

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 81/98

22. 8. 2000  
Date of Decision :

K.T.Waghmare Applicant.

Shri S.P.Kulkarni Advocate for the  
Applicant.

VERSUS

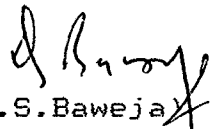
Union of India & Others, Respondents.

Shri S.C.Dhawan Advocate for the  
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

- (i) To be referred to the Reporter or not ? †
- (ii) Whether it needs to be circulated to other †  
Benches of the Tribunal ?
- (iii) Library †

  
(D.S.Baweja)  
Member (A)

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.81/98

Dated this the 22nd day of August- 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Kisan Tawaji Waghmare,  
Running Room Cook,  
South Central Railway,  
Purna Junction-431 511.

... Applicant

By Advocate Shri S.P.Kulkarni

V/S.

1. Union of India  
through Loco Foreman,  
Loco Shed, South Central  
Railway, Purna Junction,  
Dist. Parbhani.
2. Assistant Mechanical Engineer,  
South Central Railway,  
Loco Shed, Purna,  
Dist. Parbhani.
3. Divisional Mechanical Engineer,  
South Central Railway,  
(Metre Guage Division)  
Rail Bhavan, Secunderabad (A.P.).
4. Divisional Railway Manager,  
South Central Railway,  
Rail Bhavan,  
Secunderabad (A.P.)
5. General Manager,  
South Central Railway,  
Rail Bhavan,  
Secunderabad.

... Respondents

By Advocate Shri S.C.Dhawan



..2/-

O R D E R

(Per : Shri D.S.Baweja, Member (A))

The applicant was appointed as Cook in South Central Railway in the Running Room at Purna Junction on 1.5.1964. He was allotted Railway quarter No. 96/4 at Purna. The applicant was deputed to Wasim Railway Station along with other employee through oral order on 19.6.1989. The applicant joined at Wasim and subsequently was again transferred back to Purna on 31.12.1990. No order for permanent transfer had been issued. Normal rent was being recovered from him at the rate of Rs.38/- per month upto June, 1992. However, thereafter the rent at the rate of Rs.247/- is being deducted. The allotment of the quarter was not cancelled and at no stage the applicant was called upon to show cause as to why the allotment should not be cancelled and penal rent recovered. No proceedings under Public Premises (Eviction of Unauthorised occupants) Act had been taken. The applicant represented on 13.12.1993 followed by reminder dated 20.12.1995. The applicant filed Writ Petition in the High Court at Aurangabad in 1996. Subsequently, this Writ petition was withdrawn with liberty to file OA. before the tribunal as per order dated 28.4.1997. Thereafter the present OA. has been filed on 31.12.1997 seeking the following reliefs :-

- (a) to declare that recovery of damage/penal rent from July, 1992 onwards as illegal.



(b) to direct respondents to refund the excess rent recovered with payment of interest of 12% on the amount recovered.

(c) to direct stop recovery of damage/penal rent from January, 1998 onwards.

2. The respondents have filed written statement opposing the OA. The respondents submit that OA. is barred by limitation as the applicant was advised of recovery of damage rent for unauthorised occupation of the quarter as per letter dated 15.5.1990. On merits, the respondents submit that the applicant was transferred to Wasim station as per order dated 6.6.1989 and was relieved on 20.6.1989. The applicant was also paid transfer allowance. Therefore, his transfer was on permanent basis. As per the extant rules on transfer, the employee is allowed to retain quarter for 2 months on normal rent. This period could be extended for further 6 months on payment of special licence fee. The applicant neither vacated the quarter nor applied to the competent authority for retention of the quarter. Therefore, as per letter dated 15.5.1990, the applicant was informed that he is unauthorised occupant of the quarter and he should vacate the same and penal rent will be recovered from him. Again as per the letter dated 15.5.1992 the applicant was advised to vacate the quarter. In spite of repeated notices, the applicant did not vacate the quarter and therefore from July, 1992 onwards the recovery of the damage rent was started. The applicant was

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transferred back from Wasim to Purna on 31.12.1992. As regards the issue of show cause notice ~~for~~<sup>for</sup> recovery of the penal rent or taking proceedings under the P.P.Act, the respondents rely upon the order of the Full Bench in case of Rampujan. It is further submitted that applicant has to vacate the quarter and wait for his turn for allotment. The representation of the applicant dated 13.12.1993 and the representation dated 5.7.1994 through the Central Government Employee's Association letter ~~dated~~ 5.7.1994 have been replied by letter dated 31.8.1994. In view of the facts stated in the written statement, the OA. is misconceived and not maintainable and deserves to be dismissed.

3. The applicant on the disclosing of the facts in the written statement has filed amendment application to counter the submissions of the respondents. This application was allowed. The applicant in the amendment has taken additional grounds as under :-

(a) Transfer order dated 6.6.1989 through which the applicant was permanently transferred to Wasim was not served on the applicant and therefore the applicant was not aware of the same.

(b) Applicant was brought back to Purna on 10.2.91 but the actual transfer order was issued on 19.6.1992.

