OA 439/95

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 439 OF 1995.

Shri Urman Singh ... Applicant

Versus

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

Hon'ble Shri P. P. Srivastava, Member (A).

APPEARANCE :

1. Shri M. S. Ramamurthy,
Counsel for the applicant.

2. Shri V. S. Masurkar,
Counsel for the respondents.

ORAL JUDGEMENT DATED : 25TH JULY, 1995.

{ Per.: Shri M. S. Deshpande, Vice-Chairman }

1. In this group of 19 cases (O.A. No. 439/95 to 457/95) identical relief has been sought viz. striking down the letter dated 01.09.1994 by which penal rent was sought to be recovered for unauthorised retention of railway quarters from 48 persons including the present applicants; and injunction restraining the recovery of penal rent pursuant to that order and for refund of the excess recovery made. Further, by clause (d) the relief sought is of transfer on the basis of "name noting" in accordance with the occurence of vacancies without ignoring the claim of the applicants because of their non-vacation of the quarters. Since the factual position is more or

less identical in this group of cases, it would suffice to refer to the facts of O.A. No. 439/95 only. The applicants were employed as Goods Guard and came to be transferred from Valsad to Churchgate either as Goods Guard or Passenger Guard. The applicant by the letter dated 10.01.1995 applied for having his name noted for retransfer to Valsad in accordance with the practice obtaining with the respondents. The respondents declined to transfer the applicants and instead transferred some of their juniors to the places where they were previously working. The reason for not retransferring the applicants is that they have not vacated the quarters which have been allotted to them at the places where they were working previously. Since only a limited number of quarters were available at Churchgate, Bombay, the applicants could not have got allotment of the railway quarters at the place of transfer and they were, therefore obliged not to vacate the quarters. The respondents, however, started charging damage rent for the applicants' occupation of the quarters for periods exceeding two months. It is urged that the consideration for retransfer cannot be linked with unauthorised occupation of the quarters and the applicants are guilty of discriminating between the employees on the ground of non payment of penal rent.

2. The respondents oppose the applicants claim. It is firstly urged that the reliefs which are being sought by prayer (a) to (c) and (d) are distinct and contrary to rule 10 of the Administrative Tribunals rules. The relief sought by prayer clause (d), arises from an altogether different cause of action. It is contended that it was the right of the respondents to

charge penal rent for unauthorised occupation of railway quarters for a period exceeding two months and this right was being enforced by making deductions from the salary payable to the applicants. With regard to the transfer it is contended that the applicants have no right to be posted at a particular place and it is entirely within the competence of the respondents to consider who should be transferred and who should not be transferred.

3. The first question which requires consideration is whether it was permissible for the respondents to charge penal rent for unauthorised occupation of the quarters without getting the right established in the forum created under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The contention on behalf of the respondents is that it is only in respect of eviction that the respondents have to approach the Estate Officer and approaching that forum would be unnecessary if damage rent or penal rent is to be charged, since the title of the Act shows that it is an Act providing for eviction of unauthorised occupants from public premises and for certain incidential matters. Unauthorised occupation is defined under Section 2 clause (g) as follows :-

> "Unauthorised Occupation - in relation to any public premises, means the occupation by any of the public premis without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

The submission on behalf of the respondents is that any occupation in excess of two months after the employee is transferred would be unauthorised because that is the period which is stipulated by the rules in this behalf. Assuming that the occupation of the quarter by the employee after a period of two months after his transfer becomes unauthorised, the question would be whether it is necessary to proceed against such a person for recovering damages under Section 7 of the Act. Section 7 provides as follows :-

> "Power to require payment of rent or damages in respect of public premises -
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> (1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.
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> (2) Where any person is, or has at any time been, in authorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.
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> (2-A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be damages shall be payable together with simple interest at such rates as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978)].

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made and until his objections, it any, and any evidence he may produce in support of the same, have been considered by the estate officer."

