

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1011/98

Date of Decision: 24<sup>th</sup> Feb., 2000

~~Shri V.G. Bhole~~ Applicant.

~~Shri G.S. Walia~~ Advocate for  
Applicant.

Versus

~~Union of India and others~~ Respondent(s)

~~Shri V.S. Masurkar~~ Advocate for  
Respondent(s)

CORAM:

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

Hon'ble Shri.

- (1) To be referred to the Reporter or not? *yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*
- (3) Library. *yes*

*P.L. Jain*  
(S.L. Jain)  
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL, APPLICATION NO:1011/98  
DATED THE 24<sup>th</sup> DAY OF FEBRUARY, 2000

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)

V.G.Ghete,  
retired Chief Goods Super,  
Western Railway,  
Kandivili  
Now residing at

8/6. Panch Pandav Colony,  
Brahman Pada,  
Ulhasnagar-421 004.

... Applicant

By Advocate Shri G.S.Walia

v/s.

1. Union of India, through  
General Manager,  
Western Railway,  
Head Quarters Office,  
Churchgate,  
Mumbai - 400 020.

2. Divisional Railway Manager,  
Mumbai Division,  
Western Railway,  
Mumbai Central,  
Mumbai - 400 008.

3. Asst. Divisional,  
Accounts Officer,  
Mumbai Division,  
Western Railway,  
Mumbai Central,  
Mumbai - 400 008.

4. Manager,  
Canara Bank,  
Thane Branch,  
41-A Gokhale Road,  
Naupada,  
Thane - 400 602.

... Respondents.

By Advocate Shri V.S.Masurkar

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*Handwritten signature/initials*

(ORDER)

This is an application under Section-19 of the Administrative Tribunals Act 1985 to quash and set aside the Impugned order 6/8/98, direction to respondents to charge normal rent for the occupation of the Railway Quarter, no damage rent can be recovered from the DCRG, Pension or Dearness Relief and to issue post retirement complementary passes to the applicant.

2. At the outset of the hearing, the respondents counsel stated that respondents are willing to issue post retirement complementary passes to the applicant provided he applies for the same. It is the duty of the applicant to apply for issue of Post retirement complementary passes. Hence it is ordered that respondents shall issue post retirement complementary passes as per extant rules.

3. There is no dispute between the parties in respect of the facts that the applicant retired from the Railway Service on 30/6/1993, he was occupying Railway Quarter No.210/5, Kherwadi Baldra (E), Mumbai - 400 051. He was given 8 months permission after his retirement to retain the aforesaid Railway Quarter as provided under the rules. Shri Ashok Kumar Ghete- Applicant's son who was also a Railway Employee staying with him, filed OA-1124/94 before the Central Administrative Tribunal, Mumbai Bench for the allotment/regularisation of the said Railway Quarter in his name. On 26/10/94, an interim order was granted not to evict the Applicant and his son from the said Railway Quarter. During the pendency of the said OA, Shri Ashok Kumar Ghete expired and on 16/7/1996 OA-1124/94 was withdrawn as infructuous.

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4. The applicant after his retirement informed the respondents that his residential address after 30/4/94 would be Chawl No.8/6, Panch Pandav Colony, Brahman Pada, Ulhasnagar -421 004. The applicant was residing in the above said Railway Quarter alongwith Shri Ashok Kumar Ghete, **his son from first wife** who expired, second wife, and along with his another son not working in the Railways from the first wife. After the death of Ashok Kumar Ghete, his second son from his first wife continued to stay there and did not vacate the quarter. After the death of Ashok Kumar Ghete, the applicant had completely shifted his house at Ulhasnagar. He has many time conveyed to his second son to vacate the Railway Quarter. It is also in the knowledge of the respondents, that the applicant had withdrawn his former application and he alongwith his family are not staying in the Railway Quarter.

