

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

OA No.1551 of 2013

Reserved on: 22.09.2016  
Pronounced on: 6.10.2016

Present:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER  
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

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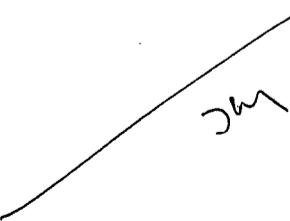
Asish Kumar Chatterjee, son of Late Kishore Mohan Chatterjee, working as Senior Technician/CS/BDS Ticket Nos. 1459-E Rly/Howrah, residing at Nuripara Main Road (Boro Taldanga) PS & PO Chandanagar, District-Hooghly, Pin-712 136.

.....Applicant

For the Applicant: Mr.S.Gupta, Counsel

-Versus-

1. Union of India service through the General Manager, Eastern Railway, Fairlee Place, 17, Netaji Subhash Road, Kolkata-700001.
2. The Chief Personnel Officer, Eastern Railway, Fairlee Place, 17 Netaji Subhash Road, Kolkata-700 001.
3. The Divisional Railway Manager, Howrah, Eastern Railway, Howrah-711001.
4. The Additional Divisional Railway Manager, Howrah, Eastern Railway, Howrah-711001.
5. The Senior Divisional Personal Officer, Eastern Railway, Howrah-711001.
6. Chief Works Manager, Jamalpur Workshop, Eastern Railway, Jamalpur, Munger, Bihar-811214.



7. Workshop Personal Officer, Jamalpur Workshop, Eastern Railway, Jamalpur, Munger, Bihar-811214.  
 ....Respondents

For the Respondents: Mr.S.K.Das, Counsel.

## ORDER

### MS.JAYA DAS GUPTA, AM:

The Applicant, Asish Kumar Chatterjee, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a. An order be passed quashing and/or setting aside the order passed by the Divisional Railway Manager in memorandum no. E/PB/CS/Damage Rent/12 dated June 6, 2013 being annexure A/16 hereof;

b. An order be passed quashing and/or setting aside all or any steps taken in pursuance of the order dated June 6, 2013;

c. An order be passed quashing and/or setting aside the order being no.E7/Colony/unauthorised occupation/Pt-II dated January 8, 2009 and all other proceedings made thereon;

d. An order be passed directing the respondent authorities to withhold and/or desist from realising the damage rent from the applicant;

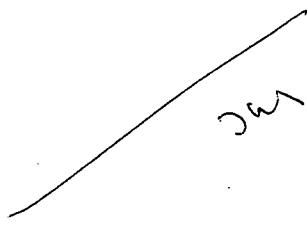
e. An order be passed directing the respondent authorities to return the damage rent already deducted from the salary of the applicant; along with accrued interest thereon;

f. Costs;

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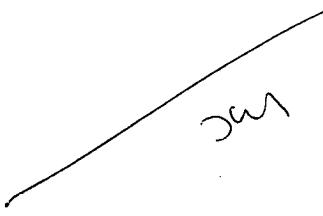
g. Such other and/or other order or orders as may be deemed fit and proper for the ends of justice."  
(extracted as such)

2. Tensely, the case of the Applicant, is that he was employed under the Indian Railway since 08.01.1980. Presently, he is working as Senior Technician at Bandel Car shed, Howrah Division Eastern Railway. He was previously working as Technician Grade I in DCS Shop of Eastern Railway Workshop at Jamalpur. While working at Jamalpur, he was allotted a Railway Quarters bearing No. 492/CD II type at Rampur Colony with effect from July 1, 1982. In December, 2000, the Chief Personnel Officer, Eastern Railway invited option for redeployment in various divisions under various new authorities from the posts in Workshop which has been rendered surplus. The applicant has given his option for his posting at Howrah Division and consequently, he was posted at Bandel under Howrah Division from June 18, 2001. As the applicant could not get quarters at Bandel and as the private accommodations were too costly for his means, his ailing parents and family continued to stay in the erstwhile quarters which he occupied at Jamalpur. It is the case of the applicant that he has made representations to the competent authority for reposting him back to Jamalpur but such representations were kept pending. The Respondents issued an

