

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.705/~~2001~~ 99

Date of Decision: 31.05.2002

Shri K.B. Yadav.

Applicant(s)

Shri G.K. Masand.

Advocate for applicants

Versus

Union of India & others

... Respondents

Shri S.C. Dhawan.

Advocate for Respondents

CORAM: HON'BLE SHRI BIRENDRA DIKSHIT. VICE CHAIRMAN  
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

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

*Shanta S*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 705/1999

THIS THE 31<sup>st</sup> TH DAY OF MAY, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE  
CHAIRMAN  
HON'BLE SMT. SHANTA SHASTRY . MEMBER (A)

K.B. Yadav, working as Sheet  
Metal Maker in the office of  
Chief Work Manager, Parel,  
Central Railway.

... Applicant

By Advocate Shri G.K. Masand.

Versus

1. Union of India, through the  
General Manager, Central  
Railway, CST, Mumbai-400 001.
2. Sr. Dy. General Manager (Vig),  
CST, Mumbai-400 001.
3. Chief Works Manager, Parel  
Workshop, Parel,  
Mumbai-400 012.

... Respondents

By Advocate Shri S.C. Dhawan.

ORDER

Hon'ble Smt. Shanta Shastri. Member (A)

The applicant is working as Sheet Metal Maker Highly Skilled (HSK) Grade-I in the scale of Rs. 4500-7000 under the Chief Workshop Manager, Parel Workshop, Central Railway. He was allotted quarter No. RB/I/119/16 situated at Kurla vide order dated 11.9.1990. According to the applicant he had proceeded on sanctioned leave from 08.02.1997 to 01.3.1997 to go to his native place. He had requested one Kamal Kumar Jaiswal to look after his quarter as caretaker in his absence, as according to the applicant the locality

....2.

where the quarter is situated is surrounded by zopadpattis and a large percentage of theft and goondaism. While he was on sanctioned leave, a surprise check of his quarter was conducted on 25.02.1997. Based on the report of the surprise check the applicant was served with a charge sheet dated 03.3.1998 issued under Rule 9 of the Railway Servants (Discipline & Appeal) Rules 1968 charging him with failure to maintain absolute integrity and behaving in a manner unbecoming of a Railway servant on the allegation that neither he nor his family members were residing in the quarter and the same had been fully sublet. The enquiry officer has been appointed, however the enquiry has not yet been completed.

2. In the meantime, the applicant has been issued a letter on 27.02.1999 advising him that the quarter allotted to him in Kurla has been cancelled with immediate effect and that he will vacate the Railway quarter. It has been further advised that damage rent at the rate of Rs.34/- per square meter amounting to Rs.1424/- per month from January, 1995 to 31.5.1995 and at Rs.42/- per square meter amounting to Rs.1759/- per month from June, 1995 to October, 1997 and at Rs.49/- per square meter amounting to Rs.2082/- per month from November, 1997 till vacation/ eviction of Railway quarter from the applicant. Being aggrieved by the letter of 27.02.1999 the applicant has approached this

h

...3.

Tribunal to quash and set aside the impugned order with a further direction to the respondents to refund the amount already deducted from his wages together with interest at the rate of 21% per annum from the date of recovery till the date of refund. The applicant also prayed for an interim relief to stay the recovery of the damage rent.

3. The contention of the applicant is that the Railway quarter was allotted to the applicant in regular course and by the competent authority. He had allowed Shri Jaiswal to stay in his quarter only as caretaker during his leave period. Further, the order passed on 27.02.1999 is based on the direction issued by the Respondent No.2 behind his back without affording him an opportunity of being heard. It is in fact premature and arbitrary as the charge of subletting has not yet been proved against the applicant. The disciplinary proceedings are still pending in respect of charge of subletting. They cannot therefore, come to the conclusion before hand that the quarter had been allegedly sublet. The applicant further submits that the respondents are not entitled to arbitrary and unilateral fixation of alleged damage rent and to start recovering the same without following the detailed procedure as <sup>has</sup> been prescribed under Rule 8 of the Rules framed under Public Premises (Eviction of Unauthorised Occupants) Act 1971. No proceedings under the aforesaid

...4.

act had been initiated by the respondents. Also the impugned order of 27.02.1999 is not a speaking order as it contains no reason. The applicant relies on the judgment in the case of Dr. Avneesh Kumar Vs. Indian Veterinary Institute, Bareilly & Ors 1999 (2) ATJ 306.

4. The respondents submit that the vigilance department conducted a surprise check of the quarter allotted to the applicant and other quarter at Kurla. During the surprise check it was found that the quarter allotted to the applicant was being occupied by Shri K.K. Jaiswal and his family members, neither the applicant nor his family was residing in the said quarter. Shri Jaiswal clearly stated in his statement that he was paying Rs.1700 to the applicant as rent for occupation of the said quarter and he had been staying there for past two years. The respondents submit that disciplinary proceedings were therefore initiated against the applicant by issuing him the charge memo. He was called upon to give his representation within 10 days from the date of receipt of the said memo. Shri Jaiswal is neither his relative nor his family member. The applicant represented on 11.3.1999.

