate Officer appointed under the provisions of "Public Premises [Eviction of Unauthorised Occupants] Act, 1971" [for short, 'the Public Premises Act']. Suffice it to say that it is admitted position that before starting recovery of the damage rent the applicant was not issued any show cause notice nor was asked to place his side before the concerned authority, but straightway recovery of the amount as assessed by the respondents unilaterally, was started. It also has been admitted on behalf of the respondents that in so far as recovery is concerned, no order in this regard has been passed by the concerned Estate Officer under Section 7 of the Public Premises Act.

5. Annexure-A/1 is an order dated 17.05.2000 which, on account of the transfer of the applicant, had allowed him to retain the quarter concerned at normal rent from 30.08.1999 to 05.10.1999 and, thereafter, from 06.10.1999 to 30.06.2000 for the education of his children at the relevant rate. A note in this order stated that if the aforesaid employee did not vacate the



quarter bearing no. 125 AB and retained the same beyond the period as allowed by the authority in this order, then the rent at the damage rate would be recovered from his pay.

6. Section 7 of the Public Premises Act runs as follows :-

“7. Power to require payment of rent or damages in respect of public premises – [1] Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

[2] Where any person is, or has at any time been in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may be, by order, require that person to pay the damages within such time and in such instalments, as may be specified in the order.

[(2-A) While making an order under sub-section [1] or sub-section [2], the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978)].

[3] No order under sub-section [1] or sub-section [2] shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.”

7.

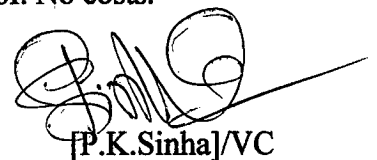
The Public Premises Act, which is an act of ^{the} Parliament, cannot

be bypassed under any pretext for making recovery of the damage rent, that too, in violation of the principles of *audi alteram partem*, without giving any opportunity to the applicant to show cause as to why such recoveries should not be made and, if made, should not be made of the amount as assessed by the authorities.

8. The learned counsel for the respondents also agreed that though recoveries can be made from pay but that is to be done by following due procedure as established by law.

9. In that view of the matter, this application is allowed and any order that relates to the recovery of the amount as damage rent as aforesaid is hereby set-aside. The amount, if so recovered, should be returned to the applicant within one month of the receipt of a copy of this order failing which the amount would be returnable with interest @ 9% p.a. from the date of expiry of the aforesaid period of one month, till that is returned. However, the respondents would be free to take steps for recovery of damage rent, if in the facts of the case permissible, in accordance with law.

This application, accordingly, is disposed of. No costs.



[P.K.Sinha]/VC

skj.