

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.43/2000

Tuesday, this the 5th Day of September, 2000

Shri. A.M.Attar. Applicant.

(Applicant Shri S.S.Karkera, Advocate)

Versus

Union of India & Ors Respondents

(Respondents by Shri V.S.Masurkar, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

(3) Library. No
B.N. Bahadur
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.43/2000

DATED: Tuesday, this the 5 TH DAY OF SEPTEMBER, 2000.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Shri A.M. Attar,
Ex-Guard, residing at
C/o S.A. Attar,
Railway Quarters No.RB.II,
7/6, Mazgaon, Byculla,
Mumbai 400 008.)

..... Applicant

(By Shri S.S. Karkera, Advocate)

vs.

1. Union of India, through
The General Manager
Central Railway
Head Quarters Office
Mumbai C.S.T.
Mumbai 400 001.

2. The Divisional Railway
Manager (P), Division Office
Personnel Branch, C.Rly.
C.S.T. Mumbai 400 001.

.... Respondents

(By Shri V.S. Masurkar, Advocate)

ORDER

(Per: B.N.Bahadur, Member (A))

This is an Application made by Shri A.M. Attar, Ex.Guard with the Central Railway, who seeks the relief for a declaration that the recovery of damage rent being made from him, by the Respondents, is illegal and arbitrary. Applicant also seeks a direction to the Respondents for a refund of Rs.79712.70 (minus normal rent), being the amount already recovered. The applicant also prays for 18% interest, on the amount due to him.



2. The case made out by the Applicant is as follows:

The Applicant states that he retired as a Guard on 28.2.1997, on superannuation. He had been occupying Railway quarter No.RB/III/3/2 at Byculla. He was allowed to retain the said quarter from 1.3.1997 to 30.6.1997 on normal rent, and thereafter upto 31.10.1997, on medical grounds. The Applicant states that he has a son, by name Shri S.A. Attar, who is also employed at Central Railway and was staying with the Applicant with due permission from Respondents. Accordingly, the son had never claimed H.R.A. The Applicant avers that the son was entitled to the type of Quarter that applicant was staying in, since he was working in the Revised Pay Scale of Rs.4000-6000/- (1200 - 1800 prrevised) (Ex.B).

3. The Applicant goes on to say that his son applied for transfer of the Quarter in his name on 24.2.1997, and that this application was never been rejected. The Respondents allotted a lower type of quarter the son on 1.1.1998, on father-to-son basis. The Applicant alleges that the son has been discriminated against, since in 9 other cases of similar type, higher type allotments have been made. This is attributed to malice and malafide by Sr. D.P.O. in view of reasons cited. The Applicant then continues to describe the details of the case of allotment pursued by the son. These details are not being repeated here, although they have been considered. The Applicant further states that the quarter was vacated on 31.7.1999, and Applicant applied for the release of DCRG/other retiral dues, which had been withheld by Respondents for (recovery of amounts against the quarter.) The Respondents have remitted the amount after deduction of Rs.79,712.70) It is with such grievance that the Applicant is before us, seeking the relief as described above.

Abd

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4. The Respondents have filed a Written Statement, resisting the claim of the Applicants, and stating that the Applicant's grievance is misconceived. Since the Applicant had vacated the Quarter only on 31.7.1999, and permission as described above had ended on 30.10.1997 the Applicant was in unauthorised occupation of the Railway Quarter from 1.11.1997 to 30.7.1999. The Respondents further aver that, as per Railway Board's Circular dated 24.7.1989 (Ex.R.10), the Applicant is entitled to a Type II Quarter only, since he was working in the (pre revised) Grade of Rs.1200 to 1800/-.. It is averred that the Applicant had been informed vide letter dated 24.7.1997 that the period beyond 30.10.1997 would be treated as being one of unauthorised occupation (R.2), and also that a notice dated 1.4.1998 (R.3) was sent. Respondents further give parawise replies to the facts and averments made in the Application. The cases of *Ramboojan*, *Ujjagarjal* and some others as detailed in para 4 of Written Statement have been cited in support of their case by the Respondents.

