

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

Original Application No. 350/01387/2015

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial
Member Hon'ble Ms Jaya Das Gupta, Administrative Member

Ahmad, son of Late Mohammad Jalil,
Residing at Quarter No.106 D, North Colony,
Eastern Railway, P.O. and P.S. Sahibganj,
Jharkhand- 906119.

.....Applicant

-Vs -

1. Union of India & ors.
Through the General Manager,
Eastern Railway, 17, N.S.Road,
Fairlee Place, Kolkata-700001.
2. The Chief Personnel Officer,
Eastern Railway, 17, N.S.Road,
Fairlee Place, Kolkata-700001.
3. The Chief Cashier (JAG)
Eastern Railway, 17, N.S.Road,
Fairlee Place, Kolkata-700001.
4. Sr. Divisional Finance Manager,
Eastern Railway, Malda Division,
Malda-732101.
5. Divisional Finance Manager,
Eastern Railway, Malda Division,
Malda-732101.
6. Divisional Railway Manager,
Eastern Railway, Malda Division,
Malda-732101.

.....Respondents

For the petitioner : Mr A.K.Gayen, Counsel
For the respondents : Mr A.K.Banerjee, Counsel

Date of Hearing : 20 .09.2016.

Date of Order : 28th -09-2016.



ORDER**JUSTICE V. C. GUPTA, JM:**

The applicant Ahmad who is posted in Malda Division as Senior DC as Cash and Pay moved this application under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs :

- a) *The letters dated 16.09.2013 and also 18.12.2013 along with report thereon as appearing in Annexures A-7 and A-8 herewith be quashed and/or set aside forthwith and the steps taken in pursuance thereof be declared as void and inoperative as well as liable to be quashed and/or set aside.*
- b) *The impugned reasoned order dated 12.08.2015 cannot be sustained in the eye of law as the same is not permit under the provisions of the public premises (Eviction of unauthorised occupants) Act, 1971 and hence the same is liable to be quashed and/or set aside;*
- c) *Direction be made upon the respondents to allow the applicant of retention of quarter situated in the former station at Sahebganj or any other station nearby to the Sahebganj station for the interest of justice.*
- d) *An order of permanent injunction restraining the respondents to deduct the huge rate of amount straightway from the salary of the applicant with immediate effect without any further delay;*
- e) *Directions be made upon the respondents to refund the deducted amount illegally recovery from the applicant on account of damage rent alongwith accrued interest thereon;*
- f) *Such further order or orders, direction or directions be made as may be deemed fit and proper."*

2. For deciding this application the facts in brief are that the applicant was on promotion posted in Sahebganj. He was allotted a residential quarter 106/D, North Colony, Sahebganj. The applicant was transferred from Sahebganj to Malda Town on 04.06.2012. The applicant joined the transferred post. The respondents when called upon the applicant to vacate the aforesaid quarter the applicant did not vacate the same on the pretext that his children are studying in School near the quarter and mother of the applicant is suffering from several



ailment and is being treated by a physician in a place of practice near to his quarter. On 12.2.2013 the applicant's mother made a representation before the competent authority on behalf of the applicant for retention of the aforesaid quarter on the ground of her ailment. He also involved politician to get the permanent retention of the quarter and for that he got a letter of Shri Rabindra Nath Chatterjee, the MLA of West Bengal addressed to Mr Adhir Choudhury, the Minister of State of Indian Railways for permanent retention of the aforesaid quarter by the applicant. The request was accepted to retain the residence till 15.04.2013 with a stipulation that the applicant will pay normal rent from 15.6.2012 to 5.8.13 and from 6.8.2013 to 15.4.2013 on double of the rent. The applicant in-spite of expiration of period of that extension did not vacate the premises and made another representation on 9.10.2013 for retention of the quarter on educational ground of his son till March 2014. But no extension was granted. Then her mother moved another representation for retention of quarter on 27.12.2013. The copy of the representation moved by the mother of the applicant has been annexed with O.A

