

(23)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 516/96.

Dt. of Decision : -10-96.

A. Iruianathan

.. Applicant.

. Vs

1. The General Manager,
SC Rly, Sec'bad.

2. The Sr.Divl. Personnel Officer,
SC Rly, Sec'bad.

.. Respondents.

Counsel for the Applicant

: Mr. S.Lakshma Reddy

Counsel for the Respondents

: Mr. C.V.Malla Reddy, SC for Rlys.

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

..2

1

200

-2-

JUDGEMENT

X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

Heard Mr.S.Lakshma Reddy, learned counsel for the applicant and Mr.C.V.Malla Reddy, learned counsel for the respondents.

2. The applicant in this OA while working as Shunter in Secunderabad Division of SC Railway under R-2^{was} in occupation of Railway Quarter No.1210/6 Type-II at South Lalaguda. It is stated for the applicant that he was transferred on promotion as Shunter 'B' and posted at Parli by order dated 15-10-90. He joined at Parli. He retained the quarter at Secunderabad. He submitted a representation dated 1-1-96 (Annexure-I at page-7) through proper channel for retention of the quarters at Sec'bad due to his family circumstances which included the education of his children. He was retransferred ~~back to Sec'bad~~ on 26-7-92. Once again he was transferred to Vikarabad as Shunder on 30-11-92 and came back to the Sec'bad on retransfer on 18-3-94. He retired from service on 30-5-94.

3. An amount of Rs.49,678/- as concurred by the associate accounts of the Sec'bad division was recovered from his final settlement dues as damage rent for non vacation of the quarters at Sec'bad and the applicant was advised of the same vide letter No.CP/500/QNR/37/May 94 dated 27-3-95 with full details of the recovery towards damage rent. The above recovery is also evident from the impugned proceedings No.CP/500/NR./37/May.94 dated 1-6-94 (Annexure-2 at page-8). The applicant appealed against that recovery by his representation dated 25-11-94 (Annexure-5 at ~~page-12~~) and also requested for waiving of the penal rent by his representation dated 16-1-95 (Annexure-6 at page-13). He was informed by the impugned letter No.P.500/TP/SC dated 18-12-95 (Annexure-7 at page-14) whereby his request for waiver of damage rent was rejected.

11

4. Aggrieved by the above proceedings for recovery of the damage rent from his final settlement dues which includes DCRG and the refusal of the department to waive the damage rent he has filed this OA for setting aside the proceedings No.CP/500/ NR./37/May.94 dated 1-6-94 (Annexure-2) and dated 18-12-95 (Annexure-7) and for a consequential direction to pay the said with-held amount with interest.

5. The main contention of the applicant in this OA are two fold:-

(i) The first contention is that the penal rent cannot be recovered except after following the provisions of Section 17 of PP (EOU) Act, 1971. The recovery of penal rent from the final settlement dues/DCRG cannot be effected for non vacation of quarter on the basis of the principle laid down in case of Rattan Lal Vs. Union of India and Others (1992 (4) SLR 651) on the file of the Principal Bench of this Tribunal.

(ii) The second contention is that the applicant was not replied to his representation till he was in service and it was suddenly recovered from his final settlement dues/DCRG. The failure on the part of the respondents to inform him regarding the recovery in time led him to "legitimately expect" that his case has been considered favourably for retention of the quarter at Sec'bad paying only normal rent. He submits that such legitimate expectations cannot be forfeited as held by the Apex Court in 1993 (3) SCC 499 (Union of India and Others Vs. Hindustan Development Corporation and Others).

6. The respondents have filed a reply. It is seen ~~that~~ from the reply that the applicant was transferred from Sec'bad on 1-10-90 and was retransferred to Sec'bad on 15-4-94 and retired from service on 31-5-94. He was on occupation of the railway quarter at Sec'bad from 1-10-90 to 31-5-94 i.e., roughly 3 years and 7 months without prior permission. Hence, the recovery of the

damage rent from DCRG is in order in view of the judgement of the Calcutta Bench of this Tribunal in Ranjit KR. Banerjee Vs. Union of India and Others (1996 (32) ATC 761).

