

(2011) 12 AHC CK 0110

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 54735 of 2002

Nand Kishore Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Citation : (2011) 11 ADJ 620

Hon'ble Judges : S.P. Mehrotra, J; Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Petitioner by means of the present writ petition has challenged the order dated 26.2.1997 and 6.12.2002 passed by the Central Administrative Tribunal, Allahabad rejecting his original application and the review application. A further challenge has been made to the order dated 8.11.2002 passed by the Railway Authorities as a consequence of the above orders.

2. Petitioner's original application challenging the order of deduction of penal rent from his salary for the period 19.2.1988 to 13.3.1994 and for the refund of the amount so deducted with interest at the rate of 18% was dismissed by the Tribunal.

3. The petitioner was working with the Indian Railways as Cabin Man and he retired on 31.3.1994 as Goods Clerk. He was posted at Allahabad and was allotted official quarter No. 655-B, Loco Colony, Allahabad. He was transferred to Aligarh which order was initially kept in abeyance for some time and ultimately was modified and he was transferred to Kanpur w.e.f. 17.2.1988. He was re-transferred to Allahabad on 22.2.1990. However, during the aforesaid period he retained the official quarter at Allahabad despite posting at Kanpur and continued to occupy it till his retirement without there being any fresh allotment on re-transfer. Accordingly, on account of overstay in the official quarter penal rent was deducted from his salary.

4. We have heard Sri R.K. Ojha, learned counsel for the petitioner and Sri Govind Saran, learned counsel for the respondents.

5. Sri Ojha has advanced two submissions. The first submission is that petitioner's transfer to Kanpur was of a temporary nature and, therefore, he was not supposed to vacate the official quarter particularly when he had been re-transferred. The demand and deduction of penal rent as such is illegal. The second submission is that even if he had not vacated the official quarter on transfer to Kanpur, on his re-transfer to Allahabad he became entitle to the same and, as such, no penal rent could have been charged/deducted from his salary after 22.2.1990 till his retirement on 31.3.1994.

6. It is settled legal position, as is also evident from the Indian Railway Establishment Manual that no Railway employee is authorised to retain the Railway quarter after his transfer/retirement/removal etc. and that the allotment of such official quarter in any of the above contingencies would automatically stand cancelled for which no specific or separate order is required. The retention of official quarter after the expiry of the permissible period on transfer/retirement/removal is to be treated unauthorised and such an employee would be required to pay penal rent in respect of such unauthorised occupation at the rate prescribed.

7. In this connection Railway Board has issued RBE No. 8/90 dated 15.1.1990 on the subject - Retention of Railway accommodation by Railway employees. The aforesaid Railway Board order provides that a Railway employee on transfer may be permitted to retain Railway accommodation" at the former station of posting for a period of two months on payment of normal rent and on request the period of retention of Railway accommodation in particular circumstances may be extended for a period of six months on payment of special or the double the rent. Further extension beyond the six months may be allowed only on education ground to cover the current academic session on payment of special rent. The aforesaid Railway Board order also stipulates that during the period of temporary transfer an employee may retain the official quarter at the former place of his posting on payment of normal rent and that temporary transfer would not be for a period of more than four months, unless there are pressing circumstances in which case it may extend for a further period not aggregating more than four months provided such an order is passed by an authority not lower than the Railway Divisional Manager in case of non-gazetted employees and with the approval of the General Manager in respect of gazetted employees.

8. For the sake of convenience the relevant clause 1.1 and 2 of the aforesaid Railway Board Order dated 15.1.1990 dealing with retention of official accommodation by the railway employees in the event of permanent and temporary transfers are reproduced herein below:

1.1 Permanent Transfer

(i) A railway employee on transfer from one station to another which necessitates

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 employees, 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 grounds of sickness of self or a dependent member of the family of the railway employee, he will 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 (i) above will be subject to his production of the necessary Certificates from the concerned school/college authority.

(2) Temporary Transfer"

(i) During the entire period of "temporary" transfer an employee may be permitted to retain the quarters at former place of posting on payment of normal rent/flat rate of licence fee/rent. Temporary transfer should not, however, be ordered for a period of more than 4 months unless there are pressing circumstances.

(ii) Temporary transfers of non-gazetted employees initially for a period in excess of 4 months or by extension of the temporary transfer for periods aggregating more than 4 months should be ordered personally by an authority not lower than the Divisional Railway Manager. In respect of Gazetted employees, such temporary transfers should be ordered with the approval of the General Manager.

(iii).....

(iv).....

9. Admittedly, petitioner was transferred from Allahabad to Aligarh on administrative ground on 1.1.1987. However, the said transfer was put in abeyance for a period of three months by the order of Divisional Railway Manager and thereafter for a further period of three months. The said stay of petitioner's transfer to Aligarh was. with a specific note that the order directing to vacate the official quarter would be complied with strictly. Finally, the petitioner was ordered to be transferred to Kanpur vide order dated 17.2.1988 passed by Mandal Karmik Adhikari, Uttar Railway, Allahabad with note that report with regard to his working at Kanpur would be submitted every month on consideration whereupon his re-transfer to Allahabad may be considered.

10. On the basis of the above order, it is asserted that the transfer of the

petitioner to Kanpur was of a temporary nature. The said submission appears to be without substance and cannot be accepted for two reasons. First of all it is not an order passed by the Divisional Railway Manager who is a competent authority as per the Railway Board's order dated 15.1.1990 to make a temporary transfer but an authority subordinate to it. Secondly, aforesaid transfer order does not provide for duration of the transfer and in no way shows that the transfer of the petitioner to Aligarh/Kanpur is for a period of only four months. Undisputedly, the petitioner on his transfer from Allahabad had remained posted at Kanpur for a period of two years before his re-transfer to Allahabad and, as such, his above transfer cannot be treated to be a temporary transfer so as to entitle him to retain the official quarter at Allahabad at the normal rent.

11. Second submission of learned counsel for the petitioner is also devoid of any merit. The petitioner once transferred from Allahabad ceased to be the allottee of the official quarter at Allahabad. The allotment of aforesaid official quarter at Allahabad stood automatically cancelled and his occupation thereof became unauthorised. Admittedly, on his re-transfer no fresh allotment of the said official quarter was made in his favour and, therefore, his continuance in the said official quarter even on his re-transfer to Allahabad continued to be as that of an unauthorised occupant. Accordingly, the authorities have not erred in realising penal rent from the petitioner even for the period after his re-transfer to Allahabad

12. Learned counsel for the petitioner has relied upon *S.C. Bose v. Comptroller and Auditor General of India and others*, 1995 Supp (3) SCC 141 to contend that in the absence of any fresh allotment of official accommodation the petitioner cannot be compelled to pay penal rent and damages for the official accommodation retained by him on transfer. In the aforesaid case the employee on being transferred became dis-entitled for official accommodation at the former place of his posting but had become entitled for accommodation in the general pool which was not allotted to him. Therefore, the Court held that his continuance in the accommodation of the departmental pool would not attract penal rent. The facts of the aforesaid case are entirely different. Here the petitioner had not become entitled for allotment of any official accommodation in the general pool and it is also not the case of the petitioner that he was not allotted any accommodation at the transferred place. Therefore, the aforesaid authority does not benefit the petitioner in any way.

13. In view of aforesaid facts and circumstances, we are of the considered opinion that the order of the Central Administrative Tribunal does not require any interference by this Court in exercise of writ jurisdiction. The writ petition lacks merits and is dismissed.