

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: _____
T.A. NO: 441/87

199

DATE OF DECISION 15-10-1992

1. Balaram Jagnur Batham

2. Prem Balaram Batham Petitioner

Mr. G.R. Menghani

Advocate for the Petitioners

Versus

Union of India and ors.

Respondent

Mr. N.K. Srinivasan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

MBM*

MD

Shy
(S.K.DHAON)

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Tr.441/87

1. Balaram Jagnu Batham

2. Prem Balaram Batham

Railway Warter No.T-13/21,
BAMY Railway Quarters,
Bandra,
Bombay - 400 050.

.. Petitioners

versus

1. Union of India
through
General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. Divisional Railway Manager
Western Railway,
Bombay Division,
Bombay Central,
Bombay - 400 008.

.. Respondents

Coram: Hon'ble Shri Justice S.K.Dhaon
Vice-Chairman

Hon'ble Shri M.Y.Priolkar,
Member(A)

Appearances:

1. Mr.G.R.Menghani
Advocate for the
Applicant.

2. Mr.N.K.Srinivasan
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 15-10-1992
(Per S.K.Dhaon, Vice-Chairman)

This petition has come to us on
transfer from the High Court of Bombay.

2. The Petitioner No.1 is the father
of Petitioner No.2. The Petitioner No.1 was in
railway service and he had been allotted a railway
quarter bearing No.11-T/16 at Andheri, Bombay. He
retired from service on 31-7-1980. The Petitioner
No.2 is also an employee of the railways. The
Petitioner No.2 was living with his father in the

said accommodation. He first made an application that the House Rent Allowance which was being paid to him may be deducted from his salary. He thereafter made an application that the said accommodation may be transferred to him. By a letter dt.17-7-84 the DRM(E) directed that the Petitioner No.2 may be informed that his application dt. 6-1-1984 could not be accepted since he had applied for sharing accommodation only one month before the date of retirement of his father and he is not eligible for sharing accommodation on out of turn allotment of the aforementioned quarter. This communication is being impugned in the present application.

3. Proceedings were initiated against Petitioner No.1 by the respondents under Section 138 of the Indian Railways Act. It appears that the Metropolitan Magistrate, 36th Court, Bombay Central, Bombay registered the case as Notice Case No.240/N/81 and sent a notice to the Petitioner No.1 calling upon him to appear in his court on 16-12-1981 to show cause, if any, why a eviction warrant should not be issued against him(Petitioner No.1). It appears that Petitioner No.1 submitted his reply to the said notice sometime in January,1982. On 5-7-85 the Metropolitan Magistrate,36th Court, Bombay Central passed an order to the following effect:"Applicant present.Respondent absent. Issue possession warrant. Adj.to 26.7.85" The legality of the aforequoted order of the Metropolitan Magistrate is also being questioned in the writ petition. We may note that the High Court of Bombay had stayed the operation of the aforequoted order and that interim order continues to operate even now.

4. In paragraph 4 of the Writ Petition it is stated that on 9-11-1981 the Petitioner No.2 addressed an application to DCS(S), a true copy of

which has been annexed to this application as Annexure 'A'. In this application it is recited that the petitioner No.2 acquired a temporary status as a railway employee on 7-5-1980 and that he was staying in Room No.15, Chawl Room No.11/T with his father. It is also stated that the Petitioner No.2 had made a separate application praying that the House Rent Allowance may be deducted from his salary but no action had been taken. In paragraph 10 of the petition it is averred that on 5-1-84 the petitioner No.2 addressed an application to DRM(E) praying therein inter-alia that the aforementioned railway quarter may be transferred to him. In the counter affidavit filed on behalf of respondents the receipt of the aforementioned two communications from petitioner No.2 has not been denied.

5. ^{now} We may have a look at the impugned order/communication dt. 17-7-1984. In it, it is clear that a reply to the application dt. 6-1-84 made by the petitioner ^{No.2} is under contemplation. To us, it appears that 6-1-84 is a typographical error, reference is really being made to Annexure 'F' to the writ petition which already stated is a true copy of the application dt. 5-1-84 sent by the petitioner No.2. The important words in the impugned order are: "since he has applied for sharing accommodation only one month before the date of retirement of his father, he is not eligible for sharing accommodation and out of turn allotment of Rly. quarter" It is clear from the aforesaid quoted passage that the petitioner No.2 had made some application praying therein that out of turn allotment of the aforementioned

quarter may be made to him. No explanation has been offered in the counter affidavit as to why no action was taken on the said application dt. 5-1-1984 of the Petitioner No.2.