7. Though the applicant submits that he went out of Sec'bad on 15-10-90, came back once again on 26-7-92 and transferred out once again on 30-11-92 and came back on 18-3-94, it appears that the railway has treated the full period from 15-10-90 to 31-5-94 i.e., ((from his first transfer from Sec'bad to out station till he retired on 31-5-94) as retention of the quarters without prior permission. It is further stated in the reply that the above recovery of damage rent is in consonance with the Railway Board's letter No.E(G)85 QRI-9 dt.15-1-90 forwarded by CPO's Lr.No.P(R)554/III dt.14-2-90-Serial Circular No.27/90 (Annexure-I to the reply). It is further stated that necessary concession has been shown to him for a period of two months on transfer account i.e., from 26-10-90 to 25-12-90 vide letter No.CP/555/Qrs./R/V/PR dt. 29-9-94 and granted sanction for retention of Railway Quarter on payment of double the flat rate from 26-12-90 to 30-4-91 on Educational Account vide Lr. No.CP/555/Qrs/R/V/PR dated 25-10-94. Hence, the respondents submit that no injustice has been done to the applicant and damage rent has been recovered in accordance with rule from DCRG.

8. Whether the damage rent can be recovered from the in this final settlement dues DCRG is the main point for consideration/OA.

9. Before going into above the question, the provisions in the rule as regards the recovery from the gratuity is to be seen. Rule-71 and 72 of CCS (Pension) Rules, 1972 which are statutory in nature provide for adjustment of the out-standing dues of the Government servant till the date of retirement against the amount of the retirement gratuity becoming payable. The sub-rule-2 of Rule-71 reads as below:-

"(1)

(2) The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the (retirement gratuity) becoming payable."

(3)

10. Similar provision also exists in the Railway Services (Pension) Rules, 1993. As per Rule-15 of Chapter-II under the general conditions the recovery and adjustment of Government or railway dues from pensionary benefits has been permitted. Sub-Rule-2 of Rule-15 is same as sub rule 71 of CCS (Pension) Rules, 1972. Further sub rule-4 of Rule-15 clearly states that the dues for over payment of house rent may be recovered from the final terminal benefits including DCRG. Sub-Rule-4 (i) and (ii) of Rule-15 is reproduced below:-

"A claim against the railway servant may be on account of all or any of the following:-

- (a) losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;
- (b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,
- (c) non-Government dues."

"Recovery of losses specified in sub-clause (a) of Clause (1) of this sub-rule shall be made subject to the conditions laid down in table 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pensions Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (1) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the members of his family in the case of a deceased railway servant."

11. There is a distinction between the action of "withholding the payment of DCRG" and "recovery from DCRG". In the

former case because of the need to recover the Government dues the release of DCRG is delayed pending settlement of the concerned issue. Whereas in the later case after the Government dues have been assessed specific amount which are Government dues are recovered from the DCRG and the balance amount of DCRG if any paid to the retiree. Therefore later category of cases cannot be construed as those denying to a retiree his DCRG together by with-holding the same. As stated earlier the statutory provision in the CCS (Pension) and Railway Services (Pension) Rules, 1993 Rule-72 provide for recovery of such dues from DCRG.

12. On the other hand recovery of Government dues from pension cannot be done except with the orders of the President under specific condition as provided for in Rule-9 of CCS (Pension) Rules. Sub-Rule-1 of Rule-9 is relevant to this issue. This Rules reads as below:-

"(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement;"

13. Similar provision as Rule-9 of CCS (Pension) Rules also exists in the Railway Services (Pension) Rules, 1993. Rule-9 of Railway Services (Pension) Rules, 1993 in Chapter II under general condition is the relevant and equivalent to the CCS (Pension) Rules. In terms of this rule withholding or withdrawing of pension is permitted by the competent authority i.e., the President of India in consultation with the Union Public Service Commission.

