

CENTRAL ADMINISTRATIVE TRIBUNAL

ORIGINAL APPLICATION NO.: 1272 OF 1995.

Date of Decision : 23.07.1996.

Smt. Kunjamma D'Cruz.

.. Petitioner

Shri H. T. Ameta

.. Advocate for the Petitioner.

Versus

Union Of India & Others

... Respondents.

Shri V. S. Masurkar

... Advocate for the Respondents.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

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

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1272 OF 1995.

Dated, this Tuesday, the 23rd day of July, 1996.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Smt. Kunjamma D'Cruz ...
Flat No. 55, Bldg. No. 'B',
6th Floor, Jagjivanram Hospital
Qtr., Maratha Mandir Road,
Bombay Central,
BOMBAY - 400 008. ... Applicant
(By Advocate H. T. Ameta)

Versus

1. The Divisional Rly. Manager,
Bombay Division, W. Railway,
Bombay Central,
Bombay - 400 008.
 2. The General Manager,
Western Railway,
Head Quarters Offices Bldg.,
Churchgate,
Bombay - 400 020.
 3. Union Of India through
the Secretary,
Ministry of Railways,
Railway Board,
Rail Bhavan,
New Delhi - 110 001. .. Respondents.
- (By Advocate Shri V. S. Masurkar)

: O R D E R :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

1. The applicant who was employed as Mid-wife in the Western Railway, retired on superannuation w.e.f. 28.2.1995. According to Annexure A-4, page 16 of the O.A., she was entitled to a gratuity of Rs. 29,205/- which has been with-held pending vacation of the railway quarters by her. The applicant applied for retention of quarter for a period of four months after superannuation, as permitted under the rules and for an additional four months on medical grounds. It is not in dispute that this representation of the applicant was decided i.e. after filing of the O.A. on 09.10.1995, only in January 1996 by which she was permitted to stay for

four months, namely; 01.03.1995 to 30.06.1995 by paying the normal rent of Rs. 38/- per month and for a further period of four months from 01.07.1995 to 31.10.1995, being the period of extension of stay on medical grounds, she was permitted to pay double the normal rent. The prayer of the applicant is to direct the respondents to release the due gratuity alongwith interest @ 18% on delayed payment and to restrain the respondents from evicting the applicant from the railway q-uarters. When the O.A. was filed, she had received the notice dated 04.10.1995 to vacate the quarters. Interim relief was granted staying this notice and the interim relief continues till today. The applicant contends that so far as the eviction is concerned, the respondents ought to have resorted to the proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 because Section 15 of the P.P. (E.U.O.) Act bars all other proceedings and therefore, it is not competent for the department to ask her to vacate the quarter by a simple notice. Even the notice dated 04.10.1995 at worst threatens P.P. Act proceedings. The applicant further relies on the Full Bench judgement in Wazir Chand V/s, Union Of India in which it is laid down that with-holding of the entire amount of D.C.R.G is not permissible. The Counsel for the applicant further submits that the applicant is not interested in retaining the quarter. On the other hand, she is keen to vacate the quarter as early as possible. However, she could not do so because she is involved in litigation in connection with the possession of her own block in the Railwaymen Apnagar Co.operative Housing Society at Andheri, that she has obtained a decree from the City Civil Court vide its judgement/order dated 10.10.1995 and that the same is in the process of execution and she would be in a position to vacate the quarter within three months.

2. The respondents have opposed the O.A. According to the counsel for respondents, the applicant cannot retain the quarter after superannuation, except for four months and further extension [^]could be granted only on medical grounds. No doubt, given such extension and the applicant was permitted to retain the quarter upto 31.10.1995 but thereafter she was bound to vacate the quarter and since she has not vacated the same, she is liable to pay the damage rent as per rules and the gratuity cannot be released till ^{she vacates the quarter and} the damage rent is calculated and it is probable that the damage rent would be in excess of the gratuity amount with-held; in which case the question of release of gratuity does not arise.

3. The Counsel for the respondents also invited our attention to the latest case law in the subject and in particular, the Full Bench judgement in Ram Poojan V/s. Union of India & Others reported at 1996 (1) ATJ 540. This judgement after referring to the provisions of para 1711 of the Indian Railway Establishment Manual and the comprehensive and detailed decisions issued by the Railway Board's letter dated 15.01.1990 held that no specific order cancelling the allotment of accomodation on expiry of the permissible/permitted period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accomodation by the railway servant would be unauthorised and penal/damage rent can be levied. He also relies on the Division Bench judgement in Ranjit Kumar Banerjee V/s. Union Of India & Others reported at 1996(1) ATJ 553 which has held that recovery of penal rent from D.C.R.G. on account of unauthorised occupation of government accomodation is permissible.

