

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 22nd day of October **2019**

ORIGINAL APPLICATION No. 330/00296 of 2016

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Radhey Mohan Tripathi S/o Teerath Raj Tripathi, R/o Village Makunahi, Post Noonkhar, District Deoria.

.....Applicant.

VERSUS

1. Union of India through General Manager, Northern Eastern Railway, Gorakhpur.
2. Mukhya Raj Bhasha Adhikari, Northern Eastern Railway, Gorakhpur.
3. Deputy Chief Controller Stores (Depot)/C.M.M. Northern Eastern Railway, Gorakhpur.
4. F.A. and C.A.O (Administration), Northern Eastern Railway, Gorakhpur.

Advocates for the Applicant : Shri T.S Pandey/Shri Amresh Tripathi

Advocate for the Respondents : Shri Anil Kumar

ORDER

The present Original Application has been filed by the applicant – Radhey Mohan Tripathi seeking to quash the Provisional Pension Order dated 01.10.2015 by which respondents directed the Bank to recover House Rent of Rs.3,71,801/- to the pension of applicant. He has also prayed to direct the respondents to refund Rs.3,63,825 recovered

during the pendency of O.A. with a further direction in the nature of mandamus commanding the respondents to decide the departmental appeal dated 2.5.2003.

2. It would be pertinent to note that during the final argument, learned counsel for the applicant confined his argument to the issue that the rent is to be recovered under the provision of Rule 7 of the Public Premises (Eviction of Unauthorized Occupant) Act, 1971 (hereinafter referred to as an 'Act'). The said rule 7 of the 'Act' reads as under:-

"7. Power to require payment of rent or damages in respect of public premises.—(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

2 [(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with 3 [compound interest] at such rate as may be prescribed, not being a rate

exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).]

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause 4 [within seven days from the date of issue thereof], why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer. 5 [(4) Every order under this section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice.]".

3. Admittedly, Revised Pension Payment Order dated 01.10.2015 was issued by the respondents wherein direction was also given to recover the arrears of outstanding rent from the pay of the applicant. It be noted that as per argument of learned counsel for the parties, the amount said to be recovered by the respondent is Rs. 3,63,825/-.

4. I have heard and considered the argument of learned counsel the parties and gone through the material on record.

5. Learned for the applicant based his argument on the averments as noted below:-

"5.7 Because admittedly, the impugned order dated 01.10.2015 has been passed by F.A. & C.A.O, N.E. Railway, Gorakhpur for recovery of rent of

premises which was allotted to the applicant is a "Public Premises" and governed by Public Premises Eviction of Unauthorized Occupant Act, 1971 as defined under section 2(c) of the Act, accordingly any order in respect of public premises can only be passed by the "Estate Officer" as defined under section 2 (b) of Act, therefore, the F.A. & C.E.O has no jurisdiction to pass order, hence deserved to be quashed and set aside.

- 5.8 Because in view of section 7 (i) of the Public Premises Act, 1971 any order likewise the impugned order dated 01.10.2015 can be passed by the Estate Officer only and not by the F.A. and C.E.O., therefore, the order is without jurisdiction and deserves to be quashed.
- 5.9 Because any order likewise the impugned order dated 01.10.2015 can be passed by the Estate Officer only and not otherwise as provided under section 2-A of Public Premises Act, 1971 as such the order impugned dated 01.10.2015 is without jurisdiction and deserves to be quashed.
- 5.10 Because according to sub section (3) of Section 7 of the Public Premises Act, 1971 no order shall be passed likewise the impugned order dated 01.10.2015 unless a notice under section 4 of the Public Premises Act has been issued to show cause, which was never issued to the applicant as such, the order impugned deserves to be quashed".

Therefore, learned counsel for the applicant submitted that the amount alleged to be recovered from him, can be so recovered under the provisions of the 'Act' and, therefore, O.A. is to be allowed by quashing and setting aside the said impugned order dated 01.10.2015.

6. On the other hand, learned counsel for the respondents relying upon the case of **Ram Poojan Vs. UOI and Ors.** reported in **1994-96 A.T. Full Bench Judgments page 244** and submitted that the Railway Authorities are at liberty to recover any outstanding amount by taking resort to Railway Boards Circulars or proceeding under the 'Act'. As such, the O.A. challenging the impugned order on the ground that it is violative of the 'Act', cannot be accepted and O.A deserves to be dismissed.

7. In the case of Ram Poojan (supra), it has been held by this Tribunal that:-

"38. (b)Our answer is that retention of accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorized occupation and there would be an automatic cancellation of an allotment and penal rent/damage can be levied according to the rates prescribed from time to time in the Railway board's circular.

39. We further hold that it would be open to the Railway Authorities to 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

unauthorized Occupants) Act 1971. We also hold that resort to proceedings under the said Act is only an alternative procedure which does not debar recovery as per the provisions of the Railway Board's circulars."

8. In view of the law laid down by the Full Bench in the case of Ram Poojan (supra), the respondents have a right to recover the outstanding amount of rent by taking resort to proceedings under the 'Act' or as per provisions of Railway Board Circulars. (Read with advantage Arjun Babloo Tukaral, Vs. G. V. Javalkar, Respondents AIR 1981 Bombay 72).

9. In these circumstances, the action of the respondents to recover the house rent under the provision of Railway Board Circular cannot be faulted with. Accordingly, the contention of applicant that the recovery of the house rent is to be made under the provision of the 'Act' is devoid of force of law and to be rejected. Accordingly, O.A is dismissed. No order to costs.

**(RAKESH SAGAR JAIN)
MEMBER (J)**

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