

(2012) 02 PAT CK 0090
In the Patna High Court
Case No : CWJC No. 925 of 2012

The Union of India and Others

APPELLANT

Vs

Arun Kumar Ojha

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 3(q)(v)
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 7

Citation : (2012) 4 PLJR 80

Hon'ble Judges : Shiva Kirti Singh, J;Aditya Kr. Trivedi, J

Bench : Division Bench

Advocate : Arvind Ujjwal, for the Appellant; N. Ganguly, Umesh Pathak and Uma Kant Mishra, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh

1. Heard the parties. Petitioners are Union of India and officials of East Central Railway. They have challenged the order of Central Administrative Tribunal, Patna Bench dated 20.4.2011 whereby O.A. No. 63/2011 was allowed by setting aside the order of the Railway dated 7.5.2010 with a direction to the Railway to refund the damage rent realized in excess of the normal rent within three months from the date of the order.

2. The relevant facts necessary for adjudication of the dispute have been noted by learned Tribunal in paragraph 2 of the impugned order. The applicant (respondent herein) was appointed on the post of Clerk Grade-I/Senior Clerk and he joined at Sonapur on 31.10.1986. He was promoted to the post of Cashier in 1996 and thereafter posted to the post of Senior Cashier in November, 2003. He was transferred under order dated 9.4.2008 from Sonapur to Danapur on the same post. He was relieved from Sonapur on 28.4.2008 but on account of illness, as claimed by him, he joined the transferred place at Danapur on 28.7.2008. On 5.8.2008 he filed an application to the Divisional Railway Manager, Sonapur for

retaining the quarter at Sonapur till March, 2009 on the ground of education of his son. He again filed application dated 2.3.2009 for retaining the quarter till alternative arrangement at Patna or Danapur could be made by him. The applicant did not receive any reply and continued to occupy the quarter at Sonapur. An order dated 21.4.2010 was served upon him to vacate the quarter and hand over the same to the new allottee. Thereafter, the applicant was served with another order dated 7.5.2010 which he challenged before the Tribunal. By that order the Railways imposed damage rent for the period 1.11.2008 to 30.4.2010 amounting to Rs. 1,15,866/- which was to be realized in monthly installments of Rs. 6,437/-. Applicant handed over the quarter to Railway through an application dated 30.6.2010.

3. The amount of damage rent was realized from the applicant (respondent herein) from his salary and in 2011 the applicant approached the Tribunal with O.A. No. 63/2011 for redressal of his grievance. As noticed earlier, the Tribunal granted relief to the applicant.

4. On behalf of the petitioners reliance has been placed upon policy decision and circulars of the Railway Board contained in Board's letter dated 30.11.2000 (Annexure-11) to highlight that the Railway employees are bound by conditions of service formulated by the Railway to the knowledge of all concerned. It has been shown from the provisions in circular dated 30.11.2000 that a Railway employee on transfer is permitted to retain the Railway accommodation at the former station of posting only for a period of two months on normal rent. Thereafter, on request by the employee on educational or sickness ground, the period of retention may be extended for a further period of six months on payment of special licence fee, i.e., double rate of licence fee/rent. Further extension beyond the aforesaid period may be granted on educational ground but only to cover the academic session in which he was transferred, on payment of special licence fee, i.e., double the normal rent. Thereafter, occupation of official quarter becomes unauthorized and is governed by provisions imposing damage rent at a rate pre-determined by the Railway through circulars.

5. From the impugned order of the Tribunal, it appears that the Tribunal has relied upon two judgments, one of the Supreme Court in the case of Union of India (UOI) Vs. Rasila Ram and Others, and another judgment of Bombay High Court in the case of N.C. Sharma Vs. Union of India (UOI) and Others, . On the basis of aforesaid judgments the Tribunal has come to the conclusion that damage rent for unauthorized occupation of Railway quarter can be recovered only by instituting a proceeding u/s 7 of Public Premises (Eviction of Unauthorized Occupant) Act, 1971 (hereinafter referred to as the Act). Since the Railway had not taken recourse to provisions of the Act, the Tribunal came to the finding that damage rent was charged without following the legal procedure and hence, the Tribunal set aside the impugned order of the Railway dated 7.5.2010.

6. On behalf of the petitioners, it has been submitted that the judgment of the Apex Court in the case of Rasila Ram (supra) is not applicable in the facts of the

case because in that case challenge was to usurpation of jurisdiction by the Tribunal in respect of an order passed by a competent authority under the Act. The Apex Court explained the law and held that the Tribunal cannot exercise any jurisdiction over orders of the competent authority passed under the Act. It was explained that service matter over which the Tribunal has jurisdiction cannot be extended so as to interfere with orders passed under the Act on the plea that Administrative Tribunal had jurisdiction over "any other matter whatsoever" granted u/s 3(q)(v) of Administrative Tribunals Act, 1985. This submission on behalf of the petitioners appears to be have substance. Judgment in the case of Rasila Ram (supra) is not applicable to the facts of the present case.

7. So far as similar objection in respect of judgement in the case of N.C. Sharma (supra) is concerned, in that case the Bombay High Court considered the provisions of Railway Service Pension Rules, 1993 and came to the conclusion that use of the words "ascertained and assessed" in respect of dues implies that the dues claimed have been ascertained and assessed through a process of adjudication or determination. Such adjudication or determination must be prior to order allowing recovery of damage rent from retiral benefits. This view was found to be justified even by the principles of natural justice. In that case relating to a retired employee, no opportunity of hearing was afforded prior to passing of order of recovery of damage rent from retiral benefits. On that ground the Bombay High Court set aside the order for recovery. There is substance in the submission on behalf of the petitioners that since the present case does not relate to a retired employee, hence, Pension Rules are not attracted.

