

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.191/1986

Shri K. Achutha U. Bhat,  
C/o. J.S.S.Bhat,  
A/19, Meghdoot, Kala Dongri,  
Sahar Road, Andheri,  
Bombay - 400 069.

.. Applicant

V/s

1. Union of India,  
through The Chairman,  
Railway Board,  
Ministry of Transport,  
Rail Bhavan,  
New Delhi.

2. The General Manager,  
Central Railway,  
Bombay V.T.Bombay-400 001. .. Respondents

Coram: Hon'ble Member (A) Shri J.G.Rajadhyaksha

Appearance:

1. Mr.G.D.Samant, Advocate  
for the applicant.

2. Mr.Nilkanth, Advocate  
for the respondents.

JUDGMENT

Dated: 24th September, 1987

¶ (Per: J.G.Rajadhyaksha, Member(A) ¶

Applicant who retired as the Chief Time Keeper in the Office of the Additional Chief Mechanical Engineer, Parel has filed this application on 20th June, 1986. The impugned order is stated to have been issued on 5.3.1986. The facts briefly are that the applicant retired from service with effect from 1.11.83 on superannuation. At the relevant time he was occupying Railway quarters No.MS/RB/II/126/B at Matunga. He had them in his possession since June 1963. He was not able to vacate the railway quarters as he could not secure any private accommodation and his wife was to undergo an operation. The respondents, there-

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fore, held an inquiry under the Public Premises (unauthorised occupant's) Eviction Act and ordered the applicant to vacate the quarters. The applicant went to the Bombay City Civil Court in Appeal No.143 of 1984 which was dismissed. Thereafter, he went to the High Court of Bombay in Civil Revision Application No.18707 of 1985. That too was dismissed on 17.10.1985 and thus, the applicant came to be evicted on 18.10.1985. The applicant's grievance now was against the respondents initially withholding the entire death-cum-retirement gratuity, of the applicant amounting to Rs.18,201.48 paise, recovery of penal rent at 6 times the normal rent out of the DCRG that was so withheld, and forfeiture of post retirement complimentary passes. He thus complained that he was awarded four penalties, one of them in addition to the three mentioned above being the loss of interest on DCRG from 1.11.1983. The reliefs that he sought were a declaration that he was entitled to receive the entire DCRG amount, that he was entitled to 9% interest thereon from 1.11.1983, that forfeiture of post retirement passes upto the year 1994 was null and void and that these should be revived and the passes for 1984 and 1985 wrongfully disallowed by the respondents should be restored.

2. The Respondents resisted the application by filing the written statement on 13.2.1987 in which they contended that the illness of the applicant's wife was not known to

the respondents. They recovered penal rent in respect of the quarters in unauthorised occupation of the applicant at 5 times the ordinary rate of rent and not at 6 times the ordinary rent and this was according to rules. They withheld the death-cum-retirement gratuity until the penal rent could be worked out and finally paid an amount of Rs. 11,856.23 paise on 20.12.1985 i.e. about two months after the applicant was evicted from the quarters. This also was according to the rules laid down in the letter of Railway Board No.E(P&A)II-79/HL-1(DC) dated 24.4.1982. They also claimed further that the applicant was made aware of the fact that he will be losing all these post retirement benefits including complimentary passes and, therefore, he had adequate notice of what was likely to happen. Yet the applicant went on corresponding with the authorities and entered into litigation, and he had to be evicted only after the High Court dismissed his Revision Application. It is also the respondent's claim that 94 employees from essential categories who were on the waiting list for RB-II type Railway Quarters were without quarters and because of unauthorised occupation of such quarters by the applicant and his like some could not even now be accommodated. Therefore, they felt that their action was fully justified and the applicant did not deserve any concessions whatsoever.

3. Mr.G.D.Samant, the learned advocate for the applicant,

drew my attention to the Railway Board's letter cited above which is dated 24.4.1982 and argued that the second clause of the letter permitted holding back only appropriate amount of the DCRG for rent recovery and that by the third clause, a show cause notice was required to be given to the applicant before the post retirement passes could be disallowed or forfeited. He argued that an enquiry under the D.A.Rules was necessary since penalties were being inflicted on the applicant. Besides, he argued that, administrative instructions could not supercede statutory rules as included in the Railway Establishment Code. He argues further that forfeiture of passes till the year 1994 virtually deprived the applicant of this benefit of visiting his native place as well as going on a pilgrimage after retirement for his entire life time. One more factor argued was that the applicant was in occupation of the said quarters between 6.9.1984 to 17.10.1985 because of a stay order granted by the Bombay City Civil Court and at least this period should not be considered to be unauthorised and, therefore, respondents should not be allowed to charge penal rent nor to forfeit any passes for this period. He adds that this period would be in addition to retention of quarters for two months following retirement according to rules.