6. Annexure I to the writ petition is a true copy of the Railway Board's letter dt. 25-6-1966. The subject matter of the communication is that "Regularisation of allotment of Railway quarters in the name of dependents of a Railway servant who retires from or dies while in services" It is emphasised in this communication that it has been decided that "when a Railway servant who has been allotted railway accommodation retires from service or dies in service, his/her son, daughter, wife husband or father may be allotted railway accommodation on out of turn basis provided that the said relation is a railway servant eligible for railway accommodation and had been sharing accommodation with the retiring or deceased railway servant for atleast six months before the date of retirement or death." In our opinion the aforesaid communication dt. 25-6-1966 was and is relevant for disposing of the application made by the petitioner No.2 for allotment of the aforesaid accommodation. The only requirement contemplated in the said communication is that the relations mentioned in the communication namely son, daughter etc. should be a railway servant and he should have been sharing the accommodation with the retiring or deceased railway servant for atleast six months before the date of retirement or death.

7. Reverting to the impugned order we find that it is based on irrelevant considerations. The factor which was to be taken into account by the

authority concerned was as to whether Petitioner No.2 had been really living or sharing the aforesaid accommodation with his father for a period of six months prior to the date of retirement of his father. The communication of 25-6-1966 does not talk of the making of an application at some point of time prior to the date of retirement of a railway employee. No other relevant circular or order has been brought to our notice by means of an annexure to the counter affidavit. However, learned counsel has placed reliance upon a cyclostyled copy of communication dt. 31-3-1977 of D.S.(E) BCT. Since we are of the opinion that the DRM(E) should pass a fresh order after applying his mind to the relevant facts and to the relevant provisions, as applicable to the facts of the instant case, we are not expressing any opinion upon the applicability of the contents of the said communication dt.31-3-1977. In view of our discussion in this and the preceding paragraphs we are of the opinion that the impugned order is not sustainable. The DRM(E) shall pass a fresh order after giving an opportunity to the Petitioner No.2 to make a fresh representation.

8. Section 138 of the Indian Railways Act has the marginal note "Procedure for summary delivery to Railway administration of property detained by a railway servant." It provides inter-alia that if a railway servant is discharged and he refuses or neglects, after notice in writing, to deliver up to the railway administration any dwelling, house or other building belonging to the railway administration and in the possession of such railway servant any Presidency Magistrate or Magistrate of the First Class may, on application made by or on behalf of railway administration, order

any Police Officer, with proper assistance to enter upon the building and remove any person found therein and take possession thereof and deliver the same to the railway administration.

It is on record that due notice was given to Petitioner No.1 to hand over possession of the railway accommodation. We have already noted that after the receipt of the notice from the Magistrate the applicant submitted his reply. The order passed by the Magistrate is already quoted above.

9. The Metropolitan Magistrate u/s.138 of the Indian Railways Act is required to act in a qua-judicial manner. He has to pass an order on objective considerations. He is required to consider and adjudicate upon the reply filed by the railway servant. A perusal of the impugned order passed by the Metropolitan Magistrate clearly indicates that he passed the same mechanically without giving any reasons. No attempt has been made by him to demonstrate that he passed the order after considering the reply of the petitioners on the contrary, the order smacks of arbitrariness. It is therefore liable to be struck down.

