
(2018) 04 CAT CK 0058

In the Central Administrative Tribunal

Case No : Original Application No. 1461 Of 2017

Laxmi Narayan Meena

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 16-04-2018

Acts Referred:

Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 7

Citation : (2018) 04 CAT CK 0058

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : P.S. Khare

Final Decision : Dismissed

Judgement

1. The applicant was appointed as Loco Steam Khallasi on 22.05.1980 and was posted at Moradabad. In due course of time, the steam locomotive became outdated and steam loco staff became surplus. As per standing instructions, applicant was redeployed and appointed on another post as Assistant Station Master in 1995. While being posted at Moradabad, he was allotted a Quarter No. T-41-C, North Colony, Moradabad in the year 1996. During inspection on 16.09.2011, it was seen that this quarter was sublet. Accordingly, on 20.10.2011, the allotment was cancelled. Applicant made a representation on 27.02.2012. The quarter was got inspected again on 25.07.2012 and on being found that there was no subletting at this time, the cancellation of allotment was rescinded on 03.08.2012.

Meanwhile, the applicant was already transferred to another station by the name Agvanpur which is about 12 km. away from Moradabad on 13.03.2012. On transfer, the staff is allowed retention for two months at normal rent and for some more duration on special rent, however, they have to apply for the same, if they need. In the instant case, the applicant did not occupy the quarter which was meant for his post at Agvanpur on the plea that it was non-liveable. At the same time, the applicant did not apply for retention of the quarter at Moradabad

and eventually vacated it on 21.07.2016 just before his retirement. He retired as Station Superintendent, Agvanpur on 31.08.2016.

2. The retention of quarter for the period 13.03.2012 when he was transferred from Moradabad till date of vacation on 21.07.2016 was treated as unauthorised and penal rent was charged for this period which amounts to Rs.9,02,136/-.

3. Feeling aggrieved, the applicant had preferred the instant OA. The applicant pleads that the allotment of quarter at Moradabad was never cancelled. Further, in case quarter was under his unauthorised possession, proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PPE Act) were required to be initiated and since no action was initiated under PPE Act, penal rent can also not be charged. Applicant also relied upon Master Circular No.49 issued under RBE 39/2007 on 20.04.2007. The relevant parts of this circular are reproduced below:

"10.8. Surplus staff Railway employees rendered surplus and posted at a new station be allowed retention of Railway accommodation already allotted to them at their respective previous places of posting on normal rent for a period of 3 years or till allotment of Railway quarter at the new place of posting whichever is earlier. The period of 3 years shall count from the date of issue of transfer orders.

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12.0 Allotment / retention of non-pooled ear-marked accommodation in the case of transfer, deputation, retirement, etc.

There exists a practice on the Railways whereby residential accommodation is ear-marked as non-pooled for use of nominated senior officials of Railway Units. Such officers, holding ear-marked / non-pooled accommodation, on their retirement, transfer, deputation, etc. may be permitted to retain such accommodation for a period of two months only on payment of normal rent. During this period of two months, if the officer concerned requests for further retention of Railway accommodation, as admissible to him/her in terms of the general instructions governing retention of Railway accommodation in the case of transfer, deputation, retirement, etc., an alternative accommodation for the purpose may be allotted, if feasible, on payment of rent as per extant instructions. All other general instructions governing retention of Railway quarter and charging of rent shall be applicable in such cases. It may be noted that no retention in respect of ear-marked /non-pooled accommodation should be permitted beyond the period of two months.

[Ref: No. E[G]2001 RN4-10 dated 17-9-2002]

13.0 Withholding of DCRG etc. in the case of post-retirement retention of Railway Quarter

To prevent unauthorised retention of railway accommodation by the retired Railway employees, Railway Administration should take following steps to

discourage them from such action : -

i. 'No Claim' certificate should not be given unless the employee after retirement has vacated the railway quarter and cleared all his arrears of rent, electricity and other charges, etc.

ii. The retirement/death gratuity or special contribution to P.F., as the case may be, should be withheld in full for non-vacation of railway quarters not only after superannuation but in all cases of cessation of service, namely, voluntary retirement, death etc. Further, the amount withheld should remain with the Administration only in the form of cash without conversion into any type of security lest the very purpose of withholding full D.C.R.G. should get defeated. It may also please be kept in view that the gratuity should be released, as soon as the quarter is vacated, so that there is neither any hardship to the retired employee or his/her family, nor there is any claim for payment of interest on withheld gratuity for reasons of administrative delay."

