CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1217/93 199.

Date of Decision: 25-9-1998

Suraj Pratap Tiwari — Petitioner/s

Mr. G.S. Walia — Advocate for the Petitioner/s

V/s.

U.O.I. & Ors. — Respondent/s

Mr. V.S. Masurkar — Advocate for the Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S. Baweja, 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

V.C.

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI 400001

ORIGINAL APPLICATION NO. 1217 OF 1993

DATED : THIS 25th DAY OF SEPTEMBER, 1998

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C.
Hon. Shri D.S.Baweja, Member(A)

Suraj Pratap Tiwari
Working as High Skilled Fitter Gr.II
Neutral Carriage and Wagon Suptd.,
Parel Workshop, Western Railway,
Lower Parel, Mumbai 400013
(By Adv. Mr. G S Walia) ..Applicant

V/s.

1. Union of India

2. through General Manager
Western Railway
Churchgate, Mumbai 400020

3. Divisional Railway Manager
Bombay Division
Western Railway
Bombay Central
Mumbai 400020

4. Neutral Carriage and
Wagon Superintendent
Parel Railway
Lower Parel, Mumbai 400013

5. Chief Secretary
Indian Railway Conference
Association, DRM Office,
Account Building
Chelmsford Road
New Delhi 110055
(By Adv. Mr. V S Masurkar,
Central Govt. standing counsel) ..Respondents

ORDER

[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the learned counsel appearing on both sides.

2. The applicant was working as High Skilled Fitter Gr.II in Parel workshop at Bombay. He was allotted railway

quarters bearing No.213/16 Bandra (E), Mumbai. Some time in the year 1987 the applicant was transferred to Sabarmati and subsequently he has been retransferred to Bombay on 6.5.89. In these circumstances the applicant should have been allowed to retain the quarters at Bombay. Respondents are recovering Rs.1621/- per month from the salary of the applicant by way of damage rent. The applicant has been representing orally and also in writing requesting the respondents not to deduct the penal rent but in vain. Then he gave a written representation on 14.4.92 and again on 30.6.93. It is stated that from 6.5.89 to September 1993 about Rs.20,000/- had been deducted from the salary of the applicant towards penal rent. The applicant is getting only Rs.100 or Rs.150/- after deductions per month. It is stated that the deduction of damage rent from the applicant's salary is illegal, unconstitutional and is contrary to the principles of natural justice. No notice was given to the applicant in this behalf. No action has been taken under the Public Premises (Unauthorized Occupants) Eviction Act, 1971 [hereinafter referred to as the Act, for short]. It is stated that no damage rent can be deducted without having recourse to the provisions of the said Act. On these grounds the applicant has approached this Tribunal for a prayer to regularise the quarters in his name, to declare that the deduction/penal rent is illegal and contrary to law and for a direction to the respondents to refund Rs.20,000/- already deducted from his salary.

3. The respondents have filed a reply. Their stand is that applicant on his transfer to Sabarmati was relieved on 8.4.86 and he joined his duties at Sabarmati on 19.4.86. On his request the applicant was allowed to retain the quarter in question for a period of two months viz., from 8.4.86 to 7.6.86. Number of notices have been issued to the applicant calling upon him to vacate the quarter or to pay the penal rent. It is denied that the applicant made representations in writing on 14.4.92 or 30.6.93. That penal rent has been deducted as per the service rules and it is denied that penal rent cannot be recovered within taking action under the Act. It is also stated that the application is barred by limitation.

4. The main contention of the applicant is that the respondents cannot recover any penal rent from the salary of the applicant without taking action under section 7 of the Act. The next submission is that the recovery of penal rent is in violation of principles of natural justice and is illegal. Then it was submitted that the deduction of the penal rent is in excess and contrary to the provisions of section 60 of the Code of Civil Procedure and the provisions of Payment of Wages Act. On the other hand the learned counsel for the respondents refuted all these contentions and further submitted that the claim is barred by limitation, principles of delay and laches.

5. In the Original Application there is a prayer for regularisation of the quarter in the name of the

applicant. however, at the time of arguments the learned counsel for the applicant submitted that the applicant has since been transferred and therefore he is not pressing the prayer for regularisation of the quarters.