Section 8 empowers the estate officer to summon and enforce the attendance of any person and to examine him on oath and require production of documents and there are similar to the powers vested in a civil court under the Code of Civil Procedure. The order passed by the Estate Officer is made appealable under Section 9. Section 4 prescribes the procedure to be followed by the Estate Officer before the order for eviction of unauthorised occupation of a person under Public Premises is issued. Since the learned counsel for the respondents did not question the position that it would be necessary to proceed before the Estate Officer if the premises have to be got vacated, it is not necessary to go into the details of the provisions of Section 4 suffice it to say, that the act vests the estate officer with the power to order eviction after following the procedure prescribed. Section 15 is in respect of bar of jurisdiction and provides as follows :

"No Court shall have jurisdiction to entertain suit or proceedings in respect of -

(a) the eviction of any person who is in unauthorised occupation of any public premises, or

(d) the arrears of rent payable under sub-section (1) of Sec. 7 or damages payable under sub-section (2), or interest payable under sub-section (2-A), of that section."

The Constitution validity of the Public Premises (Eviction of unauthorised Occupants) Act, 1971, retrospectively removing discrimination resulting from two procedures provided under the 1958 Act was upheld in Hari Singh V/s. Military Estate Officer, Delhi [AIR 1972 SC 2205]. In para 12 of the report it was pointed out that -

> "The 1971 Act came into existence to validate anything done or any action taken or purported to have been done or taken under the 1958 Act. In the first place, the 1971 Act is made retrospective with effect from 16 September, 1958 except Section 11, 19 and 20. In the second place, section 20 of the 1971 Act which is described as the section for validation provides that anything done or any action taken or purported to have been done or taken shall be deemed to be as valid and effective as if such thing or action was done or taken under the corresponding provisions of the 1971 Act. In the third place, the 1971 Act by S.15 provided bar of jurisdiction of courts in respect of eviction of any person who is in unauthorised occupation of any public premises. It, therefore, follows that under the provisions of the 1971 Act which had retrospective operation from 16 September 1958, there is only one procedure available for eviction of public premises. That procedure is to be found in the 1971 Act. The other courts have no jurisdiction in these matters."

It was further observed that the vice of violation of Article 14 which was found by the Supreme Court in the decision of Northern India Caterers Private Limited (1967) 3 SCR 399 no longer appears under the 1971 Act.

4. The Learned Counsel for the respondents urged that the primary object of the Act of 1971 was to provide for eviction of unauthorised occupants from public premises, overlooking that the title also refers to certain other incidental matters. If those other matters are to be found under Section 7 of the Act, it cannot be said that the application of the Act was restricted only to provision regarding eviction to be found in Section 4 of the Act and would not apply with the same rigour to the provisions of section 7 thereof. So far as the provisions of Section 4 and 7 are concerned, the substantive provisions in the Act and section 15 make it clear that the estate officer shall have exclusive jurisdiction in respect of the matter for which provision is made in the Act.

5. The contention on behalf of the respondents was that though the order dated 01.09.1994 was directed against 48 persons, the others besides the applicants have paid the damage-rent as desired by the respondents and it is only the present 19 applicants who have approached the Tribunal for relief. It might be noted that under none of the provisions of the Act there is a bar to the payment of damage rent/interest if the employee is ready to pay that amount to the employer and in that case it is not necessary for the consenting parties to approach the estate officer or any other forum. If a dispute arises on the matters for which the Act provides, the question would be whether despite the dispute, one of the parties to the dispute, could unilaterly take action without approaching the proper forum.

Our attention is drawn to the decision of this Bench of the Tribunal in O.A. No. 847/90 Shri B.L. Panwar V/s. Union Of India & Others decided on 24.06.1991. There the applicant who was Deputy Chief Engineer was allotted a railway quarter and after being sent on deputation he was given another posting. An order directing recovery of damage rent for the period from 17.03.1984 till 29.08.1990 was made by the respondents for unauthorised occupation of the quarter and the employee, therefore, approached the Tribunal for relief. The Tribunal considered the applicant's contention that under the Public Premises (Eviction of Unauthorised Occupants) Act, it was the Estate Officer who alone could have declared the applicant as unauthorised occupant of the railway quarter and decided the market rent or damage rent to be charged. The Tribunal observed -