4. In case of transfer, two months retention at normal rent is permissible and further retention is under medical grounds for which the Circular No.49 has the following provision:

"(i) The individual Railway employee who seeks retention of Railway accommodation beyond the period permissible under the general policy on medical grounds, may apply to the quarter controlling authority along with certificate from the Railway Medical Authorities. The quarter controlling authority shall process the request for the personal approval of the General Manager.

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(viii) The allottee will have to vacate the premises on or before the expiry of permitted period, and in the event of occupation of quarter after the permitted period of retention, it shall be treated as an unauthorised occupation and (damage) rent will be charged from him/her."

5. Respondents plead that in the instant case, no request was ever made for retention of quarter and hence the period was treated as unauthorised.

6. As against this, the applicant pleads that cancellation of his allotment, was rescinded vide orders dated 03.08.2012, an event which occurred after he was already transferred on 13.03.2012 and as such the quarter was never under his unauthorised occupation and it continued to be allotted to him and hence no penal rent can be charged.

7. The applicant also relied upon the following judgments:

(i) R.Kapur vs. Director of Inspection (Painting & Publication) Income Tax and another, JT 1994 (6) SC 354 decided on 29.09.1994 by Hon"ble Apex Court.

The petitioner therein was posted at Delhi and he was allotted a pooled accommodation for which normal rent was Rs.88/- p.m. He was transferred out

of Delhi in May 1979, however, he did not vacate the quarter at Delhi. The allotment of this quarter was cancelled on 01.07.1979. The petitioner was transferred back to Delhi in 1983 and thereafter the allotment of the said quarter at Delhi was also regularised. The intervening period was treated as under unauthorised occupation and proceedings under PPE Act were started and damage rent @ Rs.1070/- p.m. was also imposed. This decision under PPE Act was challenged and by Court decision the damage rent was reduced to Rs.176/- p.m. However, the damage rent was still not paid by the applicant. Accordingly, gratuity was withheld and "No Due Certificate" was also not issued at the time of retirement.

The Hon"ble Apex Court ruled that balance retiral dues are to be refunded along with interest and the recovery of damage rent could be made by taking action under Fundamental Rule 48A (iv)(C)(ii)(8) only.

(ii) N.C.Sharma vs. Union of India and others, (2004) 3 MhLJ 478 decided by Hon"ble High Court of Bombay on 10.02.2004. The petitioner was posted at Mumbai and he was allotted a Government quarter. He was transferred to Jhansi on 24.10.1991. He applied for retention of quarter at Mumbai, which was permitted upto 05.09.1992 and thereafter up to 31.03.1993. However, the quarter at Mumbai was still not vacated and it was treated as unauthorised w.e.f. 31.03.1993. Penal rent, for the unauthorised retention, amounting to Rs.54,609/- was recovered from DCRG.

Feeling aggrieved, the petitioner filed an OA which was dismissed by the Tribunal. The petitioner approached the Hon"ble High Court. The Hon"ble High Court relied upon the judgment of Hon"ble Apex Court in R.Kapur (supra) and on the reasoning that the prevailing rules took effect from December 1993 whereas he had already retired in October 1993, and the fact that he was transferred back to Mumbai. Hon"ble High Court did not agree with the Tribunal and gave following directions:

"22. Therefore, it is obvious that principles of natural justice have to be adhered to and an opportunity will have to be given to the concerned employee before recoveries or adjustments are effected by the Railway or Government. In the instant case, in our view, merely addressing the letters as noted above, would not by any stretch of imagination mean compliance with the principles of natural justice. There is nothing in the order dated 31st October 1996 which would indicate that prior opportunity was given to the petitioner before adjustments were made from the terminal dues/benefits admissible to him. In this view of the matter, the conclusion of the Tribunal that opportunity was given or that there was no dispute about the dues is contrary to the material placed on record and wholly erroneous. It is difficult to agree with the conclusion of Tribunal on this aspect.

23. For the reasons aforesaid, in our view, the impugned order cannot be sustained. Consequently, the Rule is made absolute in terms of prayer Clause

(a). In view of the decision of the Supreme Court in the case of R. Kapoor v. Director of Inspection (Printing and Publication), reported in 1995 SCC (L&S) 13 Rule is also made absolute in terms of prayer Clause (b). Respondents to make the payment as directed in prayer Clause (b) with interest at 9% p.a. within a period of twelve weeks from today. All concerned to act on an authenticated copy of this order."

(iii) The applicant also relied upon Section 7 of PPE Act. The relevant rules quoted are reproduced as under:

"Power of Require Payment of Rent or Damages in respect of Public Premises

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(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.

[(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 simple 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 within such time as may be specified in the notice, 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."