5. Arguing the case on behalf of the Applicants their Learned Counsel reiterated the facts of the case, and first stated that the applicant's son was allotted a lower type of quarter, and hence the Applicant could not have vacated the quarter allotted to him for the period after retirement as described. The Learned Counsel further took the plea of discrimination in such allotment already made in the O.A. and argued his case at some length on this point. He said that the documents at page 52 and 53 should be taken to imply that Applicant's stay was on valid ground. He referred to the

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judgement of this Bench in O.A. 1015/98 (page 57). Referring to the documents at page 22 and 23 regarding entitlement of employees to different categories of housing, learned counsel stated that he was entitled to Type III housing.

6. Another point made in legal contention by learned Counsel for Applicant was that the infliction of penal rent can be done only after/during proceedings under the P.P.Act. He sought support from the decision in O.A. 439/95 decided by this Bench and also sought support from the case of *Shivsagar (1997 (1) SCC 444)*. He also referred to the case of *Dhuma* decided by this Bench on O.A.87/97.

7. Arguing the case on behalf of the Respondents, their Learned Counsel first made the point that the entitlement of the son to housing was only to the type that he (son) was entitled to and did not entitle the son automatically to the house occupied by the father. Also that there was no excuse for the father (Applicant) not to handover the house in the circumstances cited. The law on this count had been settled, and, in fact, the judgement in O.A.1015/98 dated 4.3.1999 acted as *res judicata* against the Applicant. The High Court decision in WP/1526 of 1999 was also cited as going against the Applicant's case.

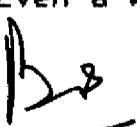
8. Learned Counsel for the Respondents also cited a number of cases in his support besides dealing with the cases cited by the Learned Counsel for the Applicant. Counsel for Respondent sought to distinguish the cases cited in support of Applicant and discussed these on a case by case basis. The applicability etc. and the arguments taken on the case law by either side will be discussed ahead. Learned Counsel for Respondents argued that the

PP Act was not relevant here as contended and that the consent terms did not deal with the issue of the Penal rent. The Court therein was seized in regard to the issue relating to eviction only.

9. Rearguing the case briefly, the learned Counsel for Applicant countered the claim that his case was hit by res judicata because of the judgement of this Bench, as argued by the other side. He also stated that the case of *Ujagarlal* not decided the issue regarding damage rent.

10. I have heard Learned Counsel on either side and have perused the papers in the case including the case law cited.

11. In the argument taken that Applicant's son was allotted a quarter which was below his entitled class, and that the quarter occupied by the father should have been allotted, I find no substance. After perusal of the instructions referred to by both sides, it is clear (Annexure B page 22) that in the first place the entitlement of the son is not to type III. Even if it were, one thing is clear that this cannot be enough ground for the present applicant to hold on to his quarter, and much less for him to justify that this action of his holding on to his Quarters will protect him from liability of penal rent. The second point made strenuously by Counsel for Applicant was that 9 other persons were allotted type III accommodation, and that this amounted to hostile discrimination. This has been denied by the Respondent. Be that as it may, it will not be for this Tribunal to go into an inquiry, as it were, to find out if any wrongful order has been made and then relate that as a cause of action, to justify the action of present applicant to retain his quarter. Even a wrongful allotment to some other persons, cannot help the



present applicant, in securing the relief he seeks in the present O.A. This is a special scheme, it must be remembered already giving him a benefit.

12. Similarly, the claim that penal rent can be decided only after/during court proceedings under P.P.Act is neither supported by any rules/laws or by citation of any case law on the point. The relationship which the applicant is trying to establish on this count is totally unjustified and not tenable.