^R I notice that Wazir Chand's case was cited before the

Division Bench which considered Ranjit Kumar Banerjee's case. In connection with Wazir Chand's case, Ranjit Kumar Banerjee's case in para 15 states as below :

"In this connection, we may, perhaps, also usefully allude to a few parallel judgements of different benches of this Tribunal concerning recovery of penal rent from the DCRG even though such rulings pertain to railway servants. In the famous Full Bench judgement of the Tribunal (subsequently confirmed by the Supreme Court through a non-speaking order in SLP) in Wazir Chand's case 1991(1) ATJ 60 (CAT Full Bench judgements, 1988-91, Vol. II, Page 187) it has been held that the withholding of entire amount of gratuity of a retired railway servant as long as he did not vacate the quarters in accordance with the General Manager, Northern Railway's circular dated 04.05.1982 was legally impermissible. But the Principal Bench in its subsequent judgement in Sushil Chander Batnager V/s. UOI as reported in 1994 (3) AISLJ (CAT) 367 analysed the Wazir Chand's order and held that the judgement of the Full Bench was delivered in the context of the G.M. Northern Railway's circular dt. 4-5-1982 which did not have any statutory force. However, there is another Rly. Board's circular dt. 24-4-1982 which was statutory in character and the latter circular authorised the appropriate hold back of the amount of DCRG for rent recoveries and in the context of such statutory circular, such recovery can legally be allowed. Similar view has also been taken by the Principal Bench in the case of Inderjit Singh V/s. UOI and others as reported in 1993(2) ATJ 205."

In my view, as between Wazir Chand's case, which is a Full Bench judgement and Ranjit Kumar Banerjee's case, which is a Division Bench judgement, Wazir Chand's case has greater authority but Ranjit Kumar Banerjee's case has tried to interpret Wazir Chand's case and on a harmonious construction conflict there need be no conflict between the two. Wazir Chand's case

lays down that 100% gratuity cannot be withheld and Ranjit Kumar Banerjee's case relying on Sushil Chander Bhatnagar's case points out that according to the Railway Board's circular dated 24.04.1982 which is statutory in character, the Railways can direct appropriate hold back of the amount of D.C.R.G. for rent recoveries and in the context of such statutory circular, there can be an appropriate hold back. But can "appropriate" hold back mean 100% hold back? It is brought to my notice by the Counsel for the respondents that a subsequent Railway Board circular no. F(E)III.87 PN 1-/2 dated 19.08.1987 clarifies the quantum of appropriate hold back as follows :-

"Regarding gratuity, sufficient amount to cover the recoveries may be withheld and the balance paid to the employee, pending non-vacation of quarters, an appropriate hold back from Special Contribution to P.F. was authorised vide Board's letter dated 24.04.1982. It is clarified that if local conditions so warrant, the entire amount of DCRG/SC to FP may be withheld till the quarters are vacated."

The question therefore is, whether the appropriate hold back in the limit can be 100%. Ranjit Kumar Banerjee's case tried to reconcile Wazir Chand's case, which stated that the whole of the gratuity cannot be withheld by referring to the Railway Board's circular about appropriate hold back which was relied on by Sushil Chander Bhatnagar's case. Though the appropriate hold back can vary, it did not envisage the possibility in the limit that the appropriate hold back can be 100%. So long as the Wazir Chand's case, a Full Bench judgement, which has been confirmed by the Supreme Court by dismissal of the S.L.P. against it, holds the field, it is difficult to see how the appropriate hold back in the limit could be 100%. It may be noted that Bhatnagar's judgement is a Single-Bench judgement.

4. In this connection, one might be tempted to refer to the discussions in connection with reservation of posts in the Government departments. In the Supreme Court judgement relating to government orders implementing the Mandal Commission Report about reservation of other backward classes vide para 94-A of Indra Sawhney V/s. Union Of India [AIR 1993 SC 477] the Supreme Court referred to meaning of adequate representation under which the reservation in appointments or posts under Article 16(4) cannot exceed 50%. If the pragmatic rule is applied in Wazir Chand's case, the appropriate hold back in the limit cannot exceed 50%. But this is only persuasive and not authoritative so far as the issue in question is concerned.