(iv) Applicant also relied upon the judgment by Hon"ble Apex Court in State of Punjab and others etc. vs. Rafiq Masih (White Washer) and Ors., [(2015) 4 SCC 334] in which follow up directions were issued by DOP&T vide their OM dated 02.03.2016 which were subsequently adopted by Ministry of Railways also. These directions prohibit recoveries in certain situations.

8. The respondents opposed the OA. It was pleaded that while the applicant was posted at Moradabad, he was allotted a quarter and was allowed to occupy the same for his own use. However, when subletting was noticed on 16.09.2011, the allotment was cancelled. When he represented on 27.02.2012, re-inspection was ordered which was done on 25.07.2012. When no subletting was found, the allotment was restored. Even though the restoration instructions were issued on 03.08.2012, this cannot have any bearing on retention of quarter after his transfer to Agvanpur Station which has already taken place on 13.03.2012.

9. As per normal instructions already in force since 19.01.1993 and which was

reiterated on 20.04.2007, the staff wanting retention at earlier station of posting, needs to apply for the same. In the instant case, applicant never applied for such retention and as such the said quarter fell in the category of being occupied unauthorizedly after 13.03.2012.

The instructions for retention of quarter, on a staff declared surplus, are not attracted in this case as he was declared surplus in the year 1995 whereas unauthorised retention is for period after 13.03.2012.

10. It was also pleaded that it is not necessary that in all cases proceedings need to be initiated under PPE Act. The rates for damage rent are already pre-fixed which can be enforced in such circumstances. Imposition of the same and its recovery from DCRG is already permitted by the policy directives referred in para 3 & 4 above. Accordingly, there is no infirmity in the damage rent which has been recovered from the gratuity at the time of retirement. Accordingly, the OA is required to be dismissed.

11. Matter has been heard at length. Sh. P.S.Khare, learned counsel represented the applicant. No one appeared on behalf of the respondents.

12. The applicant was posted at Moradabad and was allotted a Railway quarter. It was for his own use and when it was found to be sublet in September 2011, allotment was cancelled. Subsequent event of another inspection took place in July 2012 when evidence of subletting was not found and accordingly, cancellation of allotment was rescinded on 03.08.2012. The consequences of this restoration of allotment, pertain to the period between 20.10.2011 when allotment was cancelled on this account and 25.07.2012 when it was reinspected, with this restoration, he was allowed to retain the quarter at Moradabad, on normal rent till he was posted at Moradabad.

What this means is that the quarter came back in his authorised possession on normal rent. However, this will remain in force only till 13.03.2012 when he was transferred out to Agvanpur. Once he was transferred out on 13.03.2012 and he joined at another station on 14.03.2012, the applicant had not applied for retention of the quarter at Moradabad as was required under the extant rules. This retention was possible for some specified duration. However, the applicant never applied for it. Therefore, there is no infirmity for the said quarter being treated in the unauthorised occupation w.e.f. 13.03.2012 till it was vacated on 21.07.2016.

13. The allotment of quarter is under certain rules which themselves prescribe that an occupant needs to apply for retention of quarter after his transfer, if there is need.

14. The applicant also relied upon the judgment by Hon"ble Apex Court in R.Kapur (supra) and N.C.Sharma (supra) by Hon"ble High Court of Bombay. The ratio of these judgments is not applicable in the instant case as the applicant was never transferred back from Agvanpur to his previous place of posting, i.e.

Moradabad and the rules permitting recovery of penal rent were already in force since 19.01.1993 and were reiterated on 20.04.2007.

15. The rules quoted by the applicant in respect of "Power of Require Payment of Rent or Damages in respect of Public Premises", authorise the Estate Officer that when proceedings are initiated under PPE Act, the Estate Officer can also order recovery of rent/damage rent. It does not preclude recovery of damage rent in cases where PPE Act proceedings are not initiated.

16. The ratio of judgment in Rafiq Masih (supra) is also not attracted as it is not a case wherein certain excess payments took place which are being recovered. The applicant was actually transferred out of Moradabad on 13.03.2012 to a different station. That station also had a quarter which could be allotted to the applicant but the applicant neither applied for its allotment nor did he occupy the same on the plea of it being non-liveable. Applicant has not produced any evidence to indicate the efforts made by him to get it repaired to make it liveable.

17. In view of the foregoing, there is no fault with the respondents treating the quarter at Moradabad under unauthorised occupation w.e.f. 13.03.2012 to 21.07.2016 when it was eventually vacated. Accordingly, recovery of penal rent as per extant rules from gratuity can also not be faulted. OA is dismissed being devoid of merit. No order as to costs.