3. Earlier to that the request for retention of quarter was declined on 10.4.13 and 16.9.13 and recovery of penal rent was ordered. Another order dated 18.12.2013 was also issued to the applicant to pay the damages for illegal occupation of the quarter. An O.A No.239 of 2014 was filed to set aside the aforesaid order and to issue direction to decide the representation dated 27.12.2013. However, the O.A was decided on 3.6.15 in the following terms:

"Hence, this O.A is disposed of with direction to the Respondent No.1 to consider and dispose of the representation/appeal dated 27.12.2013 and communicate the result thereof, to the applicant in a well reasoned order within a period of 45 days from the date of receipt of a copy

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of this order. Upon such consideration, if it is found that the applicant is entitled to the benefit, as claimed by him, then the same be granted to him within a period of 30 days there from. If in the meantime, any decision has already been taken on the representation/appeal dated 27.12.2013 but the result has not been communicated to the applicant the same may be communicated to the applicant within a period of 15 days from the date of receipt of a copy of this order. We make it clear that we have not gone into the merit of the matter and therefore all the points raised by the applicant are left open for consideration of the respondent No.1."

4. In pursuance of the aforesaid order a detailed speaking order has been passed on 12.08.15 (Annexure A-13) which is extracted herein below:

"In pursuance of Hon'ble Central Administrative Tribunal, Calcutta Bench's order passed on 03.06.2015 in O.a.350/00239/2014, I have gone through the order of Hon'ble Tribunal, concerned file, appeals of Shri Ahmed and the relevant Railway Circulars and thereby pass the following orders :-

In terms of the order of the Hon'ble CAT, speaking order was to be passed in respect of the applicant's appeal dated 27.12.13. From the file it is seen that applicant himself has not made any appeal on 27.12.13. However, in the annexure of the petition i.e. O.A.No.350/00239/2014, appeal dated 27.12.2013 has been made by the mother of the applicant, which is addressed to GM, E.Railway, although in the extant Railway procedures the applicant himself has to appeal but in this case it is seen that the mother of the applicant has only appealed for retention of quarter.

Sri Ahmed, ADC/IOC/Sahibganj had been transferred by Sr. DFM/MLDT vide office order No.A/MLDT/C&P/Posting dated 31.05.12. Sri Ahmad has joined as Sr.DC/Cash)/MLDT at Cash & Pay Office, Malda on 05.06.12. On 21.09.12 the application for retention of Quarter No.106/D, North Colony at Sahibganj had been submitted by Sri Ahmad on the ground that his daughter was studying at St. Xavier's School, Sahibganj and the quarter was to be retained for the period from April, 2012 to March, 2013. Consequently, as per extant rules, Sri Ahmad was allowed to retain Quarter No.106/D, North Colony at Sahibganj upto 15.4.2013 on academic ground, in terms of RBE 43/2011 as per which, in the event of permanent transfer, retention of Railway accommodation is allowed on educational ground to cover the current academic session plus fifteen days.

In terms of Railway Board's RBE No.146/92, circulated vide Serial No.E.866/Vol.VI dated 23.12.92, any staff can retain the quarter on educational ground in order to cover the current academic session only i.e. till the end of academic scholastic session. In the instant case Sri Ahmad was allowed to retain the



quarter upto 15-04-13 i.e. end of academic session and hence occupation beyond this period stands unauthorised as per extant Railway Rules.

It is further noted that in the appeal, the matter of the applicant has quoted CPO's serial No.39/97 for further retention of railway quarter till December 15 on medical ground. This circular is however, not relevant as the same deals with Retired Employees' Liberalised Health Scheme (RELHS) and not for retention of railway quarter.

Vide letter dated 09.05.13, Sri Ahmed Sr.DC(Cash)/Malda had also appealed for permanent retention of the Railway Quarter on the ground of his mother suffering from Cardiac disease, Asthma and Sytica. In this connection, it is mentioned that there are no extant rules whereby permission can be granted for permanent retention of Railway quarter. The benefit of retention of railway accommodation on medical ground is admissible in case of severe illness of railway employee himself or any member of the employee's family. As per note of Master Circular No. 49, a member of family means husband or wife, as the case may be and, child/children only. Dependent relatives such as widow mother, dependent brother or sister are not to be included for purpose of these concessions. In the instant case, the retention of railway accommodation on medical ground is not permissible for hospitalisation, treatment etc., of mother of railway employee.