The statutory provision is to safeguard the vital interest of the retired employee so that his only steady sources

D

..7

of livelihood or income i.e., (Pension) after retirement is not un-necessarily jeopardised by thoughtless or arbitrary action of anybody. But such restriction of recovery of Government dues are applicable only in respect of pension. In respect of gratuity the enabling provisions for recovery of Government dues are there and Rule-15 of the Railway Services (Pension) Rule, 1993 in the statutory Rules-71 and 72 as referred to above. From the above it is clear that the statutory Rule do provide for recovery of outstanding dues including the damage rent from the DCRG/final settlement dues of a retired employee.

14. The applicant now relies on the Rattan Lal's 1992 (4) SLR 651 case to state that the recovery can be made only following the provisions of PP (EOU) Act, 1971. This reported judgement was delivered relying on the Full Bench judgement of this Tribunal in Wazir Chand Vs. Union of India and Others (1996 (32) ATC 370 (Del) (FB) and the Apex Court judgement in Union of India Vs. Shiv Charan (1992 (19) ATC 129). The reported judgement of the Principal Bench in Rattan Lal's case has to be analysed in the light of the Full Bench judgement in Wazir Chand's case and the judgement of the Apex Court in Shiv Charan's case. I shall now take up the implication of the above two cases.

15. In the Full Bench judgement of this Tribunal (Subsequently confirmed by the Supreme Court by a non-speaking order in SLP) in Wazir Chand's case 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 dt. 4-5-82 was legally impermissible. But the Principal Bench in its subsequent judgement in Sushil Chander Bhatnagar Vs. Union of India & Another (1994 (3) (CAT) SLJ 367) held that the judgement of the Full Bench was delivered

in the context of General Manager, Northern Railway' Pension's Circular dated 4-5-82 which did not have any statutory force. However there is another Railway Board Circular dated 24-4-82 which was statutory in character and the later circular authorised an appropriate 'hold back' amount from DCRG for rent recovery and in the same context of such statutory circular such recovery ~~xx~~ can legally be allowed. Similar view was also taken by the Principal Bench in the ^{of} case of Inderjit Singh Vs. Union of India and Others (1993) (25) ATC 446.

16. In the case of Shiv Charan, a railway employee, retired from railway service in August 1996 an amount of Rs.20,000/- from his DCRG as well as his railway passes were withheld on account of ~~xx~~ unauthorised retention of the railway quarter by him. The Tribunal in its judgement dated 16-8-88 in CA.1114/89 of the Principal Bench directed that the applicant must vacate the quarter by 31-8-89 ^{and} ~~xx~~ the respondents should also release the entire amount of gratuity after deducting the normal rent for the quarter till 31-8-89. The respondents were permitted to keep Rs.1000/- towards electricity bill etc., not yet calculated. ~~xx~~ Interest on the delayed payment of gratuity was disallowed. The Union of India preferred an appeal ~~xx~~ in the Apex Court against that judgement and the Supreme Court by order dated 23-4-90 granted the SLP and allowed the appeal. The respondent (Shiv Charan) was directed to hand over the possession of the quarter on or about 23-5-90 to the appellant (UOI) and the entire amount owed to the respondent less the amount mentioned thereafter was directed to be handed over by the officer taking possession then and there. As regards the amount mentioned thereafter, the Apex Court directed that the rent for the period overstayed may be deducted from the ~~any~~ payment to be made as ~~x~~ aforesaid. The appellant would be entitled to make claim in accordance with law to which they were entitled to any excess or penal rent, and the respondent would be at liberty to make any claim for compensation in an appropriate forum, which he claimed to be entitled to.

9

17. By analysing the above said fact in Shiv Charan's case the Principal Bench in the case of Sushil Chander Bhatnagar Vs. Union of India had held that "nowhere in that judgement (Shiv Charan) has it been stated (by the Apex Court) that payment of DCRG cannot be linked with non vacation of the quarter". In this connection the observations of the Calcutta Bench of this Tribunal in Ranjit KR. Banerjee's case is worth repeating.