5. On 6/8/98, the Respondent No.3 passed an order without giving an opportunity to the applicant for explaining or making representation for recovery towards penal rent of Rs.30.635/- in addition to the amount of DCRG which has not been paid to the applicant. On 21/9/98, he submitted an application to the respondents that he is not occupying the Railway Quarter and his second son who is not working in the Railways is occupying the said Railway Quarter forcibly., with a request to take legal action for evicting him vide Exhibit-D. The said second son is not in talking terms with him. He is not responsible if somebody else is occupying the Railway Quarters and Railway Administration **is** at liberty to evict him. The

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Railway Administration did not take any action, hence he feels that his second son is staying in the Quarter with active support of the Railway Administration.

6. On the aforesaid facts, the applicant claims that no recovery can be made from the DCRG of the applicant since he was occupying Railway Quarters under the orders of the Tribunal hence he is not liable to pay any damage rent for the period. No recovery can be made from Dearness Relief which is an allowance payable to compensate the rise in prices and any recovery from Dearness Relief is prohibited under the law under Section-60 of CPC. He has not been adjudged as an Unauthorised Occupant under Section-7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. No proceedings have been taken for charging of damage rent. Hence this OA for aforesaid reliefs.

7. The respondents have resisted the claim of the applicant alleging that the applicant is bound to pay Rs.30,635/- as well as electricity bill as he is in unauthorised occupation from 1/3/1994 to 30/12/1997. After retirement and extended period of occupation 28/2/94, he has not vacated the Railway Quarter, hence his DCRG amounting to Rs.50,782/- was kept in deposit as per rules on the subject.

8. After the retention period was over he was given show cause notice to vacate the Railway Quarter within a period of one month vide letter No.E/C/789/7/93/15869 dt. 28/7/94. On expiry of the said period, the Competent Authority under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, was

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requested to take action against the applicant for unauthorised possession of the Railway Quarter. The notice was issued. However, his late son Shri Ashok Kumar Ghete alongwith the applicant have approached this Tribunal vide OA-1124/94 and sought an Interim Relief on 26/10/94. As per Additional Audit Officer, Mumbai Central vide his letter dated 1/7/98, had worked out total damage rent from 1/3/94 to 31/12/97 amount to Rs.81,417/-. The DCRG which was kept in deposit has been adjusted against the total recovery of Rs.81,417/- and advised to arrange the balance amount of Rs.30,635/- from his Pension Relief. The letter dt. 21/9/98 has not been received in the office of the Respondent.

The respondents are within their right to recover the same amount from the applicant's relief on advise with immediate effect from Railway Board letter No.F(E)III.85 PN 1/13 Dated 20/9/1985. However, contentions raised by the Applicant have already been decided by a Full Bench of this Tribunal reported in 1994-96 in case of Rampoojan V/s. Union of India in OA No.1217 of 1993 and in case of Suraj Pratap Tiwari v/s. Union of India decided on 25/9/98, hence are liable to be dismissed alongwith cost.

9. The applicant has filed a rejoinder affidavit reagitating the said facts and denying the allegations levelled by respondents.

10. The learned counsel for the applicant has drawn my attention to Exhibit-D, a letter from the applicant to the Additional Railway Manager, Mumbai Division and Assistant Additional Accounts Officer, Mumbai Division in which it is stated that

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"I have already vacated the Railway Quarter No.210/5, Kherwadi Bandra(E), Mumbai and was staying at 8/6,Panch Pandav Colony, Brahman Pada, Ulhasnagar from 30/3/1994 onwards."

The receipt of the said letter is not admitted by respondents. Assuming that the said letter was sent by the applicant to respondents on 21/9/98, the applicant is not relieved from handing over the vacant possession of the said quarter to the respondents. As the applicant has entered the said premises as a licensee, he was duty bound to deliver the vacant possession of the said accommodation to the respondents. Admittedly, it is not his case that he has delivered the vacant possession of the said accommodation to the respondents.