6. As far as the question whether the penal rent can be recovered under the provision of the service rules or one has to take proceedings under section 7 of the Act, it is no longer res integra and is covered by a direct decision of a Full Bench of this Tribunal reported in 1994-96 CAT FB JUDGMENTS 244 [RAMPOOJAN Vs. UNION OF INDIA & ORS.]. In an identical case the Full Bench held the penal rent can be recovered under the service rules and there is no necessity to take action under section 7 of the Act. The learned counsel for the applicant tried to canvas that the judgement of the Full Bench is per incurium. He also referred to some decisions of the Supreme He did not cite any judgement of the Supreme Court on the point decided by Full Bench judgement of this Tribunal, we are bound by that judgement and we cannot go into the question whether the judgement of the Full Bench has been correctly decided or not. A Division Bench is bound by the judgement of the Full Bench and cannot reopen the matter. Some of the decisions cited by the learned counsel for the applicant have absolutely no bearing on the point under consideration, but on the other hand the question is squarely covered by a decision of the Full Bench which is binding on us. Hence we are not going to consider the above question on first principles since the point is covered by the judgement of the Full Bench.

7. We are also fortified in our view by some of the observations of the Supreme Court in some of the decisions. In fact the learned counsel for the applicant invited our attention to AIR 1997 SC 2725 [SHIV SAGAR TIWARI Vs. UNION OF INDIA & ORS] in support of his contention that penal rent has to be decided under the Act and in particular placed reliance on para 71 of the reported judgement. that was a case arising out of a Writ Petition filed by an Advocate under Article 32 of the Constitution of India. It was a public interest litigation. The facts of the case show that the quarters had been allotted to number of officers on out of turn basis at Delhi. The Supreme Court appointed a Committee which went into the question and enquired into the matter and submitted a report. On that basis the Supreme Court gave some directions and they cannot be applied to a case of administration recovering penal rent under the service rules. Even in that decision the Supreme Court has stated that service rules provide a mode of determination of market rent but in the peculiar facts and circumstances of that case the Supreme Court gave a direction that the penal rent should be twice or thrice the normal rent. The question whether in a given case the Government can recover penal rent under service rules or it should proceed under section 7 of the Act was neither raised nor decided in that case. As already stated it was not a dispute between the Government and a particular officer regarding recovery of penal rent, but it was a case of public interest litigation in which the Supreme Court directed that certain illegal allottes to be

evicted and they should pay penal rent etc. In fact in para 44 of the reported judgement the Supreme Court has observed that the whole system of allotment of quarters has collapsed and it was a crisis like situation which has to be dealt with as an extraordinary situation and a special procedure has to be devised to do justice to the concerned. It is because of crisis situation in the said proceedings the Supreme Court gave certain directions. In fact in para 87 of the reported judgement the relevant conclusion is at item No.14 where there is a clear direction that unauthorized occupants of government premises are liable to pay damages as per the relevant rules.

8. Learned counsel for the applicant also invited our attention to a decision of the Apex Court in the case of UNION OF INDIA AND ANOTHER Vs. WING COMMANDER R.R.HINGORANI (RETD.) [(1997) 2 ATC 939]. He placed reliance on observation in para 13 that Government is at liberty to take action under the Act to recover damage rent. On this basis it was contended that the Government has no right to determine and recover the penal rent and it has to approach only the competent authority under the Act both for determination of penal rent and recovery of the same. In our view this argument has no merit. In that case a Government officer had not vacated the quarter in spite of his transfer. This came to light after the officer retired from service. The government initiated action against the officer under section 7 of the Act for

recovery of damage rent. Then in the meanwhile the officer retired. The Government deducted Rs. 38,000 and odd from the commuted value of pension of the applicant. Then on the officer's representation the amount was reduced to Rs.20,000 and odd. Then the applicant challenged the same by filing a writ petition. The writ petition was allowed on the short ground that the officer had not been heard before determining the penal rent. Then there was also a finding of the High Court that the officer's wrongful occupation had been ratified or waived by the Government. The Supreme Court observed on appeal by the Government of India that the two conclusions of the High Court are not sustainable. In fact the Supreme Court observed that the liability to pay penal rent under the service rules is an absolute liability. In fact the Supreme Court recorded a finding in para 8 that since the officer had violated his declaration, he was clearly liable under FR/SR 317(d)(22) to pay damages equal to the market rent for the period of his unauthorized occupation. Hence there is no necessity of issuing a show cause notice and deciding the penal rent. Though the Supreme Court came to the conclusion that the order of the High Court was not sustainable on the grounds upheld by the High Court still the order of the High Court was sustained by the Supreme Court on the ground ~~of~~ that no recovery can be made from the commuted value of pension of the officer which is contrary to provisions of S. 11 of Pension Act, 1871. Then the Supreme Court gave a liberty to the Government to refund the amount illegally recovered from the pension