Shri Ahmad was allowed to retain his quarter at Sahibganj from April, 2012 to 15th April, 2013 on academic ground. In any case, even if, retention was admissible on medical ground, which in this case is not, Note-V of Master Circular No.49 stipulates that permissible period for retention of quarter on the ground of sickness and/or education will run concurrently and not in separate spells. Thus, his application for retention of quarter at Sahibganj on medical ground is not acceptable.

Vide letter dated 12-02-13 the mother of Sri Ahmad has represented to GM, E. Railway for permanent retention of railway quarter on medical ground as well as under the rules for existing electrified suburban section wherein retention of quarter at previous place of posting is permitted. Reference to para 1.4 of CPO's Serial No.146/92 has been made and a claim of similar benefit has been urged under this serial.

Since the above circular is applicable only for staff posted to electrified suburban area viz. Howrah & Sealdah, the same is not applicable for Malda Division as the whole of Malda Division including the Malda -Sahibganj route is not electrified suburban area.

Hence the appeal of mother of Sri Ahmad dated 27.12.13 cannot be considered as none of the reasons given by her hold good for retention of quarter beyond the stipulated period already allowed to Shri Ahmad. Any retention beyond this period will be



treated as un-authorised occupation and he is liable for payment of damaged rent as per extant rules.


Allowing Sri Ahmad, Sr.DC (Cash), Malda to retain quarter at Sahibganj will also be detrimental to the overall welfare of the Railway employees by jeopardizing quarter management system of the railways.

In view of the above, the appeal dated 27.12.13 from the mother of the employee as well as other appeals of Sri Ahmad cannot be acceded to as the conditions stated do not fall within the railway's extant rules on the subject.

The appeal is disposed herewith."

5. Aggrieved by this order dated 12.8.2015 the present application was filed praying for quashing of letter dated 16.9.2013, 18.12.2013 and 12.08.2015.

6. The application has been contested by the respondents by filing reply. The application was contested on the ground that the retention of quarter was allowed to the applicant from April 2012 to April 2013 on academic ground. It is also contended that if the retention was also sought on the medical ground in view of the Note V of the Master Circular No.49, the retention of the quarter on the ground of sickness and/or education will concurrently and not in a separate spells. It was further contended that para 1.4 of Circular dated 13.12.1992 would not be attracted because entire Malda Division is non electrified and all trains are fully diesel run and the facility of electrified suburb's provision is not applicable at all. The applicant was granted the benefit of extension of full academic year of 2012-2013. The instruction contained in RBE 60/2004 para 4 envisages that retention of quarter on medical ground should be forwarded by the Railway Medical Doctor of Railways and recommended by the Chief Medical Director of the Railways but applicant has not submitted any such document and submitted old private diagnosis and investigations of 2009. Moreover, all the medical certificates of 2009 are back dated. Hence on medical ground the applicant is not entitled any extension for retention of quarter. It was further



submitted that even in the electrified suburban there shall be no absolute right to retain the residential accommodation but it has certain conditions and on the administrative satisfaction of the Railway authorities. If Railway authority certify that concerned employee can conveniently commute from the former station to the new station to perform his duty without loss of efficiency and the employee is not required to reside to an earmarked railway quarter only in that event applicant may be allowed to retain the residential accommodation at the former station. It was further submitted that the Railway Board Circular having force of statute hence, the applicant cannot flout the same. The Railway authorities are competent to decide the rent and panel rent and also the damages for unauthorised occupation in terms of the Railway Board Circular. Therefore, the order of recovery of penal rent and damages cannot said to be illegal.

6. Having considered the rival submissions of the counsel of parties and going through the records we are required to analyse the fact of this case and the impact of provisions of Railway Board circulars/instructions as well as of Public Premises (Eviction of Unauthorised Occupants) Act 1971.