10. The fact remains that after his retirement, his son Shri Ashok kumar Ghete who was working in Railways alongwith his other son continued in the same quarter. Whether the applicant has left the quarter is immaterial for the reason that he has not handed over the vacant possession of the same to the respondents.

11. The learned counsel for the respondents relied on 1997 AIR SCW 1404, Amitabh Kumar and Anr. v/s. Director of Estates and Anr. lays down the Principle that

"after Voluntary Retirement of Government Servant, Application for substituted ad hoc allotment by petitioner-son of retiring Government servant who was also in Government Service, Petitioner remaining in unauthorised occupation after expiry of period of ad hoc allotment-Must pay penal rent."

12. It is true that Shri Ashok Kumar Ghete expired after filing OA-1124/94 and the same OA was disposed of as infructuous

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on 16/7/96. Since no regularisation was ordered in favour of Shri Ashok Kumar Ghete the fact that Tribunal's order dated 26/10/94 "not to evict the applicant and <sup>his</sup> son from Railway Quarter" does not mean that applicant is not liable to pay penal rent and liable to pay only normal rent or no rent. The interim orders passed in the OA are subject to the decision of the OA. The permission to retain the quarter was only till 28/2/94, hence he is deemed to be in unauthorised possession of the said quarter since 1/3/94.

13. It is immaterial whether the applicant is in talking terms with his another son or not.

14. The learned counsel for the applicant relied on Section 15 of the PP(EOU) Act 1971 and argued that the applicant was helpless to get the quarter vacated by his second son.

16. I am of the considered opinion that it is not so. If eviction is barred, in view of section 15 of the said Act, suit for possession based on dis-possession is not barred. Similarly, criminal proceedings are barred **for** eviction, but criminal prosecution <sup>for</sup> punishing a person under Section-448 is not barred. Hence, the said contention of the applicant's counsel is devoid of merits.

17. The learned counsel for applicant relied on 1997 II CLR 112 C.K.Razdan v/s. Municipal Corporation of Delhi decided by the Hon'ble Delhi High Court for the proposition that amount can not be recovered from the pension in view of Section-11 of the Pension Act. He further relied on AIR 1985 S.C.995, Calcutta Dock Labour Board and Anr. v/s Smt.Sandhya Mitra & Others which

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lays down the proposition that Gratuity payable to workman employed under Calcutta Dock Labour Board is not liable for attachment for satisfaction of decree. Regarding the later, it is suffice to say that Section-60 of CPC is applicable in execution of decree. The learned counsel for the applicant made a new plea which is based on pure question of law arising from the record will be gone into by the Court in view of case reported in 1992(2) S.C. 67, State of U.P. and Ors. v/s. Anupam Gupta etc. But the said plea, even after consideration, I do not find that it helps the applicant to avoid the responsibility as no decree of a Civil Court is said to be executed in the proceedings of the case.

18. The learned counsel for applicant relied on (1994)6 SCC 589 R.Kapur v/s. Director of Inspection (Painting and Publication) Income Tax and Anr. decided on 29/9/94 which lays down the proposition that Right of a reitred employee to gratuity not dependent on vacating the Government Accomodation. He further relied on the judgement of Hon'ble High Court of Mumbai in Writ Petition No.1085/97 Latha Prasad Singh v/s Union of India & Others decided on 12/9/97 which lays down the proposition that the respondents (Railway Administration) have no authority or power to withhold the pension, other post retirement benefits payable to the petitioners such as DCRG - Provident Fund in respect of recovery of outstanding amount of rent/damanges for occupation/unauthorised occupation of Railway Quarter by the petitioner from 5/6/90 till vacated 28/6/96.

19. The learned counsel for the respondents relied on 1997(2) SC SLJ, Union of India v/s. G.Ganayutham for the proposition that

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Gratuity can be withheld under Rule 9 of the CCS(Pension)Rules under 3(1)(0), pension includes Gratuity except when the term pension is not used in contradistinction to Gratuity and under rule 9 the word pension is not used in contradistinction to Gratuity. Hence Tribunal is not right in its finding that gratuity could not be with held under the rule.

