

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.161/2000

Dated this the 14th day of December 2000.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

R.N.Srivastava,
Senior Commercial Manager,
Office of Chief Claims Officer,
Central Railway, Mumbai.

... Applicant

By Advocate Shri R.S.Tulskar

V/S.

1. Union of India through
the General Manager,
Central Railway,
CST, Mumbai.

2. Divisional Railway Manager (P),
Central Railway, Jhansi Division,
Jhansi.

3. Chief Personnel Officer,
Central Railway, CST,
Mumbai.

... Respondents

By Advocate Shri Suresh Kumar

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the relief to quash the order dated 28.7.1998 (Ex. 'A') and 25.1.1999 for recovery of damage rent from the wages of the applicant with a request/direction to the respondents to refund the entire amount

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that has been deducted from the applicant's wages in pursuance of the impugned order referred above with interest at the rate of 21% from the date of recovery till the same is refunded.

2. The applicant was appointed as Law-Assistant on 8.12.1972 on Central Railway and after initial posting in the Office of Chief Claims Officer, Mumbai, was transferred in 1975 and posted in the Office of Divisional Railway Manager, Central Railway, Jhansi Division, Jhansi. The applicant was transferred in July, 1996 from Jhansi to Mumbai. He could not shift his family immediately in pursuance of the same transfer order on 19.8.1996, requested Respondent No. 2 to grant him permission to retain quarter at Jhansi. Accordingly, he was granted permission to retain quarter at Jhansi from 19.8.1996 to 31.5.1997 by Respondent No. 2 vide his letter dated 25.9.1996. The request of the applicant to retain the quarter at Jhansi vide his application dated 30.5.1997 followed by the reminders dated 9.9.1997, 27.11.1997, 2.2.1998 and 9.6.1998 was not considered by the Respondent No. 2. The applicant was served with the impugned order dated 28.7.1998 that the damage rent at the rate of Rs.11,438/- per month will be recovered from the wages of the applicant. The applicant replied to the same vide his representation dated 24.8.1998 (Ex. 'C'). Respondent No. 3 at the behest of Respondent No. 2 started illegally and arbitrary recovery from the wages of the applicant at the rate of Rs.3000/p.m. from November, 1998. The applicant vacated the quarter on 29.8.1998.

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3. The applicant has challenged the said recovery on the ground that the action of the Respondent No. 3 to effect recovery of the alleged damage rent from the wages of the applicant is illegal and arbitrary in as much as the same is based on no evidence whatsoever and is absolutely contrary to the provisions of Section 7 of Public Premises Act read with Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Payment of Wages Act. Without taking recourse under the provision of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, recovery amounts to high-handed action on the part of the respondents. The orders are passed without affording the applicant an opportunity of being heard. So many Railway employees occupying the quarters even after the transfer and no such action is taken by the respondents against them and only standard rent is recovered.

4. The respondents have resisted the claim of the applicant on merits and on ground of limitation also.

5. It is true that the applicant has challenged the order dated 28.7.1998 and OA. has been filed on 15.3.2000. Apparently, it appears that the OA. is barred by time but in the considered opinion it is not so, for the reason till the recovery of all the damage rent is not completed/not recovered, the applicant has a cause of action to challenge the said recovery. It is further necessary to mention that the calculation regarding damage rent is vide order dated 25.1.1999 and OA. is filed on

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15.3.2000 though late by one and a half month but as stated above, as the recovery is continuing the applicant has a continuing cause of action in his favour to challenge the same. Hence, it is hereby held that the OA. is not barred by time.

6. The learned counsel for the applicant argued though not raised in pleadings that the applicant was not served with a show cause notice terminating his allotment of the said quarter. In reply to the same, the learned counsel for the respondents relied on 1994-96 Full Bench Judgements p.244 Ram Poojan vs. Union of India & Ors. which clearly lays down that in case of transfer, retirement or otherwise if a Railway servant has not vacated the Railway quarter even after the expiry of permissible period, it is not necessary to issue any specific order cancelling the allotment of the accommodation and further retention of accommodation by the Railway servant will be unauthorised and penal/damage rent can be levied.

7. The learned counsel for the applicant argued that the respondents ought to have taken recourse to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the answer to the same is also contained in the case referred above Ram Poojan vs. Union of India and Ors. along with V.G.Ghete vs. Union of India & Ors. decided by this Bench on 24.2.2000.

8. The learned counsel for the applicant relied on Vol.1 Supreme Court Service Rulings 502, Union of India & Ors. vs. E.G.Nambudiri and argued that principles of natural justice are applicable to administrative orders if such orders affect the right of a citizen. I do agree with the above proposition of law laid down by the Apex Court and I am of the considered opinion that the respondents have not violated the same for the reason that even the applicant has represented the matter against the order dated 27.1.1998 and thereafter the respondents have further passed the orders regarding recovery of the damage rent.

9. The learned counsel for the applicant relied on Vol.1 Supreme Court Service Rulings 469, C.L.Verma vs. State of Madhya Pradesh & Anr. and argued that administrative instructions cannot compete with a statutory rule, Rule to prevail if the administrative instructions are contrary. I am of the considered opinion that the said proposition of the law holds good but it does not help the applicant in the present case for the reason that Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is a general law while I.R.E.M. is a special law which prevails against general law.

10. It is true that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 under which rules are made, Rule 8 relates to assessment of damages which is as under :-

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" 8. Assessment of damages -- In assessing damages for unauthorised use and occupation to any public premises the estate officer shall take consideration the following matters namely --

- (a) the purpose and the period for which the public premises were in unauthorised occupation;
- (b) the nature, size and standard of the accommodation available in such premises;
- (c) the rent that would have been realised if the premises had been let on rent the period of unauthorised occupation to a private person;
- (d) any damage done to the premises during the period of unauthorised occupation;
- (e) any other matter relevant for the purpose of assessing the damages."

11. The learned counsel for the respondents relied on Railway Board's Circular dated 19.1.1998 and argued that the respondents have ordered the recovery of the damage rent on the principles laid down in the said Circular, as the Railway Board has power to issue the circulars which has force of law and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is not applicable to the Railway employees, Rule 8 of the same is also not applicable to the Railway employees in preference to the Railway Board Circular dated 19.1.1998.

12. The contention of the applicant that the recovery is in violation of Payment of Wages Act cannot be examined by this Tribunal in view of K.P.Gupta's case as the jurisdiction rests with Labour Court.

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13. The non consideration of the request of the applicant for further retention of the quarter, can not be a ground to resist the claim. Similarly, an illegal action, if any, by not charging the damage rent to some employees, which is not established, does not give a right to contend a discrimination under Article 14 of the Constitution of India.

14. In the result, I do not find any merit in the OA., it is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L.JAIN
(S.L.JAIN)

MEMBER (J)

mrj.