amount but the Government is at liberty to recover that amount of Rs.20,000 and odd by taking action under Section 7 read with Section 14 of the Act as arrears of land revenue etc. Therefore the direction was to recover the amount of Rs. 20,000 and odd and not for determination of penal rent. Since the officer had retired there was no question of recovering any amount from his salary. The amount cannot be recovered from his pension. Therefore, the government has to take action under the Act to recover that amount as arrears of land revenue. But if the officer is in service then the amount could be recovered from his salary. Therefore, in our view this decision instead of helping the case of the applicant clearly supports the stand of the respondents that under service rules penal rent can be recovered without recourse to the provisions of the Act.

9. Applicant's counsel also relied on 1996(2) ATJ 252 [P.K. GANGADHARAN Vs. UNION OF INDIA & ORS.]. Even in that case it is seen that the Government had made some recovery towards penal rent from the salary bill of the official. He challenged the same before the Ernakulam Bench of this Tribunal. What the Tribunal has observed is that the recovery is illegal because there was violation of principles of natural justice in not hearing the officer before making recovery. Therefore, on the question whether the Government itself can recover penal rent from the salary this case is not of help to the applicant. The fact is that the Tribunal held that recovery

can be made but the official must be heard before ordering recovery. Therefore, even this decision supports the case of the respondents that they can make recovery of penal rent from the salary of the official as per service rules. But this decision only helps the applicant on one point viz., that before ordering recovery of penal rent the official must be put on notice or he must be heard in the matter. We will consider whether in the present case there is any violation of principles of natural justice at a little latter stage.

10. Learned counsel for the applicant also invited our attention to a case decided in (1996) 5 SCC 54 [SHANGRILA FOOD PRODUCTS LTD. AND ANOTHER Vs. LIFE INSURANCE CORPORATION OF INDIA AND ANOTHER]. In particular he placed reliance on the observation of the Supreme Court that liability to pay damage rent arises only when the occupant is adjudicated of being in unauthorised possession. Based on this observation it was contended that unless action is taken under the Act and the official is adjudicated to be in unauthorised occupation, the question of payment of penal rent does not arise. In our view this argument has no merit. That was a case between a private tenant in occupation of the premises belonging to the public sector undertaking viz., the Life Insurance Corporation of India. The allegation against the tenant was that he has sub-let the premises and therefore his possession is unauthorized and liable to pay penal rent. The tenant had denied the question of sub-letting.

Therefore, there was serious dispute before the authorities whether the tenant sub-lease the premises or not. It is in those circumstances the Supreme Court observed that unless it is held that it was a case of sub-let the tenant is not liable to pay penal rent. In the present case we are concerned with a railway officer on the one hand and the railway administration on the other. Here the applicant has not vacated the quarter after transfer and after the prescribed period, as per the Railway Board circular penal rent has been levied. The Railway Board circular produced before us states that a transferred official has to vacate the quarter within two months from the date of relief from the post. We have also seen Government orders and circulars which provide that if a Government servant retires he must vacate the quarters within two months. Therefore, in such cases, there is no necessity of holding an inquiry and giving a finding that the possession is unauthorised. If a retiring official does not vacate the quarters within two months as per rules or a transferred official does not vacate the quarters within two months of transfer then as per rules the possession becomes unauthorized after the expiry of that time. In such cases there is no necessity of an official being adjudicated or declared by any authority that the occupation is unauthorized. If once a particular period expires under the service rules, the possession becomes unauthorized automatically. Therefore the above decision does not apply to the facts of the present case.