4. Mr.Nilkanth fairly stated that there was in fact a stay order granted by the Bombay City Civil Court for the

period 6.9.1984 to 17.10.1985 but he also argued that it could not change the tenor of the case. Regarding the two months retention of quarters after retirement, he had no objection to following the rules. He also pointed out that there is no evidence of the applicant's wife's illness on record, though she must have been treated at one of the Railway Hospitals. Therefore, whatever respondents did was in keeping with the policy of the Railways and, therefore, there is nothing wrong. The applicant did not, therefore, deserve any relief. He also further argued that the applicant was informed on 6.1.1984 that since he had failed to vacate the quarters he would be liable to pay penal rent and he would also be losing one set of post retirement passes for every one month of unauthorised retention of Railway Quarters. In Mr.Nilkant's opinion this was adequate notice and no separate show cause notice was required. Besides an enquiry under D.A.Rules was not required as the applicant had already retired from service. He also argued that Railway Establishment Code itself being a compilation of administrative instructions, such instructions could always be issued to effect changes.

5. After having heard both the Learned Advocates and perused the record, I have come to the conclusion that strictly speaking the applicant did continue even after retirement unauthorised occupation of the Railway Quarters

allotted to him while in service. To Mr.Samant's contention that administrative instruction could not supersede statutory rules, Mr.Nilkanth had rightly replied that the orders issued on 24.4.1982 were administrative instructions all right, yet they were not amending any statutory rules but only the Railway Establishment Code which was a compilation of administrative directives and not some statutory rules issued under Article 309 of the Constitution. I accept his contention. I feel convinced that action taken by the Railways is correct and in keeping with the interests of the administration. The DCRG that was withheld has been paid. The Railways were entitled to recover the penal rent and that has been recovered from the amount of DCRG that had been withheld. There can be nothing wrong with this step taken by the Railways as admittedly the applicant had continued to be in unauthorised occupation of the Railway Quarters. So far as the forfeiture of the passes is concerned, it could be argued that the applicant was not given a show cause notice. Conversely, his being informed on 6.1.1984 that he was in unauthorised occupation of the quarters and certain consequences including forfeiture of passes would follow could also be said to be adequate notice and if he had anything to say on the matter he could have represented against such proposed action. Though the letter dated 6.1.1984 has not been styled as a show cause notice, I agree with Mr.Nilkanth, the Learned Advocate for the Respondents that in the circumstances a

separate show cause notice was not called for and neither administrative instructions nor rules of natural justice have been violated.

6. The only point on which the applicant can get some relief is the fact that he was in occupation of the quarters between 6.9.1984 to 17.10.1985 i.e. just over 13 months under the orders of the Bombay City Civil Court. This occupation cannot, therefore, be treated as unauthorised. In the circumstances, the Railway would not be entitled either to charge penal rent for this period or to forfeit passes to which the applicant is entitled for these 13 months. In the circumstances I feel that the application deserves to be partly allowed only in so far as this period is concerned.

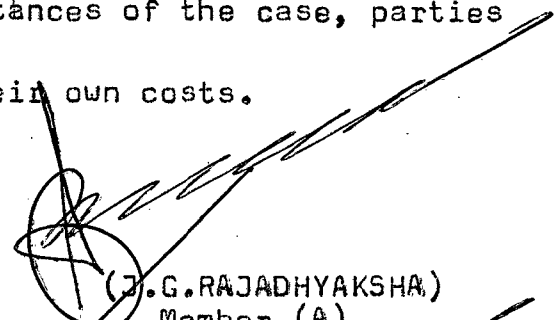
I, therefore, pass the following order:

ORDER

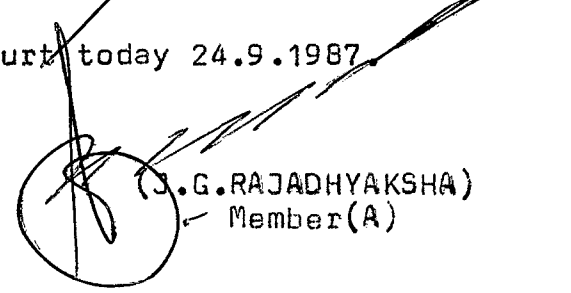
1. The application is partly allowed.
2. The Respondents are hereby directed to calculate and charge the rent at ordinary rates for the period 6.9.1984 to 17.10.1985 during which applicant was in possession of the quarters under the orders of a Court of Law, apart from the period of two months, allowed by rules, following retirement.
3. The difference between penal rent already charged by the Respondents and the ordinary

rate of rent which the applicant would have had to pay (because his occupation for the period mentioned above is authorised) shall be refunded to the applicant within a period of two months from the date of this order.

4. So far as the post retirement passes are concerned, since the occupation of quarters for two months after retirement as well as between 6.9.1984 to 17.10.1985 was authorised, the respondents will not be entitled to disallow the passes at the rate of one set of post retirement passes for every one month of unauthorised retention of Railway Quarters for this period. In other words they will restore to the applicant the appropriate number of post retirement passes, immediately and in any case before 15th October, 1987.
5. In the circumstances of the case, parties should bear their own costs.

  
(J.G. RAJADHYAKSHA)  
Member (A)

Delivered in open Court today 24.9.1987.

  
(J.G. RAJADHYAKSHA)  
Member (A)