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order dated 01.01.2009 intimating the applicant that damage rent for illegal occupation of the quarters at Jamalpur from July, 2001 to November, 2008 has been calculated at Rs.4,59,065/- which will be deducted from the salary of the applicant from June, 2009. Finally on January 21, 2010 the authorities issued vacation report of the said quarters with effect from January 21, 2010. By an order dated 30<sup>th</sup> March, 2010 the Chief Works Manager, Jamalpur Eastern Railway demanded damage rent amounting to Rs. 27, 923/- from the applicant for illegal occupation of the said quarters for the period October, 2008 to January, 2010. It is the applicant's submission that finding no other option, he has filed this Original Application for redressal of his grievance.

3. Respondents filed their reply contesting the case of the applicant. Their stand is that the while the applicant was working at Jamalpur Workshop he was allotted Railway quarters bearing No. 492/Rampur Colony but after his transfer to Howrah Division he did not vacate the quarters and retained the same unauthorizedly without any intimation to the administration from July, 2001 to January 20, 2010. He vacated the said quarters and handed over the said quarters to new allottee Sri Udeswar Harizan, OS/DPS/JMP on and from 20<sup>TH</sup> April, 2010 (sic). Accordingly, damage rent including electric and water charges

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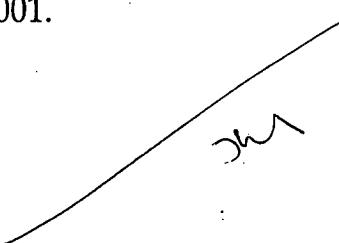
were calculated for unauthorized occupation of the quarters for the period July, 2001 to January 20, 2010. The applicant made an appeal dated 05.04.2012 and the appellate authority disposed of the appeal of the applicant vide order dated 07.05.2012/12.6.2012. Thereafter he preferred another representation to DRM, Eastern Railway, Howrah for waiver of damage rent due to retention of Rly Qrs at Rampur Colony, Jamalpur. Aggrieved by the deduction of damage rent, he filed OA No. 183 of 2013 which was disposed of by this Tribunal with direction to dispose of the appeal of the applicant dated 27.2.2012 preferred to DRM, Howrah. As per the order of the CAT, the representation of the applicant was considered and speaking order was passed against which the present OA has been filed. It is the case of the Respondents that all action was taken strictly in accordance with Rules. Hence, they have prayed for the dismissal of this OA.

4. We have heard the learned counsel for both sides and perused the records.

5. The order dated 14.6.2001 regarding posting after inviting options at page 24 of the OA reads as under:

"Sub: Redeployment of workshop staff against new activity in Howrah Divn.

Ref: CPO/CC's letter No. E/LP/123/Surplus/WS dt.22.5.2001 & Elc/Creation/EMU/BDC-NH dt. 30.5.2001.



In terms of CPO/CC's letter dated above, the following workshop staff who had opted for HWH Divn & declared medically fit in B/1 Medical category re redeployed in HWH Division against now activities on his existing pay grade & capacity w.e.f. 18.6.2001.

.....  
B. For maintenance of 3017/3018 & 3045/3046 at HWH Stn.

1.A.K.Chatterjee, Tech.I 22252 DCS 1104320  
5500/-, 4500-7000/-  
.....

Accordingly, equal no of supernumerary posts of Tech. III are transferred to HWH Divn. In the chain of above incumbents in terms of CPO/CCC's letter No. E/LP/123/Surplus/WS dt. 11.6.2001.

Their lien and seniority will be maintained in this respective shops his unit. They are entitled for joining times, transfer passes etc as admissible under the extant rules. Their LPCs service record and leave A/Cs will follow.

They should be instructed to report to the Sr. DPO/HWH for further posting order. They should be released with necessary identity slips containing their names. Father's name Desig T.No./Shop father's name identification marks specimen signature and one pass port size photograph duly attested b y one the Gazetted Officer.

This issues with the approval of CWM/JMP.

Sd/-  
Chief Works Manager, ER/JMP"

6. From the above, it is clear that the applicant had opted for Howrah Division and accordingly he was transferred and

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posted to the said place. The said order also shows that equal number of supervisor post of Tech. III was transferred to Howrah Division inasmuch as the applicant was transferred to Howrah Division along with the post. He is, therefore, not a surplus employee as contended by him.