20. On a perusal of para-6 of the said authority, it is clear that **D.V.Kapoor v/s. Union of India (1990(4)SCC 314)** which took a contrary view, Rule 3(1)(0) was not brought to the notice of the Court. As to **Jesuratnam v/s Union of India (1990 Supp SCC 640)** it was said that there was no discussion in that case. Para-7 & 8 of the above authority is also material, which is as under:-

"7. We may also state that subsequently, in **State of U.P. v. UP University Colleges Pensioners association (1994 (2) SCC 729)**, the decision in **Jarnail Singh's** case was distinguished as the latter was based on rule 3. In yet another case in **Sita Ram Yadava v. Union of India (1995 Suppl. (4) SCC 618)**, special leave was initially granted because of a contention based on **D.V.Kapoor's** case that gratuity could not be withdrawn, wholly or partly, under Rule 9. But at the time when the matter was disposed of, it was said that in as much as the gratuity has already been released in full to the employee, it was not necessary to go into the question whether gratuity could be withheld under the Pension Rules.

8. We are of the view that the last two decisions, namely, **State of UP v. UP University Colleges Pensioners Association (1994(2)SCC 729)** and **Sita Ram Yadava v. Union of India (1995 Suppl. (4) SCC 619)** do not, for the reasons stated above, affect the ratio of the case in **Jarnail Singh v. Secretary, Ministry of Home Affairs, (1993 (1) SCC 47)**. Therefore the Tribunal was wrong in thinking that under rule 9, 50% of the gratuity could not be withheld. We accordingly set aside the finding of the Tribunal on this point."

21. The learned counsel for the respondents relied on **(1995)29 ATC 540, State of Haryana & Others v/s. K.N.Dutt** which

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deals with the principles of resjudicate and abuse of process of the Court. In my considered opinion the said authority is not relevant. For the reason that neither Principles of resjudicata applied nor question of abuse of process of Court is there as earlier OA No. 1124/94 was not decided on merits.

22. The learned counsel for the respondents relied on 1998 SCC (L&S) 719, Union of India & Anr. V/s. K. Balakrishna Nambiar which lays down the proposition that interest not payable in respect of the period of such unauthorised occupation and for another month after vacation. In the said authority, the earlier decision dated 4.12.1995 passed in Union of India Vs. S.V. Ramteke was followed.

23. The learned counsel for the respondents relied on 1997(1) SC SLJ 114, Union of India V/s Ujagar Lal which follows Rajpal Wahi & others V/s Union of India and others SLP (C) Nos 7688 - 91 - 88 decided on 27.11.98 deals with a case of a Railway Board circular which prohibits payment of DCRG till the retired employee surrenders possession of the quarter and it is held that respondent who was unauthorisely in occupation of the quarter, cannot claim interest on delay in making payment of DCRG.

24. The learned counsel for the respondents relied on 1994-96 Administrative Tribunals Full Bench Judgements in the case of Ram Poojan V/s. Union of India and others , which laid down the proposition that after the expiry of permissible period for vacation of the accommodation by the Railway servant will be unauthorised and penal/damage rent can be levied.

25. In view of AIR 1976 SC 1637 in the case of New Delhi Municipal Committee V/s Kalu Ram and another which is being followed in the case of 1997(1) AISLJ 40 Smt. M.P. Kanal V/s Union of India through General Manager and others decided on 7.10.1996 by CAT Bombay Bench, it is held that Section 7 of Public Premises (Eviction of Unauthorised Occupants) Act only provides a special / alternative procedure for the levy of rent and does not constitute any right to claim.

26. 1997 (1) CAT Bombay Smt. M.P. Kanal V/s. Union of India through General Manager and others follows Ram Poojan's case referred above and lays down the proposition that rent can be levied by any other procedure and in view of Section 15 no proceeding can lie elsewhere than Estate Officer. So also Section 15 does not bar government to take rule under Article 309 to take action without coming to P.P. Act. It is further held that no damage rent can be recovered without notice is of no way and DCRG can be with held for non vacation of the quarter.