11. We have come across some decisions of the Supreme Court which have some bearing on the point under consideration.

1997 (1) SC SLJ 399 [AMITABH KUMAR & ANOR. Vs. DIRECTOR OF ESTATES & ANOR.] - That is a case where the father retired from service, but the son continued in possession of the premises and since he was also in employment asked for allotment in his name. The allotment was not made in his name. Then penal rent was charged. The son approached a Bench of this Tribunal challenging the levy of penal rent. The Tribunal dismissed the application. Then the matter was carried in appeal before the Supreme Court. After reviewing the case of the Appellant the Supreme Court has observed at the end of the judgement as under:

> "... Obviously, the first petitioner was in unauthorised occupation, as a consequence, under the rules he is required to pay the penal rentals. Under these circumstances, we find no force in the contention and the Tribunal's order does not warrant interference. Two months time is granted from today for payment of penal rentals." (underlining is ours)

(1997) 1 SC SLJ 52, [STATE OF ORISSA & ORS. ETC. Vs. SADASIVA MOHANTY] - that was a case where some of the Government servants of the State of Orissa retired but they did not vacate the quarters. Then the allotment was cancelled and penal rent was levied at five times the

standard rent as per service rules. The same was challenged before the State Tribunal on the ground that the Government cannot charge penal rent and they are liable to pay only standard rent. The state tribunal accepted the case of the retired government servants and allowed the application. On appeal the Supreme Court observed that the rules provide for charging penal rent at five times normal rent and therefore the Government can levy and recover the same. The Supreme Court has upheld the power of the Government to levy damage rent under the service rules. Therefore, this decision also fortifies our stand that the railway administration can levy penal rent under the service rules.

1996(1) SC SLJ 87 [VINOD KRISHNA KAUL, INDIAN POLICE SERVICE (RETIRED) Vs. UNION OF INDIA & ORS.]. In that case the Government had amended the rules of allotment of quarters at Delhi and one of the clauses was that if the allotee has acquired his own house and if he does not vacate the quarters he is liable to pay penal rent at market rate as may be determined by the government from time to time. The Supreme Court did not say that the Government has no right to determine the damage rent. What the supreme court observed in that case is that the allotee had acquired his own house but he could not occupy the same since the house was in the possession of a tenant and therefore he had no immediate right of occupying the house and hence he is not liable to pay penal rent and therefore the penal rent levied and

deducted from his salary was held to be not justified. This also supports our view that under service rules the Government has a right to make a rules for determining the penal rent and to recover the same from the pay of the officer.

These decisions therefore supports our view that penal rent can be claimed and recovered as provided under the service rules. We have already seen that the matter is concluded by a decision of the Full Bench of the Tribunal in RAMPOOJAN's case and a Division Bench is bound by the judgement given by a Full Bench.

12. For the above reasons we hold that the respondents have every right to recover the penal rent from the salary of the official as provided in the service rules without having recourse to Section 7 of the Act.

13. As far as the question of violation of principles of natural justice is concerned we find there is no merit in this submission. The record bears out that a number of letters were written to the applicant and that is sufficient, in our view, to meet the requirements of principles of natural justice.

14. We have already seen that the applicant was transferred and he was relieved on 8.4.86. Therefore, as per service rules he has a right to remain in possession of the quarter only for a period of two months and

thereafter he is liable to pay penal rent. We have on record a letter dated 28.4.86 written by the Railway Administration to the applicant informing him that he is entitled to retain the quarters on payment of normal rent from 8.4.86 to 7.6.86. It is further stated that he must vacate the quarter by 7.6.86 failing which retention of quarter would be treated as unauthorized and he would be liable to pay penal rent as per rules besides being liable for disciplinary action. Therefore, even before the expiry of two months the applicant has been put on notice that he must vacate the quarter by the expiry of two months failing which he is liable to pay penal rent as per rules. This letter is at page 18 of the paper book. Then we have another letter on page 19 dated 24.6.86. Here also the applicant has been informed that he was required to vacate the quarter by 7.6.86 failing which, amongst other things, he is liable to pay penal rent from 8.6.86. Then there is one more letter dated 14.7.86 at page 20 advising the applicant to vacate the quarter and that he is liable to pay penal rent from 8.6.86 as per rules. Then we have one more letter dated 29th September 1986 page 21 of the paper book, where some allegations were made. Then on page 22 we have one more letter dated 11.8.86 addressed to the Divisional Railway Manager that since the official has failed to vacate the quarters within time as per rules necessary action should be taken to evict him under the Act. Similar letters are also at page 23 and 24. It is, therefore, seen that number of letters are written to the applicant calling