"Pension and gratuity are important reliefs of a retiring employee. Gratuity which represents one-time payment is conceptually different from pension - the latter being a steady and recurring source of some income for livelihood to the retiring employee. Although both were specially protected, safeguards against recovery from pension are far stricter. An employee cannot claim restrictions concerning DCRG with similar intensity or rigour. While a retired employee's welfare has to be looked into, the employer Government's legitimate claims to dues from the employee are equally the concern of the State. That is why, there are provisions in the rules and related instructions to recover government dues on account of unauthorized occupation of government quarters by the employee from out of his DCRG. The Supreme Court judgement in Siv Charan case allows withholding (i.e., delaying the release of) the payment of the entire amount of DCRG, as long as the retiring employee does not vacate the government quarter and does not pay at-least the normal rent. But once the quarter has been vacated and the normal rent paid, the withholding of the entire amount of DCRG will be impermissible under the Supreme Court's judgement in R.Kapur case reported in 1994 (28) ATC 516. But the Supreme Court judgement in R.Kapur case does not stand in the way of the Department from recovering from the DCRG, the exact amount of government dues resulting from penal rent/damages, as levied under the rules and paying to the retiree the balance amount of the gratuity. An employee's rights and duties, privileges and obligations go hand in hand. It is not reasonable that an employee would only expect his rights to be honoured by the Government (in the form of payment of his entire amount of DCRG), while he can throw to the winds his own obligation to pay to the Government their dues. Any such ascertainment amounts to his claiming licence not to pay to the State the amounts he owes to the same as rent, penal rent damage

(3)

for government quarters of which he has been in unauthorised occupation. To expect that Government would have to pay to him his gratuity promptly, without any question, and he would enjoy the luxury of paying to the Government his dues only through expensive and dilatory civil proceedings to be pursued by the Department separately and independently, is nothing but being unfair to all concerned. This is because the employee's claim to DCRG and his liability to pay rent/penal rent/market rent/damages for different kinds of occupation of a government quarter-all arise out of service conditions, as part of the service rules/regulations or instructions.

Under the circumstances, we are of the view that as it is not a case of withholding the entire amount of DCRG towards recovery of penal rent for admitted unauthorised occupation of government quarters, but rather it is a case of recovery of specific amount of penal rent/damages for the period of unauthorised occupation of government quarters, the decision of the Hon'ble Supreme Court in R.Kapur case is not of any assistance to the petitioner and that the action of the respondents taken in pursuance of the statutory rules as contained in CCS (Pension) Rules, cannot be faulted with. If Rule-9 of the CCS (Pension) Rules concerning pension places some curb on recovery from pension except in defined conditions, there are parallel provisions in the same Rules vide Rules 71 and 72, (similar provision in Railway Services (Pension) Rules-15 in chapter-II general conditions) which allow recovery of such dues from DCRG.

The petitioner in his petition has incidentally taken also an alternative plea that penal rent/damage rent cannot be recovered from him, as no proceedings have been initiated against him under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. But the Principal Bench in the case, Sushil Chander Bhatnagar Vs. Union of India has held that recovery of penal rent etc. for overstay in railway quarters from gratuity can be made without necessarily following the provisions of Section 10 of P.P.Act., and that the processes under P.P.Act provides only an alternative remedy. It has further been held therein that for adjustment against penal rent etc. for such overstay, it is not necessary to issue show-cause notice before initiating recovery proceedings, because, the employee is supposed to be aware of the provision of Railway Manual/Instructions^{Rules} outlining the consequences of unauthorised occupation. Also this very Calcutta Bench of the Tribunal in the case of Suda Iswar Rao Vs. Union of India or

A

in the case of Shankar Vs. Union of India has similarly held that recourse to P.P.Act is not necessary, nor is it required to issue a show-cause notice before charging penal rent, because the employee concerned is supposed to be aware of the departmental instructions in the matter of unauthorised occupation of government quarters and its consequences. But the ratio of those decisions is applicable to similar cases. In the instant case, liability to penal rent is there under the relevant provisions of F.R.45-AI(ii)C which any government employee is supposed to know".