> "As the title of the Act as also the statement of objects and reasons of the Act itself suggests, this Act has been enacted to prescribe a simplified procedure for eviction of unauthorised occupants of public premises without protractedlitigation. The Railway Board's circular on the allotment of quarters, recovery of rent, maximum permissible period of retention of quarter after transfer, retirement, etc. which are issued with the sanction of the President, are statutory in character. Such subordinate legislation is not in conflict with the scheme of the Public Premises (Eviction of Unauthorised Occupation) Act but only supplements (and does not supplant) the provisions of the Act. Wherever such subordinate legislation has been issued by any Government department keeping in view its administrative requirements, the employees of that department would, in our view, form a separate class as far as public

> premises are concerned. In our opinion, it is only just and expedient and not discriminatory at all, to have such subordinate legislation not conflicting with the scheme of the Act for different departments of the Government. We have, therefore, to hold that treating the continued occupation of the railway quarter beyond 16.03.1984 at Baroda as unauthorised by the Railway administration and recovering rent, accordingly, is in accordance with the Railway Board's orders on the subject and cannot be considered as illegal or discriminatory as alleged by the applicant."

It would be apparent that the observations in Hari Singh's case (AIR 1972 SC 2205) were not considered by the Learned Members nor was their attention drawn to the bar of jurisdiction created by Section 15 of the Act. The statutory instructions to which reference was made did not prescribe the forum before which the grievance could be ventilated. It is only Section 15 which provides the forum for adjudicating upon the disputes between the employee and the employer in respect of matters covered by the provisions of the Act. The decision in B.L. Panwar V/s. Union Of India cannot be considered to have laid down ~~as a party~~ the proposition that despite the provisions of Section 15 of the Act the railway authorities would have the power to adjudicate upon the disputes. This decision to that extent shall have to be regarded as being per incuriam. Another Division Bench decision on which the Learned Counsel for the Respondents rely was rendered by the Calcutta Bench of this Tribunal in Shankar V/s. Union Of India (1994 26 ATC 278). There the contention on behalf of the applicants was that the remedy with the respondents was to file appropriate application under Section 7

ot the Public Premises (Eviction ot Unauthorised Occupants) Act, 1971 before the Estate Officer claiming such damage rent and the estate officer has to assess such damage rate for such unauthorised occupation on giving appropriate notice to the opposite party and on taking appropriate evidence has to pass such order and the respondents cannot themselves assess such damage rate and recover the same from the salary payable to the applicants and more so without issuing any show cause notice before taking such action. Reference was made to several circulars issued by the Railway Board which provides the guidelines tor realizing damage/penal rent. The Learned Members relied on New-Delhi Municipal Committee V/s. Kalu Ram [AIR 1967 SC 1637] for the proposition that Section 7 does not create right but merely prescribed alternative procedure for recovery of certain dues and held that the contention that the respondents are obliged to proceed under Section 7 in order to recover damages could not be accepted. Several other decisions also came to be considered in the penultimate para of the judgement but the Learned Members pointed out that those decisions had no application on the question before them. We are in agreement with the Learned Members that the other decisions which have been referred to in that para are not on the point which was before them or which arises before us here.

6. It is necessary to understand in what context Delhi Municipal Committee V/s. Kalu Ram came to be decided. Kaluram was one of the displaced persons who was allotted one stall and Rs. 30/- was the licence tee payable per month by all the allottees of these stalls. Later, the allottees, including the respondents, applied to the Rent Controller for reducing the rent. In the meantime, many ot the allottees fell in

arrears in paying the licence fees. The respondents, therefore, asked the estate officer appointed under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 to take steps to recover the amount in arrears under Section 7 of that Act. The Estate Officer made an order on September 28, 1961 under Section 7 (1) of the Act asking the respondents to pay the sum, overruling his objection that the claim was barred by limitation. The respondents appeal was dismissed by the Additional District Judge and when he approached the Punjab High Court, the High Court accepted the contention and allowed the petition. The New Delhi Municipal Committee therefore, approached the Supreme Court. It is clear from these facts that the question whether it was necessary to approach the Estate Officer for getting the relief under Section 7 did not arise in that case. The Supreme Court observed that if the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable and when a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time barred and so the word "payable" under Section 7 in the context in which it occurs, means "legally recoverable". The decision did not refer to the question whether it was necessary to approach the Estate Officer for getting relief under Section 7 of the Act and reference to Kaluram's case, with very great respect to the Learned Members, was