upon him to vacate the quarters failing which he is liable to pay penal rent. No reply is sent by the applicant at any time either seeking extension of time to vacate the quarter or pleading any circumstances for not paying penal rent. According to the rules after expiry of two months penal rent can be levied. Then there are circulars from time to time fixing the mode of determining penal rent depending upon the location of the quarter, its area etc. In service matters, when the rules clearly provide for payment of penal rent there is no necessity of holding any inquiry and penal rent can be charged as prescribed in the rules. There is no violation of principles of natural justice in view of number of letters written to the applicant bringing to his notice that he will have to vacate the quarters failing which he has to pay penal rent as provided in the rules.

15. The only other submission of the learned counsel for the applicant is that the recovery of penal rent from salary of the applicant was excessive, since major part of the salary has been recovered, contrary to the provisions of S.60 of C.P.C. In case of recovery of debts in pursuance of a decree from order of a Civil Court, S.60 of C.P.C. provides for certain exemptions and certain limits. Such a limit cannot apply to the recovery of rent under service rules. Therefore, the decision relied upon by the learned counsel for the

applicant under section 60 of the Code of Civil Procedure may not strictly apply. Recoveries made by way of penal rent are under service rules. It may be under the Payment of Wages Act there is a statutory bar that the total deduction should not exceed 50% of the gross salary of an employee. The applicant has not pleaded as to what was his salary in a particular month, what was the deduction and how much balance was paid. He has not produced his pay slips. He has not given any chart of recoveries made. What is more the recovery started in the later part of August 1986 and for seven years the applicant took no steps and came to this Tribunal as late as 1993. Therefore, the claim on this ground is barred not only by bar of limitation but also the principles of delay and laches. Further no detailed particulars are given as to how each month's recovery was more, what was his gross pay in that particular month, how much penal rent was levied and how much amount was paid to the applicant by way of salary after the recovery etc. The pay also would be increased from time to time due to earning of increments etc. Therefore, the applicant should have given a chart of his monthly income from 1986 to 1993. Then we could have examined and found out whether there is any excess recovery, contrary to the provisions of the Payment of Wages Act. Further in view of the long delay in approaching this Tribunal and by applying principles of delay and laches we cannot now reopen the previous recoveries prior to the filing of the O.A. Therefore, we are rejecting the claim of the

applicant to reopen and test the validity of recoveries made during the last seven year prior to the date of application.

16. As far as recovery after the date of filing of the application are concerned it has been stayed by the interim order passed by this Tribunal. Therefore, it is quite likely that no recovery has been done or made after the filing of the application, except may be for one or two months prior to the service of the interim order. The applicant is still continuing unauthorisedly in possession of the quarter. We have already recorded the submission of the learned counsel for the applicant that he is not pressing this prayer. It is brought to our notice that the applicant has been transferred out of Bombay, but still he has not vacated the quarter. Hence there is no equity in favour of the applicant. However, whatever arrears of penal rent the applicant is liable to pay for the period during the pendency of this application and any period either prior to or after the disposal of this application, the respondents are at liberty to recover the same from the salary of the applicant hereafter. However, we hold that the respondents should not recover penal rent from the applicant's salary hereafter contrary to the provisions of the Payment of Wages Act, 1936. They can make recovery of the said amount so that the total deduction should not exceed 50% of the present and future salary of the applicant.

17. In the result, the application is partly allowed as follow:

i) Prayers a, b and c in paragraph 8 of the application are rejected

ii) In terms of prayer clause d of para 8 of the O.A. we direct that the respondents should recover the arrears of penal rent due from the applicant and future penal rent that would be due from the applicant till he vacates the quarters, from the salary of the applicant provided the total deductions including the penal rent should not exceed 50% of the monthly gross salary of the applicant as provided in the Payment of Wages Act, 1936.

iii) The interim order passed in this case is hereby vacated.

iv) In the circumstances of the case there would be no order as to costs.

(D S Bawej)
Member(A)

(R G Vaidyanatha)
Vice Chairman

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