8. It may be worthwhile to notice that in the case of Union of India (UOI) and Others Vs. Madan Mohan Prasad, the Apex Court also took similar view as that of Bombay High Court although the relevant provision in that case was Rule 323 of Railway Pension Rules, 1950. In that case the Supreme Court distinguished the case of Wazir Chand Vs. Union of India (UOI) and Others, and some other later judgments because in those cases there had been no occasion to consider the meaning and significance of Rule 323 of Railway Pension Rules, 1950. Under Rule 323 the permissible deductions from retiral benefits were governed by the clause "admitted and obvious dues". The Apex Court held that normal house rent will only be covered under such clause and not penal or damage rent. Thus it stands settled that for claiming damage rent from a retired employee the Railway must take recourse to provisions of the Act. But in respect of serving employees, the matter requires further consideration.

9. On behalf of respondent, it has been submitted that a learned Single Judge of Delhi High Court has in a judgment dated 21.9.2010 passed in Writ Petition (C) No. 5336/2008 (Syed Azhar Ahmed vs. Northern Railway & Ors.) held that since the Legislature has provided a particular Statute, the Public Premises Act, 1971, recourse should have been taken by the Railway to the provisions of the said Statute instead of resorting to its on procedure to recover the rent/damages. The court held that it was strange that for seeking eviction the Railway had taken

recourse to the provisions of the Act but for recovery of damages they had relied upon service rules. According to learned counsel for the respondent the Railway cannot claim any right to realize damage rent from serving employees also without taking recourse to the provisions Of the "Act" for realizing damage rent.

10. We are unable to agree with aforesaid views advanced on the basis of aforesaid judgment of learned Single Judge of Delhi High Court. In several judgments including in the case of Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar, the Apex Court has permitted recovery of even damage rent as per service rules. Further, in the Delhi case a suit had been filed for eviction of the employee and, therefore, the court observed as to why relief of realizing damage rent was not sought under the same proceeding. In our considered view, public policy also does not warrant a view that the employer having power to recover dues of rent or damage rent must always resort to litigation by filing cases before the competent authority under the Act. So far actual eviction is concerned, it requires physical action and that may not be permitted at the hands of executive authorities unless sanctified by an order of a competent statutory adjudicating authority.

11. Hence, in our considered view, the Railway has necessary powers under service rules governing employees who have not retired, to realize special rent as well as damage rent as specified before hand. However, if the concerned employee has a reasonable/bona fide defence then he would be entitled to an opportunity of hearing through representation seeking review which must be considered fairly and promptly. Such post facto hearing is warranted by the principles of natural justice as well as fairness in State action.

12. Annexure-R is a letter of the Railway dated 4.4.2011 which also reiterates the aforesaid principles. As per paragraph-1 of the said letter the Railway authorities are required to issue cancellation of allotment of quarter as soon as the permissible period expires and thereafter notice should be given to the employee to vacate the quarter by specified date otherwise action will be taken for his eviction and also for deduction of damage rent.

13. In our view, instructions in Annexure-R, are of prospective nature and reasonable. When the Railway is forced to seek remedy under the Act for eviction of the unauthorized occupant, only then there may be necessity of avoiding two proceedings and in that situation required damage rent may be deducted after obtaining necessary adjudication under the "Act".

14. So far as the present case is concerned, as noticed earlier, the relevant circular of the Railway Board itself permits overstay for two months on normal rent and for further period of six months on double rent and such period may be extended to cover the entire academic session, if education of children of the concerned employee is a ground for granting extension. A perusal of the impugned order of the Railway dated 7.5.2010 contained in Annexure-8 shows that double rent has been directed to be realized from 1.11.2008 to 30.4.2010

without considering that the respondent/applicant had filed applications seeking permission to stay in the quarter on one or the other ground. Admittedly, no decision on such applications were communicated to the concerned employee before deciding to treat the entire period as period of unauthorized occupation and, therefore, liable for damage rent, if the Railway had taken proper decision and communicated the same to the respondent within a reasonable time prior to determining the period of unauthorized occupation liable for damage rent, we may not have thought of remanding the matter for an academic exercise but in the present case we find that the authorities were required to take some decision in respect of applications filed by the respondent and only thereafter they could have decided the period of unauthorized occupation. In view of the facts discussed in the preceding paragraphs, we are of the view that the order impugned before the Tribunal dated 7.5.2010 has rightly been set aside. That part of the order of Tribunal is, therefore, maintained. However, other direction to refund the amount realized from the applicant (respondent herein) is set aside because we are of the view that the matter requires reconsideration by the Railway authorities. Hence, the matter is remitted to the concerned authority of Railway with a direction that it shall consider the applications filed by the respondent/applicant and communicate decisions taken thereon and then decide the period of unauthorized occupation, if any, for which penal rent may be imposed in accordance with policy decision of the Railway. In this exercise, if any further representation is promptly filed by the applicant/respondent herein the same may also be considered so that principles of natural justice may be complied with. If after final determination the authorities come to the view that period of unauthorized occupation should be less than what was determined earlier then they shall refund the excess amount realized from the applicant/respondent herein without any delay. The entire exercise should be completed within three months from production/communication of a copy of this order.

The writ petition is allowed to the aforesaid extent.