10. The Public Premises (Eviction of Unauthorised Occupants) Act, 1958 hereinafter referred to as the Act, provides for the eviction of unauthorised occupant from Public Premises. We may refer to the relevant portion of the Act. "Premises" means inter-alia any building or a part of the building (2(1c)). "Public Premises" means inter-alia any premises belonging to the Central Government (Section 2(e)). "Unauthorised Occupation" in relation to any public premises,

means inter-alia the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

11. In Northern India Caterers Private Ltd. v. The State of Punjab, (AIR 1967 SC 1581) the Supreme Court declared Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 void on the ground that this section is discriminatory and violative of Article 14 of the Constitution, inasmuch as it conferred an additional remedy over and above the usual remedy by way of suit, and provided two alternative remedies to the Government leaving it to the unguided discretion of the Collector to resort to one or the other of the procedures. In order to overcome the decision of the Supreme Court the 1958 Act was suitably amended by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968. By this Amendment Act, Civil Courts were, inter-alia precluded from entertaining any suit or proceeding in respect of the eviction of persons who are in unauthorised occupation of public premises. The High Courts of Delhi, Allahabad and Calcutta held that the whole of the Public Premises (Eviction of unauthorised Occupants) Act, 1958 as amended by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968 as void under Article 13(2)

of the Constitution as it was found to contravene Article 14 thereof. The Court observed that as the Act of 1958 was void the amending Act of 1968 was also ineffective. Thereafter the Public Premises (Eviction of Unauthorised Occupants)Act, 1971, hereafter referred to as the Act, was brought into force with effect from 16-9-1958.

12. Section 15 of the Act has the marginal note "Bar of jurisdiction". It provides *inter-alia* that no Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises. It will be seen in Section 15 the expression "Court" has been substituted for the expression "Civil Court" ✓ as insertion into the Public Premises (Eviction of Unauthorised Occupants)Act, 1958 by Section 10E of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968. This legislative change is significant. It signifies that no Court, either Civil or Criminal or Revenue or any other court as generally understood shall have jurisdiction to entertain any suit or proceedings in respect of matters referred to u/s.15. However, the question still remains as to whether the forum as contemplated u/s.138 of the Indian Railways Act constitutes a "Court". The term "Court" as employed is of comprehensive import and includes within its sweep not only ordinary regular civil courts, or courts in the strict sense of the term but also other statutory judicial authorities functioning under diverse statutes.

13. The definition of 'court' in section 3, Evidence Act is not exhaustive but framed only for the purpose of that Act and is not to be extended where such an extension is not warranted. The definitions of the words 'Judge' and 'court of justice' in Ss.19 and 20 of the Penal Code indicate that the pronouncement of a definitive judgment is considered the essential sine qua non of a court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicted that he or they constitute a court. The essential test of a judicial pronouncement is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness.

14. In *Virindar Kumar v. State of Punjab*, AIR 1956 SC 153, Venkatarama Ayyar, J. speaking for the Supreme Court observed:

"What distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it.

And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by

an Act is a court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possess all the attributes of a court."

15. Having read the provisions of the Indian Railways Act in general, section 138 in particular, and applying the test aforementioned there can be no two opinions that the Magistrate acting u/s.138 does not function as a Court. Therefore, section 15 of the Public Premises (Eviction of Unauthorised Occupants)Act, does not come in the way of the Magistrate exercising jurisdiction u/s.138 of the Indian Railways Act.

16. The word "discharge" in Section 138 has been used in a general sense, so as to include in it discharge ~~or~~ retirement. The said expression will therefore apply to a railway servant who has been relieved of his office on retirement.

17. The accommodation in question was allotted to the Petitioner No.1 in his capacity as a railway servant. He retired as a railway servant. He is being called upon to vacate the accommodation on his retirement. Section 138 of the Railways Act enables the railway administration to initiate proceedings against railway servant. Therefore, the proceedings under section 138 would fall within the four corners of section 3(q) of the Administrative Tribunals Act, 1985 which defines "service matters" so as to include amongst others, ⁱⁿ "any other matter whatsoever". This Tribunal, therefore, has the jurisdiction to entertain this petition even in respect of the reliefs that proceedings u/s.138 of the Railways Act may be quashed.

18. This petition succeeds and is allowed. The order/communication dt. 17-7-1984 of the DRM(E) is quashed. The order dt. 5-7-1985 passed by the Metropolitan Magistrate, 36th Court, Bombay Central, Bombay is quashed.

19. There shall be no order as to costs.


(M.Y.PRIOLKAR)

Member(A)


(S.K.DHAON)

Vice-Chairman

MD