

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

ORIGINAL APPLICATION NO. 657 of 2001

Jabalpur, this the 5th day of March, 2003.

Hon'ble Mrs. Shyama Dogra, Member (J)

Lakhan Lal Rawat S/o Ram Lal Rawat,
aged about 74 years, Retd. Stn. Master,
R/o Village Teela, Tehsil Mungawali,
Distt. Guna, M.P.

-APPLICANT

(By Advocate- Mr. M. R. Chandra)

Versus

1. The Union of India through
the General Manager, C.Rly Mumbai.
2. Senior Divisional Accounts Officer,
Central Railway, Jhansi.
3. The Divisional Railway Manager,
Central Railway, Jhansi.
4. The Branch Manager,
State Bank of India, Bina Branch,
Bina Distt. Saugor.

-RESPONDENTS

(By Advocate- Mr. H. B. Shrivastava)

O R D E R (ORAL)

This Original Application has been filed by the applicant to quash the order for recovery by ~~the~~ Annexure A-1 dated 30.8.2001 and further prayed for payment of consequential benefits of complimentary pass being stopped from the year 1985 on the basis of non-vacation and unauthorized occupation of Railway Quarter No. D49-B at Bina Jn.

2. The brief facts of the case as mentioned in the O.A. are that the applicant while working at Central Railway Bina Junction ~~Station~~, he was allotted a Railway Quarter No. D-49/B. On his transfer from Bina Junction to another Station, BAD, the applicant vacated the said Railway Quarter

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at Bina Junction on 28.4.1982 and had obtained vacation certificates both from the Sectional Inspector of Works as well from ~~as~~/Electrical Foreman, Bina as per Railway Rules. He has also attached photocopy of certificate as Annexure A-2 and the said certificate of the vacation was duly forwarded to the Chairman, Housing Committee, Bina Junction by the Station Master Bina Junction under his letter No. SB/Octs/LLR/RM dated 30.4.1982 vide Annexure A-3.

3. The applicant remained at Bad Station till 13.2.1985 and thereafter he was transferred to Karad Junction where he worked from the period from 14.2.1985 until his superannuation. In both the stations at Bad and Karad Junction, the applicant was not allotted with any quarter (Railway). Therefore, he made his own private arrangements for accommodation.

4. It is further submitted by the learned counsel for the applicant that the said house has been vacated by the applicant in accordance with law and as per procedure prescribed for handing over the ~~possession~~ ^{possession} to the competent authorities. Therefore, recovery of damage rent from his pensionary benefits vide Annexure A-1 is illegal and arbitrary in view of the various decisions of the Tribunal passed from time to time in this regard that recovery of damage rent etc. can be ^{not} effected from the retiral benefits of the railway employee.

5. The applicant has also placed reliance on Annexure A-4. The main grievance of the applicant is that the applicant has already vacated the said house at Bina on his transfer in April 1982. Therefore, the said retiral benefits cannot be withheld without giving any opportunity of being heard by the respondents.

6. It is further submitted by the learned counsel for the applicant that the respondents have not resorted to the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for the alleged unauthorised occupation, if any, in view of the Railway Services (Pension) Rules, 1993, Rule 16 (8) (e) as well as in view of the letter issued by the respondents vide Annexure R-7 dated 12.10.92, wherein it has been mentioned that in case the applicant does not vacate the house within the specified period of 15 days, or in case he did not give any reply to the notice issued by the respondents ^{vide} Annexure R-7, the Estate Officer ~~is~~ to get that house vacated after following the strict action under said Public Premises Act, 1971.

7. The applicant has further disputed Annexure R-19, ^{is} which ~~the~~ extract (photocopy) of Quarter Possession Register, wherein it has been mentioned in column 3 the date of vacation of the house by the applicant as 29.6.1997 and the date of occupation of said house by one Ashok Kumar Sahu as 29.6.1997. However, no signature has been put by the applicant on the said Register, which clearly shows that this document is not authenticated document, as the applicant has already vacated this house long time back ~~xxx~~ i.e. in the year 1982.

8. It is further submitted and averred by the learned counsel for the applicant that Annexures R-14 and R-11 are contradictory and he has denied the veracity of these documents. He has further submitted that even the statement filed by the respondents is contradictory, as they have made this averment that some relevant documents being very old ~~were not~~ traceable and in spite of this submission they have produced some copies of extract of some Register as well as some proforma being filled-up at the time of retirement of the applicant vide Annexures R-8 and R-12, which also casts doubts on the genuineness of these documents.

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9. In the written statement, the respondents are refuted the claim of the applicant and also disputed the genuineness of the documents vide Annexures A-2 & A-3 and in support of this, the respondents have filed certain affidavits that these documents vide Annexure A-2 & A-3 have not been issued by the concerned officers and the incumbent of Electrical Department who is said to have signed letter dated 28.4.82 named Shri Gya Prasad was an Electrical Mistry, who has since been retired on 1.1.1983. The other certificate of vacation said to have been issued by the Inspector of Works, Bina has not been signed by the then I.O.W. Bina, who was posted ^{at Bina Jn.} on the date of issue of the certificate. Shri B.T. Badhava, who was posted as Inspector of Works, Bina on 28.4.82 has also superannuated on 31.10.89. The forwarding letter vide Annexure A-3 dated 30.4.82 is said to have been issued by Shri J.P.Vaish, Transportation Inspector, Bina has also been superannuated on 29.2.1988. It is further stated in the affidavit by DEM, Jhansi on 4.1.2002 that said relevant document in this regard is not available in the office and there is no such mention of vacation of said quarter in the Minutes of Meeting of Housing Committee, Bina held on 30.4.82, 5.6.82, 9.7.82 and 25.8.82. Therefore, the genuineness of these documents have been denied by the respondents.