7. That the applicant was transferred to Mālda Division in the year 2012. He was allowed to retain the quarter from 5.6.12 to 15.4.13. on the ground of education of children to complete the academic session of the year.

7.1. That the applicant taken the recourse for seeking extension against the Railway Circulars after 15.4.13. The applicant alone being the Railway employee may seek extension but not by any other family member.

7.2. The applicant initially applied for retention for a period of one year on the ground of illness of his mother and also on the ground of completion of academic session of his son, which was allowed on the terms of the Circular of

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the Railway Board. The applicant thereafter, applied for extension of the accommodation till March 2014 on the ground of education of his son as he took admission in Sahebganj. Thereafter, his mother again applied on 27.12.2013 to retain the accommodation till March 2015. The claim made on 27.12.2013 by mother of applicant has been declined by a reasoned order. The perusal of the aforesaid order reveals that it has been passed strictly in accordance with the Railway Board Circulars issued from time to time.

7.3. The applicant has not pleaded anywhere that he has vacated the premises occupied by him at his former station. The applicant has also not pleaded whether he occupied the earmarked official residence at the place where he has been transferred.

7.4. The place of new posting is not a electrified suburban area and as such the benefit of para 1.4 of RBE 92/1990 could not be extended. For ready reference para 1.1 and 1.4 of RBE No.8/90 under the subject "Retention of Railway quarter for Railway employees" is reproduced herein below:

1.1. Permanent Transfer

(i) A railway employee on transfer from one station to another which necessities change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of 2 months on payment of normal rent or single flat rate of licence fee /rent. On request by the employee, on educational or sickness account, the period of retention of railway accommodation may be extended for a further period of 6 months on payment of special licence fee, i.e double the flat rate of licence fee/rent. Further extension beyond the aforesaid period may be granted on educational ground only to cover the current academic session on payment of special licence fee.

(ii) Where the request made for retention of railway quarter is on ground of sickness of self or on a dependant member of the family of railway employee, he be required to produce the requisite Medical Certificate from the authorised Railway Medical Officer for the purpose.



(iii) In the event of transfer during the mid school/ college academic session, the permission to be granted by the competent authority for retention of railway accommodation in terms of Item No.(i) above will be subject to his production of necessary Certificate from the concerned school/college authority.

1.2.-----

1.3.-----

1.4. An employee posted at a station in the electrified suburban area of a Railway may on transfer to another station in the same electrified suburban area, may be permitted to retain the railway quarters at the former station on payment of normal rent/flat rate of licence fee/rent provide:-

the Railway administration is satisfied and certifies that the concerned employee can conveniently commute from the former station to the new station for performance of duty without loss of efficiency, and

the employee is not required to reside in an earmarked Railway quarter."

The authorities while passing the impugned order rightly held that the aforesaid circular is not applicable in case of the applicant.

8. So far as the plea raised by the applicant that Railway authorities has no power to determine the penal rent or pass any order for recovery for the same in view of provisions contained in an special Act, the Public Premises (Eviction of Unauthorised Occupants) Act 1971 is not sustainable in view of a Full Bench decision of the CAT Allahabad Bench in **Ram Poojan vs. Union of India & Ors. (1996) 1 ATJ 540**. The similar question has been gone into by Full bench of CAT Allahabad and the Bench after considering several judgments of other superior Courts held that it was apparent that retention of quarter without seeking permission on occurrence of various events enumerated therein, viz, transfer/retirement/removal etc. the cancellation/ termination beyond permissible/ permitted period indicated in all above cases would be automatic. So far as question of recovery or rent /penal rent without resorting the