13. The learned Counsel for the Applicant cited the case of Lalita Prasad Singh decided the High Court of Bombay (WP No.1085/97). It cannot be said to apply to the facts and circumstances of the present case. I must at this stage go to the case of *Rampoojan* which was depended upon very strongly by the learned Counsel for Respondent. This case (1996 ATJ 540) was decided by a Three Member Bench of this Tribunal. A careful perusal of this judgment shows that number of issues before the Tribunal in the present O.A., have been decided in this case of Rampoojan Patel by the Full Bench. Reproduced below is the Headnote in this case which clearly elucidate these points and shows the applicability of *Ram Poojan*'s case to the present case.

"(A) Residential Accommodation -- Unauthorised Occupation -- A railway servant on transfer, retirement or otherwise, if does not vacate the railway accommodation even after the expiry of permissible period--It is not necessary to issue specific order cancellingt the allotment of accommodation -- Further retentioin of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied.

(B) Residential Accommodation--Penal/Damage rent--Retention of accommodation beyond the permissible period--Allotment of quarter stands automatically cancelled--Penal rent can be levied according to the rates prescribed from time to time in the Railway Board's circular.



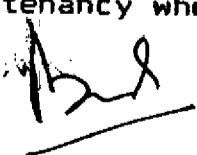
(C) *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* -- *Penal Rent*-- It is open to the Railway Administration to recover penal/damage rent by deducting the same from the salary of the Railway servant--Not necessary to take resort to proceedings under P.P.Act.

(D) *Indian Railway Establishment Manual, Para 1711*--*Recovery of Rent*--*Railway Board's circulars are the general or special orders permitted to be issued under para 1711 of I.R.E.M.* -- There is no inconsistency between the provisions of the Railway Board's circulars and the provisions of Para 1711.

(E) *Indian Railway Establishment Manual, Para 1711* --*Recovery of Rent*--*Provisions under Railway Board's letters regarding recovery of rent for unauthorised retention of quarter*--*These letters supplement the provisions of para 1711 of I.R.E.M. and in no manner supplant them.*

(F) *Penal Rent* -- *Residential accommodation* -- *Applicant transferred from Allahabad to Mirzapur*--*Not provided the accommodation at Mirzapur*--*Retained the residential accommodation which was provided at Allahabad*--*Charge of penal rent for unauthorised retention after the permissible period, justified.*"

14. The argument of the Counsel for Applicant that no specific order has been made declaring the Applicant as unauthorised occupant is also clearly answered by the decision in *Rampoorjan's case* and no further elucidation is necessary. It is clearly seen that the said case of the Full Bench applies squarely to the present case before us. In view of this, I am unable to follow the decision cited by learned Counsel for Applicant in the matter of *K.K.Ahire* decided by a Single Member of this Bench in O.A.510/96. So also, the case of *Urman Singh* cited by Counsel for Applicant will not help the case of the Applicant. The learned Counsel for the Applicant had also sought to depend on the decision in the case of *Shangrila Food Products Ltd. vs. LIC* (J.T 1996 (6) SC 522), I agree with the point made by Learned Counsel for Respondents that this case deals with the tenancy where private companies/Corporations are involved and



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cannot be cited as being relevant in the situation of Govt. accommodation made available to Govt. servants. Thus, this case is not applicable to the present case before me. So also, the case of *Shivsagar Tiwari* (1997) 1 Supreme Court Cases 444 does not apply to the present situation before me. A few other cases have been cited by both sides I do not see the need for discussing each one of them since the dependence on the ratio of Rampoojan's case decided by the Full Bench of this Tribunal are very relevant and applicable.

15. In view of the above position, I am not convinced that the Applicant has made out any case for being provided with the reliefs that he seeks. In the consequence, I do not find any justification for interference in the matter. This Application is therefore, dismissed. There will be no orders as to costs.

B.N.Bahadur

(B.N.Bahadur)

Member (A)

sj*

05/09/2000