5. According to the respondents, the enquiry is not yet completed because of the obstructive attitude adopted by the applicant, he is not cooperating with the enquiry officer. He is making false and frivolous

14

allegation and getting the matter adjourned time and again. The respondents submit that the damage/market rent has been fixed as per the Railway Board circular issued in 1961 and letter dated 09.4.1980 as well as letter dated 10.4.1986. The provisions of these letters have been incorporated in the master circular of Railway Board on allotment of quarters in para 6 (i). According to the respondents, there is no need to take recourse to the PP Act when there are <sup>special</sup> rules provided for recovering the same. These rules are binding on the Railway employees. The applicant is aware of the rule. The respondents have also produced a copy of the Railway Board's circular dated 21.12.1995. The Railway Board circulars and rules are held to be statutory in nature by the Hon'ble courts repeatedly. The action of the respondents is in accordance with law and rules. The Apex Court has also held that charging penal rent is justified and proper. Further the judgment in the case of Avneesh Kumar & Ors (supra) is not applicable to the facts and circumstances of this case as in this case admittedly Shri Jaiswal was residing in the quarter allotted to the applicant and he had admitted that he was paying Rs.1700/- per month to the applicant. It clearly establishes the fact of subletting and making gains for self at the cost of the Railways.

6. The applicant reiterated his arguments that damage rent should not be recovered directly without

...6.

k

resorting to the procedure laid down under the PP Act. Also the applicant ought to have been given an opportunity of being heard before starting the recovery of the damage rent. Learned counsel for the respondents has drawn our attention to para 1711 of the IREM. The respondents have the power to recover the damage rent when an allottee of the Railway quarter sublets his accommodation. Even it has been held by the Full Bench of the Tribunal in Rampoojan Vs. Union of India & Others 1996 (1) ATJ 540 that it is not necessary to initiate the proceedings under the PP Act.

7. We have heard the learned counsel for both the sides and have given our careful consideration to the arguments advanced. We note that the applicant's allotment of quarter was cancelled vide letter dated 27.02.1999 and he was asked to vacate the quarter. Once the allotment is cancelled staying in the aforesaid accommodation beyond that date amounts to unauthorised occupation and therefore, the respondents have rightly charged damage rent to the applicant. According to us when the Railway rules have specifically provided for charging damage rent for unauthorised occupation or in case of subletting, it is not necessary to initiate action under the PP Act. This has been laid down clearly by the Full Bench in the case of Rampoojan (supra). Recently also in OA No. 2378/1999 decided on 25.5.2001 the Full Bench has confirmed this view. In

.....7.

the present case therefore, we have to hold that there is nothing wrong in the respondents cancelling the allotment of quarter of the applicant on the ground of subletting and charging rent at damage rate. The rule position shows that in case of subletting, after proper warning the concerned employee should be charged penal/market rent as the case may be pending finalisation of the DAR or eviction proceedings. In the present case the contention is that no such warning seems to have been issued. However, a show cause notice has already been issued to the applicant on the allegation of subletting and he was given an opportunity to represent. Therefore it cannot be said that no notice was given. The applicant has made a representation denying the charges. It has even been held in Rampoojan's case that no notice is required to be given before imposing penal rent. The learned counsel for the applicant tried to distinguish his case by submitting that Rampoojan's judgment was with reference to those on transfer/ retirement, who did not vacate the accommodation. In the present case, the applicant is still working. We do not agree, what matters is, the ratio laid down. The judgment in Rampoojan's case has become final and it has not been set aside. We therefore, hold that it is not mandatory to proceed under the PP Act.

8. The rule position is given in the master circular on allotment of quarter and retention thereof



on transfer etc. As per Rule 6 (i) where a Railway employee has sublet the quarter fully to an outsider, he should be taken up and eviction proceedings should be started against the sublettee to get the quarter vacated expeditiously. Further, the staff found violating the above instructions after proper warning should be charged penal/market rent as the case may be pending finalisation of the DAR or eviction proceedings. Departmental action is also required to be taken against the Railway servant in such cases. This provision has been included on the basis of the letters dated 09.4.1980 and 10.4.1986 of the Railway Board. Thus, it is clear that the respondents can take action against Government servant subletting accommodation. Since in the present case, it was clear from the statement of sublettee that the applicant had sublet the quarter to him. The respondents' action in cancelling the allotment of the quarter and imposing of penal rent cannot be faulted with. It is not clear whether any proper warning had been issued to the applicant. However, the applicant did make a representation on 11.3.1999 with reference to the charge memo issued to him in initiating disciplinary proceedings as well as with reference to the impugned order dated 27.02.1999. He combined both. Be that as it may, since the applicant had already represented and a show cause notice was given to him, the purpose of warning has to be deemed as served. The applicant got an opportunity to represent.

9. The disciplinary proceedings are still pending, but that does not come in the way of respondents cancelling the quarter or charging the penal rent. That is a separate action.

10. The respondents have imposed penal rent from 01.01.1995 i.e. with retrospective effect. The applicant has questioned the charging of the damage rent with retrospective effect. In our considered view, the subletting of the quarter by the applicant was detected only on 25.02.1997 and the quarter allotted in the name of the applicant was cancelled with effect from <sup>27.2.1999</sup> ~~27.02.1997~~. Therefore, charging of damage rent retrospectively is not justifiable. The applicant would therefore, be liable to pay damage rent from the date of cancellation of the quarter allotted to him. If any damage rent has already been recovered for the period from 01.01.1995 upto <sup>27.2.1999</sup> ~~25.02.1997~~ the excess amount recovered shall be refunded to the applicant. The OA is disposed of accordingly. We do not order any costs.

Cancelled vide order  
dt 18.9.2003

Sh

(SMT. SHANTA SHASTRY)  
MEMBER (A)

B. Dikshit  
(BIRENDRA DIKSHIT)  
VICE CHAIRMAN

Gajan

Order/Judgement despatched  
to Applicant, respondent (s)

24/6/07