27. In case of Ram Poojan referred to above under the provisions of para 1711 of the I.R.E.M. and Railway Board Circular were subject of consideration, Railway Servants (Pension) Rules 1993 which came in force since 3.12.1993 gave administration to withhold or recover/adjust the amount of licence fee from the Dearness Relief, DCRG, P.F. in view of Rule 16(6) and 16(8) of the same Rules. After considering Railway Pension Rule 1993 the case of Smt. M.P. Kanal referred to above.

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28. The learned counsel for the applicant relied on 1998 (2) ATJ 70 in the case of Motilal Sharma V/s. University of Rajasthan and others, decided by Rajasthan High Court which deals with Employees Provident Fund Act 1952 - Section 10, which is not a subject matter before us. The said authority does not help the applicant.

29. The learned counsel for the respondents relied on 1987 (2) ATC 939 in the case of Union of India and another V/s. Wing Commander R.R. Hingorani which lays down the proposition that a person doing something with full knowledge of its adverse consequences must face the consequences and cannot claim equitable relief, where liability of a Government servant under a Rule is absolute, no relaxation in the Rule can be presumed to have been granted by Government merely on ground of Government's failure to take action under the rules for some time. In the present case if the Government has not taken any steps for the quarter to be vacated, it does not absolve the applicant from his liability to pay damage rent.

30. The learned counsel for the applicant relied on Wazir Chand V/s. Union of India and others which was upheld by the Apex Court 12305/93 decided on 1.11.1993. The said authority has been considered in the case of Smt. M.P. Kanai referred to above.

31. 1997 II CLR 112 C.K. Razdan V/s Municipal Corporation of Delhi decided by the Hon'ble Delhi High Court. (1994) 6 SCC 589 R.Kapur V/s. Director of Inspection (Painting and Publication) Income Tax

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and another, Writ Petition No, 1085/97 in the case of Lalta Prasad Singh V/s Union of India and others decided on 12.9.1997 by the Hon'ble High Court of Bombay. That is a case of Railway employees, but provisions regarding Railway Servant (Pension) Rules 1993 were not subject for consideration. In the same way proceedings for leaving damage rent etc. was also not a subject for consideration. Hence the said authority cannot be precedent for the reason that the authority is a precedent for proposition which it decides.

32. 1997 (2) SC SLJ Union of India and others V/s. G. Ganayutham is a case in respect of disciplinary proceedings.

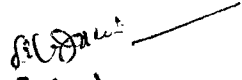
33. 1998 SC (L&S) 719 Union of India and another V/s. K. Balakrishna Nambiar and 1997 (1) SC SLJ 114 Union of India V/s. Ujagarlal are the cases relating to Railways Servants which deals with cases of Railway circulars deserves to be followed.

34. The learned counsel for the applicant relied on 1998 (1) SC SLJ 349 A.K. Krishna and others V/s State of Karnataka and others and argued that powers under Article 311 cannot be exercised by the Government if the legislature has already made a law and the field is occupied. In that situation, Rules can be made under the law so made by the legislature and not under Article 309. He further argued that Rule made in exercise of the Rule making power given under an Act constitute Delegated or sub-ordinate legislation, but the Rules under Article 309 cannot be treated to fall in that category and, therefore, on the principle of

Occupied field, the Rules under Article 309 cannot supercede the Rules made by the legislature. A General later law does not abrogate an earlier special one by mere implication. Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular case which have been already otherwise provided for the special Act.

35. In the above circumstances I am of the considered opinion that P.P. Act is general while Railway Servant (Pension) Rules 1993 and IREM is special law which prevails against general law.

36. In the result I do not find any merit in the OA it deserves to be dismissed and is dismissed accordingly, except the observations as made in para 2 of this order. No order as to costs.

  
(S.L.Jain)  
Member (J)

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