It is also apparent from Annexure-A/1 dated 27.10.2001 which is an application submitted by the applicant to the Chief Personnel Officer, Kolkata that admittedly, he had opted for redeployment at Howrah Division. He had also admitted that such option was given in haste without considering the conditions of his parents who were residing in the Railway Quarters at Jamalpur and hence he has prayed for his reposting to Jamalpur Workshop. Such letter dated 27.10.2001 is extracted herein below for ready reference:

"To  
The Chief of Personnel Officer,  
Eastern Railway,  
Kolkata.

Through: DRM/Howrah:

Sub:-Prayer for my re-posting in Jamalpur Rly Workshop as a Special Case on humanitarian Ground.

Ref:-Your letter No.  
ELC/Creation/EMV/BDC dt. 30.5.2001 and  
CWM/JMP's L.No. E/R(28)/GDCE/Pt. II dt.  
1-6-2001.

Sir,

With due respect, I beg to state that I was previously working as Tech-I in, DOS shop of Jamalpur

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Rly. Workshop vide my Ex. T.No.22252 and I was discharging my duties with full sincerity.

Subsequently, I had opted for my redeployment in Howrah Divn. in response to your office letter No.E/LP/123/Surplus/WS, dt. 15.12.2000 and as such I was released from Jamalpur workshop on 19.6.2001 for redeployment in Howrah Divn. vide letter under reference on the condition that my lien would be maintained for 2 years in my parent shop at Jamalpur.

I have accordingly been acted as Tech-I in Carshed/Bandel for maintenance of Bandel-Naihati EMU Coaches vide, T.no.1459 and discharging my duties satisfactorily.

In this connection, I may convince your honour that I had actually opted for Howrah Divn. in haste without consulting my parents who are residing in my Rly. Quarter at Jamalpur and as such they are pressing me to return back to Jamalpur workshop.

Besides the above, my parents are too old and sickly and they often remains sick. There is no other male member in my family to look after them. I am also experiencing much difficulties in looking after them from Bandel.

Over & above, my wife and children are also leading incared life in my absence and I am unable to bring them at Bandel for want of a Rly. quarter as I am unable to procure a private house on high rent which would be unmanageable from my meagre salary.

Since my lien is still being maintained in my parent shop at Jamalpur, I wish to go back to Jamalpur workshop on my former post as admissible under the rules.

I, therefore, graciously request your honour to kindly to re post me in Jamalpur workshop on my former post as a special case on humanitarian ground at an early date for which I shall remain ever grateful to you.

Thanking you,

Yours faithfully,  
Sd/-

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(A.K. Chatterjee)  
Tech-I/T.no. 1459  
Car Shed/Bandel."

7. The Respondents, as it appears took note of all the points raised by the applicant in his representation submitted by the applicant against the order of payment of damage rent and finally rejected the same in memorandum dated 6.06.2013. The said Memorandum dated 06.06.2013 reads as under:

"EASTERN RAILWAY  
No. E/PB/CS/Damage Rent/12 Howrah, dated, the 6<sup>th</sup> June, 2013.

MEMORANDUM

In obedience to the judgment of Hon'ble CAT/Calcutta in O.A. No. 183 of 2013 dated 01.04.2013 – Ashis Kumar Chatterjee –VS- Union of India & Others, I, the undersigned working for gain as DRM/HWH and carefully gone through the appeal dated 27.02.2012 and other facts and circumstances of the cases and observed as under:-

Shri A.K. Chatterjee was working as Tech-I in JMP workshop under Chief Workshop Manager, E. Rly., JMP. In the year 2001, an option was called for filling up of some posts for maintenance of BDC-NH-EMU Coaches while Shri Chatterjee was working at JMP. In response to the said option of Tech-I, he applied for the same. Finally, he was selected and posted under Howrah Division in the year 2001.