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procedure laid down in Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is concerned the Full bench held that procedure under 1971 Act is only alternative remedy but is not the only remedy. As no new right is created under 1971 Act, the recovery can be made pursuant to the Administrative instructions issued. It has been further held that Railway can deduct the dues from salary as per rates fixed by Railway Board in its circulars having force of statute. It has been further held that the provision of 1711 IRME and subsequent Railway Board circulars supplement the provision in para 1711 and do not supplant them nor they are inconsistent with para 1711. Hence in view of the law laid down by full bench there is no force in the plea raised by the applicant. The applicants Counsel relied upon a Judgement of Hon'ble Supreme Court in Allaahabd Bank V. A.C. Aggarwal, 2013 (2) Supreme 464 and submitted that in view of the fact that the Public Premises Act is special Act hence shall supersede over the Circulars of Railway Board. He relied upon para 17 and 18 of the judgement which are extracted herein below;

17. Reference may also be made to section 14 of 1972 Act, which reads as under:

*"Section 14. --Act to override other enactments etc.-
The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any other enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."*

18. *In view of the plain language of the above provision, which contains a non-obstanate clause, every eligible employee is, notwithstanding any thing inconsistent contained or instrument or contract is entitled to gratuity. Therefore, even if the respondent had opted for pension, he could have legitimately claimed gratuity without being required to refund the amount of pension already paid."*

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The submission of the applicants Counsel is not sustainable because the provision of overriding effect as contained in section 14 of Gratuity Act, 1972 are not contained in Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Moreover the respondents have the alternative to proceed in accordance with the aforesaid Act as held in **Ram Poojan's case (supra)**.

9. So far as the question of corrigendum dated 26.4.2007 is concerned the same is quoted as under:

"Index No.1049

RELHS correction of serial no.39/97

Serial No. 47/97 No. E/886/Vol.V(loose) Dt. 30.04.97

Sub: Grouping or quarters for retention of quarters at old station on transfer

The competent authority in consultation with the organised labour have decided that the Rly Staff transferred within the following sections and for the specific stations, of Asansol, Dhanbad and Danapur Division may be permitted to retain their Rly Quarters at old station on payment of normal rent keeping in view both the administrative and operational conveniences subject to following stipulations;

- (i) Essential Staff should be excluded from arrangement as quarters are earmarked for such post.*
- (ii) No package allowance will be paid if the quarter is retained by the staff concerned in old station.*

This issues with concurrence of FA & CAO. (F&B).

ASANSOL

DANAPUR

DHANBAD

1.JSME-BDME

1.DNR-PNBE

1.DHN-BHULI-KDS

2.DGR-DCCP-OYR

2.GHZ-MKA

2.DHN-GMO

3.STN-BRR-MMU

3.DHN-KTH-PEH-SNMY

4.ASN-KIAPUR

4.BRKA-PTRU-KDRE

5.UDL-DZSY

5.CPU-DERA(OBRADAM)

6.DHN-GMO-GJD

(ONLY FOR traction staff)

7.GMO-DGD-GRP-PUS

8.CPU-RNS

9.GMO-PEH

10.KQR-GJD

11.GMO-KGR(KODARMA)

12.GMO-HZD

(Signature)

13.BRWD-DTO

14.OBRA-SGHL-SKTN"

The aforesaid is not creating an absolute right for retaining the residential accommodation but is available under certain restrictions contained therein. Moreover how this will apply in the case of applicant has neither been pleaded nor established. As per circular the satisfaction of the Railway authorities is lacking in the case in hand. More over the Railway Authorities rightly found that case of the applicant does not fall under the provisions of the above corrigendum.

10. Hence we are of the view that no interference is warranted in the impugned order or the earlier orders passed for recovery and sought to be set aside.

10. Before parting with this case we would like to observe that applicant has no right to occupy the quarter beyond the permissible period, and his possession is unauthorised which prima facie amounts to a grave misconduct. He has already granted sufficient extension as per his request. Therefore, he is not only be liable to pay penal rent but also subject to disciplinary proceedings.

11. In view of the above we hope and trust that the applicant must have vacate the quarter by now as he prayed the retention up to March 2015 in the last which has already expired much before. If the applicant is still in occupation of the quarter, the Railway authority shall take appropriate action by initiating disciplinary proceedings for this misconduct of the applicant.

Hence we dismiss the O.A with cost.

(Jaya Das Gupta)
Administrative Member

(Justice V.C.Gupta)
Judicial Memberpg