4. The applicant has filed rejoinder reply reiterating his contention in the OA. while rebutting the submissions of the respondents.

5. The respondents have filed reply to the amendment application reaffirming the stand taken in the OA.

6. Heard Shri S.P.Kulkarni and Shri S.C.Dhawan for the applicant and respondents respectively.

7. The first point which requires to be gone into is whether the OA. is barred by limitation. The respondents submit that the applicant was made aware as per letter dated 15.5.1990 that he is in unauthorised occupation of the quarter and damage rent will be recovered from him. According to the respondents the cause of action arose on 15.5.1990 and OA. filed in 1998 is barred by limitation. The applicant in reply to paras 2 and 4 of the written statement has contended that the cause of action is continuous as the recovery is still being made and therefore there is no bar of limitation. Considering the facts of the case, I am inclined to subscribe to the stand of the respondents.

The applicant has denied the issue of letter dated 15.5.1990. Subsequently, respondents have issued another letter dated 15.5.1992 directing the applicant to vacate the quarter and also indicating the damage/penal rent will be recovered. The recovery of penal rent was started from July,1992 onwards. The applicant was aware of this as this position as he averred so in the OA.



though he has denied the receipt of the order dated 15.5.1992. From July, 1992 onwards, the penal rent is being recovered. The applicant has filed the present OA. on 31.12.1997 when the recovery of the penal rent had continued for more than 5 years. The applicant kept quiet except making occasional representations. Repeated representations will not extend the period of limitation. The applicant has not indicated any reasons for delay in approaching the Tribunal. Even after taking the plea of limitation, the applicant has not filed any application seeking condonation of delay. The applicant's plea that recovery of the penal rent is a continuous cause is not tenable. It is not a case of fixation of pay. The recovery of the penal rent is a consequence of the applicant being declared as unauthorised occupant of the quarter. Therefore the core issue to be decided is whether the applicant is in unauthorised occupation of the quarter or not. The relief of not recovering penal rent will consequently follow. Unauthorised occupation is not a continuous cause of action. The matter is required to be challenged when the employee is declared unauthorised occupant. In the light of these observations, I am of the view that OA. is barred by limitation. In this connection, I refer to the judgement of the Hon'ble Supreme Court in the case of Ramesh Chand Sharma vs. Udham Singh Kamal, 2000 (2) SC SLJ 89. In this case, the OA. has been filed more than 3 years after the cause of action. No prayer was made for condonation of delay. Still the Tribunal disposed of the OA. on merits. The Hon'ble Supreme Court has not approved the order of the Tribunal observing as under in para 7 :-



..7/-

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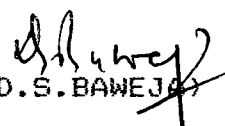


" In our opinion, the OA. filed before the Tribunal after the expiry of 3 years. could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21 (1) of the Administrative Tribunals Act, 1985."

In view of the facts of the case and the law laid down by the Hon'ble Supreme Court, I have to hold that the OA. is barred by limitation and deserves to be dismissed on this account.

8. In view of the findings recorded above, the OA. is not being considered on merits. It is, however, noted that the applicant is in continued occupation of the quarter even after his posting back to Purna since 1992. In spite of recovery of penal rent, the respondents have not taken any legal steps to get the quarter vacated for more than 5 years at the time of filing of the OA. Asking the applicant to vacate the quarter after such a long period and then to wait for turn for the allotment of the quarter would be harsh. I am, therefore, of the opinion that quarter if still not vacated by the applicant will be regularised in the name of the applicant from the date of filing of the OA. and the penal rent will be recovered upto that date only.

9. In the end, the OA. is dismissed as being barred by limitation. However, to mitigate hardship to the applicant, relief of regularisation of the quarter if still in <sup>his</sup> ~~the~~ occupation is granted as per direction in para 8 above. No order as to costs.

  
(D.S. BAWEJA)  
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Contempt Petition No.20/2001  
in  
Original Application No.81/1998

Dated this Tuesday the 4th September, 2001

Coram : Hon'ble Shri Justice Birendra Dikshit, Vice Chairman  
Hon'ble Shri B.N. Bahadur, Member (A)

Shri K.T. Waghmare.

.. Applicant/  
Petitioner.

Vs.

1. Shri O.P. Agrawal,  
Divisional Railway Manager,  
Hyderabad Division,  
South Central Railway,  
Secunderabad, A.P.,  
Pin-500071.
2. Shri N. Krathivasan,  
General Manager,  
S.C. Railway, Railway Nilayam,  
Secunderabad, A.P.-500071.
3. Shri Rajkamal Rao,  
Chief Personnel Officer,  
Rail Nilayam, 4th Floor,  
S.C. Rly., Secunderabad,  
A.P. 500071.


.. Respondents/  
Contemners.

Tribunal's Orders on Contempt Petition (Oral)

Heard Learned Counsel for both the sides.

We do not find any case being made out to draw Contempt  
Petition under Section 11/12 of Contempt of Courts Act.

The Contempt Petition No.20/2001 is dismissed.

  
( B.N. Bahadur )  
Member (A)

  
(Birendra Dikshit)  
Vice Chairman.

H.