What is said by the Calcutta Bench of this Tribunal quoted above relates only to Government quarters occupied by the Government servant. The authorities have the option to choose any of the alternate methods of recovery i.e., through DCRG/salary etc., or through process of P.P.Act, is not, however, there if the Public Premises are occupied by a non employee citizen or a third party, in which case recourse to P.P.Act is the only process available.

18. The Allahabad Bench of this Tribunal in Dinesh Chandra Srivastava Vs. Union of India and Others (1995 (3) SLJ (CAT) page-241) had held that "the retention of a quarter after the employee had been transferred and posted elsewhere, is unauthorised and damages of penal rent can be charged".

19. From the above analysis it is evident that the action of the respondents in recovery of Government dues towards unauthorised occupation of Government quarters from the DCRG/ final settlement dues of the petitioner cannot be held to be unlawful or bad. Hence, the contention of the applicant in this OA that the remedy left to the railways to recover the penal rent only after following the provisions of P.P.Act, 1971 is not borne by facts. Hence, this contention fails.

20. The second contention for which the judgement in 1993 (3) SCC 499 was relied upon was considered. A reading of the above judgement of the Apex Court will reveal that the legitimacy of expectation operates in public law field and provides locus standi for judicial review. Its denial is a ground for challenging

the decision/action. But denial can be justified by showing some overriding public interest. Denial does not by itself confer an absolute right to claim relief. Grant of relief should be limited only to cases where denial amounts to denial of any right or where decision/action is arbitrary, unreasonable, not in public interest and inconsistent with principles of natural justice.

21. From the above it would be seen that the present case does not fall under the dictum laid down by the Apex Court. The legitimate expectations arises only if there is a legitimacy for such expectations. When specific rule exist for recovery of the damage rent in the present case the applicant can have no reason to legitimately expect that the damaged rent will not be recovered from his final settlement dues if the same is not paid by him x already. Under the circumstances it has to be held that the expectations of the applicant cannot be conceived as a legitimate one but ~~the~~ case of fiction in his mind. The practice in the railway as ascertained is also to the effect that the damage rent and other outstanding dues of a retired employee had been recovered from the final settlement dues in some other cases also. Hence, the past practice also indicates that the applicant cannot have such legitimate expectations as avered by him. In this connection the Apex Court observation in the reported case is worth recollecting.

"A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. A person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus he has locus standi to make such a claim. There are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected.

13

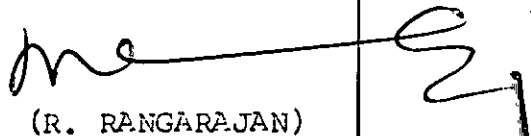
Such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. If a denial of legitimate expectation in a given case amounts to denial or right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the

D

treasury of natural justice and it ought not to unlock the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept. The courts should restrain themselves and restrict such claims duly to the legal limitations."

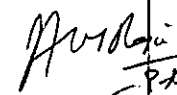
From the above observation in reported judgement of the Apex Court it is evident that this citation does not assist the applicant but it is against the applicant, as none of the conditions prescribed in the observations, has been fulfilled. Hence, this contention also fails.

22. In the result, I find no merits in this OA. Hence, the OA is dismissed for want of merits. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 7th October 1996.

spr


2.10.96.
D.R. (S)

38
..15..

O.A.NO.516/96

Copy to:

1. The General Manager,
South Central Railway,
Secunderabad.
2. The Senior Divisional Personnel Officer,
South Central Railway,
Secunderabad.
3. One copy to Mr.S.Lakshma Reddy, Advocate,
CAT, Hyderabad.
4. One copy to Mr.C.V.Malla Reddy, SC for Railways,
CAT,Hyderabad.
5. One copy to Library, AT,Hyderabad.
6. One duplicate copy.

YLKR

O.A. 516/86
28/10/96

Typed By
Compared by

Checked By
Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 7/10/86

ORDER/JUDGEMENT
R.A./C.P./M.A. NO.

in

O.A. NO. 516/86

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED :
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

No Spare Copy

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal देशपत्र/DESPATCH 28 OCT 1996 हैदराबाद बेंच HYDERABAD BENCH
--