5. Just as this Tribunal is bound by Wazir Chand's judgement, it is also equally bound by the Ram Poojan's judgement which is a Full Bench judgement. It appears that the Division Bench judgement of this Tribunal in Urman Singh's case vide O.A. No. 439/95 decided on 25-7-1995 [which considered the Division Bench judgement of Calcutta Bench in Shanker & Others V/s. Union Of India & Others [1993 (2) ATJ 553] and Suda Iswar Rao V/s, Union Of India & Others [(1994) 2 ATJ 539] which judgements are also referred to in Ranjit Kumar Banerjee's case] was not cited before the Tribunal which considered the Ranjit Kumar Banerjee's case. For the present, I am concerned with the fact that Ram Poojan's judgement having held that the remedy under the P.P. Act is only an alternative remedy so far as the Government departments are concerned and in terms of para 1711 of Indian Railway Establishment Manual, which provides in para 1711 (b)(v) for the charging of rent in excess of 10% of the emoluments from a railway servant who does not vacate the residence after the cancellation of the allotment and considering that the cancellation of

allotment is held to be automatic in Ram Poojan's case in the case of a Government employee who are not specifically permitted to stay in the quarters, I am required to hold that inspite of the ratio laid down in Urman Singh's case, howsoever cogent, since it was a Division Bench judgement, I am bound by the Ram Poojan's judgement, which is a Full Bench judgement. In the result, I have to proceed on the basis that the Railway Administration is entitled to recover penal rent from the applicant without resorting to the proceedings under P.P. Act with effect from 01.11.1995 subject, ofcourse, to any court orders in this respect. The Learned Counsel for the applicant cites before me the case of M.N. Darveshi V/s. Commanding Officer reported at 1995(1) ATJ 358. In this case, relying on the judgement of Bombay Bench in O.A. No. 116 of 1993 decided on 07.04.1992 in Domnic James V/s. Union Of India, it was held that the department was not entitled to recover damage rent for the period eviction was stayed under order of the Court. On this point, the Domnic James case, in my view, still holds the field. My conclusions from the above discussions are as below :-

- (i) In terms of the permission granted by the Railway Administration to the applicant to occupy the quarters vide memorandum dated 06.01.1996, the applicant was entitled to stay in the railway quarters upto 31.10.1995 by payment of normal rent upto 30.06.1995 and by payment of double the normal rent from 01.07.1995 to 31.10.1995.
- (ii) The applicant was protected by the interim order of the Court dated 02.11.1995 till the date of communication of present order. The gap of one day viz. 01.11.1995 may be ignored. Following the ratio of Domnic James case, the applicant

therefore is liable to pay double the normal rent, (rate paid immediately prior to interim order) from 01.11.1995 till the date of communication of present order when the interim relief will stand vacated.

- (iii) The respondents are therefore entitled to charge damage rent to the applicant from the date of communication of order without resorting to the proceedings under P.P. Act till she vacates the quarter.
- (iv) So far as the gratuity is concerned, the respondents are directed to release the gratuity amount to the applicant after adjusting normal/double rent due from her plus electricity and water charges upto the date of communication of order, plus Rs. 1000/- ^(one thousand rupees) towards damages as an hold back and rest of the amount should be released to her.
- (v) I am not inclined to grant interest on the balance gratuity amount following ^{S.C.} ~~these~~ judgements in Rajpal Wahi's case.
- (vi) In case the applicant vacates the quarter earlier and the amount to be recovered from her on account of normal rent/double rent plus damage rent is less than the total amount of gratuity, the applicant will be entitled to interest on the with-held amount from the date of vacation of quarter till the date of payment, at 18%.

6. The O.A. is therefore disposed of in these terms without any orders as to costs.

7. After the judgement was dictated, Shri V.S. Masurkar, submitted that the protection of the Court which is granted by way of stay cannot extend to the charging of the normal rent during stay. The protection extends only as to the stay on eviction and it does not extend to not charging of damage rent which is required to be charged by the department in terms of applicable orders. This contention of Shri Masurkar is noted but it is rejected because I am bound by the ratio of Domnic James case. The ratio of Domnic James case is that when an employee is protected from eviction by the Court's order, he is also liable to pay only the normal rent during the period of his protection. The final order in para 6 supra is reiterated.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

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