Shri Chatterjee while working at JMP was residing in a Rly. Qr. No. 492/CD, Type-II at Rampur Colony at JMP. After his posting in Howrah Division he was not allotted with Rly. Qr. But, his family continued to live in Qr. No. 492/CD-II at JMP from July/2001 to 20.01.2010. He should have vacated the Qr. At his old station. Obviously, he retained the Qr. In question at Jamalpur from July/2001 to 20.01.2010 without any permission of the Competent Authority. So, the period in question was treated as unauthorized occupation of Railway Quarters. Accordingly, damage rent including electric and water charges were calculated for unauthorized occupation during the period from July/2001 to 20.10.2010 which amounts to rs.5,56,920/- (Rs. Five lakh fifty six thousand nine

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hundred and twenty two only). The same amount is being deducted in monthly instalments from his regular salary bill.

He has not agreed with the deduction of damage rent and ultimately went to Hon'ble CAT/Calcutta for filing the instant O.A. case.

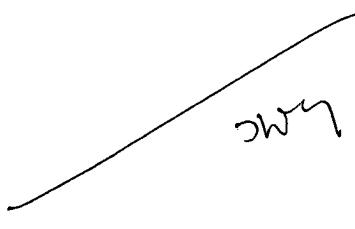
It is pertinent to mention that to justify his dissatisfaction regarding the causes of deduction of damage rent he sought for some information under RTI Act which was also communicated to him in the proper manner by P.I.O. As he was dissatisfied with the order of P.I.O he preferred an appeal to the Appellate authority under RTI Act i.e. ADRM/E.Rly/HWH which has also been disposed of by the Appellate Authority in the proper manner. While Appellate Authority under RTI Act communicated his order, he narrated that Railway Administration of Howrah Division requires some clarification from JMP Workshop regarding the history of his transfer and occupation of Railway Quarter there.

Receiving the judgement of Hon'ble CAT/Calcutta, the matter has been got clarified from the authority of Jamalpur Workshop regarding the case of Shri Chatterjee's occupation of quarters at Jamalpur.

It is clear from the records of Jamalpur Workshop that he was not transferred to Howrah Division as a re-deployed surplus staff, being rendered surplus at Jamalpur Workshop. Rather, he was actually posted at Howrah Division against his own option. As he was not transferred on surplus ground to Howrah Division, he is not entitled to get the benefit of retention of Rly Qr. at his old station for a period of 3 years. Obviously, his retention of Qr. at JMP for the period from July/2001 to 20.01.2010 was without any permission i.e. unauthorized occupation. It warrants recovery of damage rent for unauthorized occupation of quarters.

Under the above circumstances, I am of the opinion that the decision of Railway Administration regarding deduction of damage rent as mentioned above is justified and the plea of applicant for waiver of damage rent cannot be acceded to.

Thus the case stands disposed of.



Divl. Railway Manager,  
E. Railway, Howrah."

8. The applicant has also taken the plea that no recovery of damage rent can be made from him without taking the recourse of the Public Premises (Eviction of unauthorised Occupants Act) 1971 "in short P.P.Act". This fact is not correct. Whether damage rent can be recovered from an employee without taking the recourse to the P.P.Act came up for consideration before this Bench in OA No. 2269 of 2010/ MA No. 495 of 2010 (K.Suryanarayana vs UOI and Others) and this Bench of the Tribunal after taking into consideration the order of the Full Bench of the Allahabad Bench of the Tribunal held vide order dated 1.6.2015 as under:

17. We are relying on a judgment and order passed by the Full Bench of Allahabad, Central Administrative Tribunal in the matter of **Ram Poojan v. Union & India & ors.** reported in (1996) 1 ATJ 540. After considering number of judgments the Full Bench of Central Administrative Tribunal, Allahabad Bench held that the provisions of Para 1711 of the IREM are based on Railway Board's Circulars. Railway Board's Circulars supplement the provisions in Para 1711 and do not supplant them nor they are inconsistent with Para 1711. Para 1711 of IREM deals with recovery of rent. Railway Board's letter dated 17.12.1983) as well as subsequent Railway Board's letters deal with the damage rent as well as revised damage rent. In the said judgment various provisions of the Railway Boards letters were quoted. The Full Bench of CAT, Allahabad Bench held that it was apparent that retention of quarters without seeking permission on occurrence of various events enumerated therein viz.