inappropriate. There was no occasion to consider Section 15 of the 1971 Act in Kaluram's case nor was this position considered by the Division Bench in Shankar V/s. Union Of India (1994 (26) ATC 278). In Suda Iswar Rao V/s. Union Of India (1994 (2) ATJ 539) The Learned Members retered in para 22 ot the decision to their own decision in Shankar V/s. Union Ot India without considering the provisions of section 15 and since the material provision was not considered, the decision would not bind us as it would also be a decision rendered per incuriam.

7. In Bhupinder Singh V/s. Union Ot India (O.A. No. 452 of 1992) decided on 26.08.1994 a Single Bench (comprising of one ot us - (M.S. Deshpande (J)) which was the case of a Pensioner regarding DCRG, it was observed -

> "Admittedly proceedings under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, have not been initiated against the applicant. Unless an order is obtained under the said provision, it would not be open to the respondents to levy penal/damage rent against the applicant."

and following the Full Bench judgement of C.A.T. in Wazir Chand V/s. Union Of India & Ors. ((1989-1991) Vol.II Page 287) the claim for D.C.R.G. was directed to be paid to the applicant after deducting the normal rent due and liberty was granted to the respondents to initiate proceedings against the applicant under Section 7 ot Public Premises (Eviction of Unauthorised

Occupants) Act, 1971, in respect of the claim for damage/market rent. The Learned Counsel for the respondents urged that most of the cases in which the observations came to be made regarding the applicability of the provision under Section 7 were in respect of pensioners and not in respect of in-service personnel and, therefore, in view of the pension rules the amount could not be deducted from pension or DCRG. In P.K. Kutty V/s. Union of India decided by a Bench of which one of us (M.S. Deshpande, J., Vice-Chairman) was a Member (1994(28) ATC 622), the contention of the Learned Counsel for the respondents that the procedure under Section 7 of the Act was only an alternative remedy which was left to the respondents but not the only remedy, as no new right is created and the recovery can be made pursuant to the administrative instructions came to be considered and it was pointed out that in view of the observations in Nazir Ahmad V/s. King Emperor (AIR 1936 PC 253) where a power was given to do a certain thing in a certain way the thing must be done in that way or not at all, other methods of performance are necessarily forbidden. This was in line with the observations in Taylor V/s. Taylor (1875 (1) Ch D 426), where it was pointed out that where a statutory power is conferred for the first time upon a Court and the mode of exercising it is pointed out, it means that no other mode is to be adopted. It therefore follows that the administrative instruction which has been issued prior to the enactment of the Public Premises (Eviction of Unauthorised Occupants) Act, cannot be enforced for realising the amount due either as rent or damage rent and the only method as

laid down by the provisions of Public Premises Act shall have to be pursued. A Division Bench of this Tribunal at Calcutta while deciding J.K. Chatterjee V/s. Union Of India (1995 (29) ATC 678) also took the view that -

> " it follows that on the strength of the executive instructions the Railway authorities are not competent to recover penal rent/ damages from an employee for unauthorised occupation of railway quarter since there is a law enacted by Parliament i.e. Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Railways, in our opinion, is required to approach the said forum for realisation of penal rent/damages from an unauthorised occupants of railway quarter."

It was held that in view of the Supreme Court orders in Shiv Charan's case (1992 (19) ATC 129) the applicants would be entitled to make a claim in accordance with law to which they are entitled for any excess or penal rent. A Learned Member of this Tribunal at Calcutta held in U.N. Swamy V/s. Union Of India (1994 (27) ATC 366) that in view of the decision in Shiv Charan Case, Union Of India V/s. Shiv Charan (1991 Supp (2) SCC 386; 1992 SCC(L&S)140; (1992) 19 ATC 129) and in view of many other decisions such as Inderjit Singh V/s. Union Of India (1993 (25) ATC 446(ND)), the Railway authorities are not entitled to deduct any amount in excess of the normal rent from the pay bill of the applicant without resorting to the legal procedure in the appropriate forum.

