

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 534/96

Transfer Application No.

Date of Decision 11.7.96

S.D. Deekar

Petitioner/s

Shri G.S.Walia

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri S.C.Dhawan

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member (J)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ?✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

O.A.NO. 534/96

Dated, this the 11th day of July 1996

CORAM: Hon'ble Shri B.S.Hegde, Member (J)

S.D.Deekar

(By Advocate Shri G.S.Walia) ... Applicant

V/S.

Union of India & Ors.

(By Advocate Shri S.C.Dhawan) ... Respondents

O R D E R

(PER: Shri B.S.Hegde, Member (J))

Heard Mr.G.S.Walia for the applicant and Shri S.C.Dhawan for the respondents. In this OA, the applicant has challenged the impugned order passed by the respondents dated 22.5.1996 under Section 5 of the P.P.Act treating him as unauthorised occupant of the premises allotted to him prior to his retirement Qr.No. RB/II/52/1 at Sion and also states that his DCRG and Post Retirement Passes have not been released by the respondents. The applicant has retired from service w.e.f. 31.12.1993. As stated above, the impugned order was passed on 22.5.1996 after a lapse of 2½ years. He filed his OA only on 10.6.1996. His main contention in this OA is that the respondents ought to have appointed his daughter on the weightage of his being a loyal worker and provide employment to the wards. If she had been employed by the respondents, she would have got the benefit of regularisation of Railway quarter. Since he is unwell, he could not make alternate arrangement because of financial constraints.

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The respondents have issued a notice under Section 4 of the P.P. Act on 6.2.1996 asking him to hand-over the vacant possession peacefully inspite of Departmental Notices dated 6.10.1995 and also asked him to show cause within 7 days from the date of receipt of the notice why an order of eviction should not be made against him. Despite the notice, he did not attend the hearing initially fixed on 6.3.1996 and again it is adjourned but to 18.3.1996 on that occasion he did not attend/his advocate attended and he contended that the departmental notice dated 6.10.1995 was served upon him asking him to vacate the said Railway quarter since he ceased to be eligible to continue occupation due to cancellation of allotment of the said quarter in his name consequent upon his retirement from the Railway service, and inspite of the notice of eviction, he continued the occupation. He said that since allotment of the said quarter stands cancelled, the respondent is not entitled to continue occupation of the said quarter and as such he is unauthorised occupant of the said quarter and liable for eviction from the said Railway quarter under P.P. Act 1971. Accordingly, the respondents have passed the eviction order against the applicant.

2. The facts are not disputed. The applicant has raised a plea that the impugned order passed by the respondents is not a competent authority in terms of Section 3 of P.P. Act. According to the applicant, Sr. Divisional Engineer (South) is the officer who is in-charge of the section and he is the person designated to function as an Estate Officer in respect of the said quarter and who exercises the administrative control

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over the section on which the said quarter is situated. He also contended that the notice under Section 4 was not issued by the competent authority. Applicant states that by a Govt. Notification dated 23.7.1983 which has been published in Gazette of India R-2 Sect 3 (ii) the Sr. Divisional Engineers can exercise power under the Public Premises Act only in respect of the premises under the administrative control in the Central Railway within their respective jurisdiction. He further contends that he could not attend the hearing because he was unwell. Thereby, the impugned order passed by the respondents is arbitrary, bad in law, unauthorised without jurisdiction, etc.

3. The respondents in the reply categorically denied the various contentions raised in the OA. They further contend that the application is misconceived and not maintainable in law and this Tribunal has no jurisdiction to entertain and try this application as admittedly the order of eviction has been passed under P.P. Act after following the due process of law and appeal if any from the order under Section 9 lies to District Judge of the district in which the premises is situated. P.P. Act provides for an appellate forum, thereby, this Tribunal is not entitled to entertain this petition. This Court has no jurisdiction and is not a Court of appeal as provided under P.P. Act. Respondents are justified to withhold the DCRG/Damage rent as per Railway Board's Circular. They further contend that in the present case the total amount recoverable from applicant due to unauthorised occupation till date is Rs. 43,470/- and respondents have also to recover the