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transfer/retirement/removal etc. cancellation/termination beyond the permissible/permited period indicated in all the above cases would be automatic. The other provision in the said Railway Board's letter is that retention of quarters by the employee after expiry of the permissible period will be treated as unauthorised and thirdly, he would be required to pay damage rate of rent in respect of the said Railway quarters.

The rates of rent have been categorised as:

- (i) Normal rent;
- (ii) Damage rent which would be double the normal rent or 10% of the emoluments whichever is highest.

18. This Tribunal in para 20 dealing with the submission of the Ld. Counsel for the applicant replying on the decision of the Bombay Bench, in support of his submission that in any event damage rent /panel rent cannot be recovered without resorting to the procedure laid down in the Public Premises (Eviction of unauthorised Occupants Act) 1971, held as follows:

"Procedure under Section 7 of the Public Premises Act was only an alternative remedy but is not the only remedy, as no new right is created and the recovery can be made pursuant to the administrative instructions issued.

The Tribunal also relying on two decisions of Division Bench of CAT, Calcutta Bench held that Railway can recover the dues by deducting from the salary. The Railway authorities can recover the damaged rent from the salary itself, when by the appropriate Railway Board's circular such rates have been fixed, which have got statutory force, and the railway servant must be deemed to be aware of such rates. The Tribunal further held that, when the railway servant was in unauthorised occupation of the railway accommodation the respondents did not commit any illegality in assessing

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the damage rent and recovering the same from the salary of the railway servant. The Railway authorities could recover penal/damage rent by deducting the same from the salary of the Railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of unauthorised Occupants) Act, 1971. The Tribunal while dealing with the submissions of the applicant in the said case that where a vested right created under the provision of para 1711 of IREM could that be taken away by subsequent Railway Board's circulars of 1990. The Tribunal rejected such contention and held that the Railway Board's circulars are general and special orders permitted to be issued under para 1711 (b). There was no inconsistency between the provision of the Railway Board's circular and the provisions of Para 1711.

The Full Bench in para 28 of the judgment in reference to the judgment of, "State of Maharashtra v. Jagannath Achyut Karandikar as to whether the operation of the Statutory rules could be restricted by executive instructions, categorically held that the provision under para 1711 IREM and the Railway Board's circulars have the same status and statutory force. The provisions in the IREM are based on Railway Board's circulars. The Railway Board's circulars supplement the provisions in para 1711 and do not supplant them nor they are inconsistent with Para 1711."

19. That apart the Hon'ble Supreme Court in the case of P.R. Subramaniyam and others reported in 1978 SCC (L&S) 35 held that Railway Board's letters have the statutory force same as the statutory rules under Article 309 of the Constitution of India. Para 3 of the said judgment is set out hereinbelow:

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"3. In the Indian Railway Establishment Code, Volume I are the Rules framed by the President of India under Article 309 of the Constitution. Contained in the said Code is the well-known Rule 157 which authorises the Railway Board, as permissible under Article 309, to have "full powers to make rules of general application to non-gazetted railway servants under their control." The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated as rules having the force of rules framed under Article 309 pursuant to the delegated power to the Railway Board if they are of general application to non-gazetted railway servants or to a class of them."

It is evident from the above decision of CAT that it is not necessary to resort to PP Act for recovery of damage rent.

9. From the record, it appears that the applicant himself admitted that he had opted in haste to go to Howrah Division without thinking the conditions of his aged parents and family. **Therefore, when he was transferred to Howrah Division along with the post from Jamalpur, he should have vacated the quarters allotted to him at Jamalpur after the period provided under the Rules.** The applicant admittedly retained the quarters at Jamalpur beyond the permissible limits. It is not the case of the applicant that although under the rules he was entitled to retain the said quarters, the respondents have illegally imposed the damage rent. Hence, asking for damage rent the respondents cannot be faulted with.

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10. The above being the position of facts and law, we do not see any merit in this Original Application. This Original Application is accordingly dismissed. No costs.

(Jaya Das Gupta)  
Member (Admn.)

(Justice V.C.Gupta)  
Member (Judl.)

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