10. It is further contended by the learned counsel for the respondents that in view of the Full Bench decision in Ram Poojan's case, (1996)34 ATC 434, the said amount for penal rent can be withheld by the concerned authorities as on the transfer of railway incumbent from one place to another his occupation in the Railway quarter in earlier station is deemed to be ~~unauthorised~~ unauthorised in view of the

statement and submitted that Annexure R-6, the copy of the alleged notice has never been received by the applicant as the same has not been sent to his permanent home address, which has been given by him at the time of his retirement. Even the applicant has denied the receipt of Annexure R-7, which is also copy of the notice issued to the applicant in the year 1982 at the address C/o Station Supdt., Bina whereas the applicant has retired in the year 1985. Therefore, this notice has never been received by the applicant as the same has not been sent at his residential address. It is further submitted by the learned counsel for the applicant that so far as Annexure R-11 is concerned, it has been issued by the authorities when he was retired from Karad Station and they were not the concerned authorities to come to the decision. When it is mentioned in column 7 that the railway quarter was occupied by the applicant and rent upto March 1985 has been recovered, as the alleged recovery of penal rent pertains to the Railway Quarter and for Karad Station. situated at Bina Junction. Therefore, this document is also now disputed by the applicant being based on incorrect facts.

13. I have heard the learned counsel for the parties and perused the records as well as the case law given by the learned counsel for the parties.

14. After going through the relevant records, it appears that both the parties are disputing the genuineness of certain documents being issued by the concerned authorities at relevant time with regard to the vacation of railway quarter as well as issuance of notice to the application for vacation of said quarter. It is an admitted fact that this Tribunal cannot deal with the disputed questions

of fact and both the parties are disputing this fact that whether the house has been vacated in the year 1982 or in the year 1987. Therefore, keeping in view of the fact that when alleged notice Annexure R-7 was issued, the Estate Officer was also directed by the DRM, Bhopal that if the applicant does not give any response to this notice within a period of 15 days or does not vacate the said house within specified period, he has to get the house vacated after following strict action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. After perusal of that Annexure R-7 dated 12.10.92, it is also found that this has not been sent on the address of the applicant at that relevant time, as he had already retired in the year 1985 while the said notice has been issued at the address C/o Station Supdt., Bina. Therefore, it can be very well ^{be} said that the applicant has not received that notice, which has been deprived him of an opportunity of being heard before the concerned authorities.

15. The relevant sub-clause (e) of Clause 8 of Rule 16 of Railway Services (Pension) Rules, 1993, on which applicant placing reliance is as below:-

"Dispute, if any, regarding recovery of damages or rent from the ex-railway employee shall be subject to adjudication by the concerned Estate Officer appointed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971?

Meaning thereby that once a dispute is arisen ~~arise~~ with regard to the recovery of damages or rent from the Ex-Railway Employee, the matter is to be adjudicated upon by the concerned Estate Officer and in the present case dispute has arisen with regard to payment of said rent on the basis of fact that the applicant has categorically submitted and supported his contention ^{the basis} on some documents (Annexure A-2 to A-4) that he has vacated that house in the year 1982. In view

of the fact that respondents are also disputing genuineness of these documents while filing affidavit sworn by the concerned authorities. I am of the considered opinion that the matter requires thorough enquiry on the factual position as well as the authenticity of these documents, which cannot be dealt with by this court. Therefore, it is in the interest of justice to refer the matter to the respondent No. 3, i.e., DRM, Central Railway, Jhansi to refer this dispute to the concerned Estate Officer to proceed with the matter in accordance with the provisions of public premises (Eviction of Unauthorised Occupants) Act, 1971 and in accordance with law. For this purpose, the respondent No. 3 is directed to refer the matter to the concerned Estate Officer within a period of one month from the date of receipt of copy of this order with direction to the Estate Officer to expedite the matter and thereafter decide it within a reasonable period, as the applicant is a retired person and matter cannot be kept pending for long. It is made clear that the respondent No. 3 will give specified time bound period for decision of the matter by the Estate Officer. The applicant is also directed to co-operate with the proceedings to be initiated by the Estate Officer.

16. In view of the aforesaid directions Annexure A-1 will be kept at abeyance till the matter is referred to the Estate Officer and once the matter is referred to the Estate Officer ~~the~~ the applicant is at liberty to make an appropriate prayer before the Estate Officer for stay of operation of the said order, if ~~he~~ ~~he~~ desires.

17. So far as the second prayer of the applicant with regard to the extending him benefits of complimentary pass being stopped from the year 1985 on the basis of non-vacation and unauthorised occupation of Railway Quarter

is concerned, the respondents are directed to consider the prayer of the applicant on his representation to be filed by the applicant within a period of four weeks from the date of receipt of copy of this order and to pass an appropriate order in accordance with law ^{thereafter} within a period of two months after giving him an opportunity of being heard. The applicant is also at liberty to supplement his representation with relevant documents, if he so desires.

18. In view of these observations and directions, this O.A. stands disposed of with no order as to costs.

Shyama Dogra
(Mrs. Shyama Dogra)
Member (J)

'MA'

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पूरांकन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अंगेक्षित:-

- (1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
- (2) आवेदन श्री/श्रीमती/शु.के काउंसल
- (3) प्रत्यक्षी, श्री/श्रीमती/शु.के काउंसल
- (4) फिलॉसॉफी, जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

Lakhan Lal Gupta
H B. Shrivastava

Thomas
उप निदेश
16/8/03

Issued
on 10.3.03
PS