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balance of Scooter advance amounts to Rs.6,048/- with interest thereon while the amount of DCRG payable is only Rs.28,380/- therefore respondents state that after adjustment of penal rent and other dues there is nothing payable to applicant towards DCRG. Further, while denying the contention of the applicant that since he is a loyal worker, his daughter should have been given employment in the respondents' department, even assuming without admitting, the said claim has to be claimed on or before 1976. Since he has filed the OA. in 1996, the alleged claim is time barred. In this connection, the learned counsel for the respondents states that the CAT Principal Bench in OA.NO. 258/94 in similar circumstances dismissed the application observing that the circular was issued in 1974 and the application after 21 years of time can't raise any issue or claim any relief on the basis of the same. Further, his contention that unless his representation is disposed of, he could not be asked to vacate the quarter. There is no such condition in the service regulation that till his representation is disposed of, he cannot be asked to vacate the quarter if due process of law is complied with. Further, the respondents contend that as per Railway Board Circular respondents are entitled to charge damage rent as per rate mentioned therein. Since the Tribunal is not a forum of appeal as provided under P.P.Act, the only remedy for the applicant is to file an appeal before the District Judge, if so desires. It is an admitted fact that the applicant has not made a representation for the release of DCRG or Post Retirement Passes.

For the first time, he has taken this plea in the OA, without making this plea before Estate Officer. Not only he failed to appeal before Estate Officer for pleading mercy for extension of time. He did not attend the hearing, on the other hand, his advocate attended. With regard to the contention that the respondent who passed the impugned order ins to the competent authority under Section 5, negativating this contention, this respondents submit that as per Railway Board Circular dated 23.7.1983 all Divisional Engineers of Central Railway are entitled to perform the duties of Estate Officer under P.P. Act in respect of premises of the Central Railway within their respective jurisdiction. The respondents further state that the Divisional Railway Manager (Works) is the department and Divisional Engineers are the Estate Officer with respect to their jurisdiction. It is further contended that the DEN (HQ) has jurisdiction upto Thane and they deny that the Sr.Div.Engineer is the office who is designated to act as Estate Officer in respect of the quarters as alleged otherwise. The respondents state that Divisional Railway Manager (Works) is the department and Divisional Engineer is the Estate Officer under whom the quarter in question lies and who has issued notice and passed the order was authorised under notification.

4. During the course of hearing, learned counsel for the applicant Mr. Walia draws my attention to the judgement rendered by this Bench in O.A.No.174/96 in some other case, where the undertaking given by the applicant to the Court has been accepted and the similar action be taken in his case. He also showed

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the undertaking in which he seeks for extension for six months upto 31.12.1996. However, after perusal of the same, I am not inclined to accept the contention of the applicant. In that order, after withdrawing the OA. and in the facts and circumstances of the case, both the counsel agree that after giving undertaking he has been directed to vacate the quarter by 31.8.1996. That is not the case here. Instead of seeking mercy/lenient attitude, the applicant still says that he is entitled to retain the quarter and till the alleged representation is disposed of, the respondents are not authorised to vacate him from the quarter. The decision of the Civil Court cited by him is not binding on this Court, thereby all the contentions raised by the applicant are not relevant to the facts of this case.

5. The learned counsel for the respondents Shri Dhawan draws our attention to the case of Ram Poonian vs. Union of India & Ors., 1996(1) ATJ 540, wherein the Full Bench has taken a view that :-

"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."

It is also observed 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 circular."

Therefore, he submits that in the light of the aforesaid judgement, the applicant is not justified in continuing in the quarter and the order passed by the respondents is correct and justified.

6. In the result, I am of the view that the respondents have complied with due process of law in passing eviction order against the applicant for his unauthorised occupation. As against the eviction order an appeal lies under Section 9 of the P.P. Act to District Judge. The applicant instead of preferring an appeal has filed the OA. in this Tribunal. Considering the facts and circumstances of the case, I am of the view that the applicant ought to have preferred an appeal before a District Judge to quash the eviction order. Thereby he has not exhausted the statutory remedy in this case. Therefore, having stated that the eviction order passed by the respondents is in accordance with law, we are not justified in giving extension for his unauthorised occupation. Therefore, the OA. is liable to be dismissed. In that event of the matter, the interim order passed on 10.6.1996 also stands disposed of. Accordingly, we dismiss the OA. with no order as to costs.


(B.S. HEGDE)
MEMBER (J)

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