8. It is, therefore, clear that section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, creates a bar for recovery anything in excess of the normal rent unless the remedy is sought under Section 7 of the Act before the Estate Officer.

9. The case of Union Of India V/s. Wing Commander R. R. Hingorani (Retd.), 1987 (2) ATC 939 is not relevant to the facts of the present case because that case came to be considered in the context of Pension Act, 1967 and in para 9 of the judgement, the Supreme Court pointed out that -

> "No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such court."

Shri V. S. Masurkar, Learned Counsel for the respondents submits that there are two different categories of cases. One which relates to the pensioners and those who retired from Government service, and the other relates to those who are in service and the province of Section 7 of the Act would not apply to those in service. A careful reading of the provisions of the Act however makes it clear that it does not distinguish between any particular categories of servants but refers only to the persons who are in

unauthorised occupation ot government quarters. The distinction which the Learned Counsel sought to make between the retirees and in-service employees, theretore, does not impress us.

10. With regard to the question of transfer, the Learned Counsel for the respondents urged that plural remedies cannot be pursued in this petition. The prayer in clause (d) is that the respondents be directed to retransfer the applicant to his former station of working as per 'name noting' and according to occurrence of vacancies, without ignoring the claim of the applicant for non-vacation of quarters. It is clear that the applicants main grievance was that the penal/damage rent was being recovered without approaching the proper forum and that, this irregularity vitiated the process of considering him for the transfer on the basis of name noting. We do not think that Rule 10 can be called in aid in the present facts and circumstances for depriving the applicant of the relief he is claiming by clause (d).

11. We must make it clear that at the request ot the Learned Counsel for both the parties, we heard the entire matter at the stage of admission itself because the pleadings were complete and the Learned Counsel stated that they would have nothing more to add at the stage ot final hearing and no further hearing was necessary in view of the extensive arguments they had advanced.

12. On the question of transfer it is clear that to facilitate the consideration of transferring

the Passenger or Goods Guards who were granted adhoc promotion at Churchgate, a procedure was evolved by the respondents to aid the process without deciding who and which of the employee should be transferred. It was only to help the process of considering the desirability or otherwise of transferring the adhoc Goods or Passenger Guards. Merely because certain procedure was adopted and the wishes of this class of employees for retransfer were ascertained by what was described as name noting, they would have no right to be considered for retransfer. The Learned Counsel for the respondents relied on the observations in [1995 (2) JT SC 498] State of Madhya Pradesh & Ors. V/s. Sr. S. S. Kourav & Ors.

> "The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation."

13. In the present case, there is no material before us to consider in what way the respondents transferred some of the officers and not others and the applicants have urged before us only that non-payment of the damage/penal rent, an extraneous consideration, went to the decision making process. This may or may not be so but since the applicants have not placed

before us any material to substantiate this allegation, we do not think we should interfere in the matter of transfer. Prayer (d) therefore cannot be granted.

14. In the result, we allow the application in respect of prayer (a), (b) and (c) and we direct that the respondents shall refrain from recovering penal/ damage rent or any arrears as per order dated 01.09.1994. The order dated 01.01.1994 to that extent is quashed so far as the present applicants, but the respondents are left free to recover the normal rent for the period for which the applicants have been in occupation of the quarters. Liberty to the respondents to proceed against the applicants for any other or additional relief which they may seek before the estate officer with respect to penal/damage rent. In respect of the penal/damage rent which has already been recovered, we direct that the amount so recovered shall be adjusted in the future rent which may be payable by the applicants for their continued occupation of the quarters. Prayer (d) is rejected. All the petitions are disposed of with the above directions. No order as to costs.

(P.P. SRIVASTAVA)
MEMBER (A).

(M. S. DESHPANDE)
VICE-CHAIRMAN.

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