

(2010) 10 AHC CK 0372

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48015 of 2005

Union of India (UOI)

APPELLANT

Vs

Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Citation : (2010) 2 UPLBEC 1696

Hon'ble Judges : Virendra Singh, J;Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Shri A.K. Roy, learned Counsel for the Petitioner and Shri A.P. Srivastava, appearing for the Respondent No. 2.

2. This writ petition has been filed by the Union of India, through Chief Commercial Manager, North Central Railway, Head Office, Allahabad challenging the order dated 01/4/2005, passed by the Central Administrative Tribunal, Additional Bench, Allahabad allowing the Original Application No. 517 of 2004, filed by the Respondent No. 2 challenging the orders dated 12/12/2003 and 15/4/2004, by which order recovery of amount of Rs. 2,24,207/- as damage charges in respect of Quarter No. E-3B,AEN Colony, Varanasi was directed.

3. Brief facts of the case as emerge from pleadings of the parties are: The Respondent No. 2 was working as TI/Coal/BSB N.C. Railway, Allahabad. By an order dated 11/1/1994, Quarter No. E-3B,/BSB (SS/Pool) was directed to be transferred to Dy.CGS/BSB Pool by mutual transfer to allot it to Shri S.K. Mishra, the Respondent No. 2, who, claims to have taken possession of the quarter on 28/3/1994. By a subsequent order dated 30/3/1994, issued by the Divisional Commercial Manager, it was directed that the said quarter is not to be transferred to Chief Commercial Manager, (Pool), hence the allotment made in favour of the Respondent No. 2 be treated to be cancelled. A letter dated 31/3/1994, was issued by the Chairman Regional Housing Allotment Committee

by which information was issued that the allotment of quarter in favour of the Respondent No. 2 has been cancelled by letter dated 30/3/1994, hence the same may be treated to have come into force immediately. Another letter dated 01/4/1994, was issued by the Station Manager, Varanasi informing the Deputy Chief Commercial Manager (Claims) that allotment of said Quarter in favour of the Respondent No. 2 has been cancelled and the Respondent No. 2 be informed accordingly. The Station Manager, again wrote a letter dated 20/2/1995, to the Deputy Chief Commercial Manager (Claim) NCR, Varanasi informing that even after cancellation of the said quarter the Respondent No. 2, has unauthorisedly occupied the said quarter and is still living in the said quarter. It was stated in the said letter that disciplinary proceedings be initiated against the Respondent No. 2 from the date of occupation of the said quarter and penal rent be deducted. Again a letter dated 23/10/2002, was written by Station Manager, NCR Varanasi to Senior Vigilance Inspector, Head Office Baroda House, New Delhi (In Varanasi) informing that in spite of cancellation of allotment on 30/3/1994, the Respondent No. 2 is illegally in unauthorised occupation of the said quarter and the letter dated 20/2/1995, was already issued by the Station Master for taking disciplinary action and deduction of penal rent from the salary of the Petitioner. On 10/10/2002, a vigilance check was also held in which the Respondent No. 2 was found in occupation of the said quarter. A letter dated 11/8/2003, was written by the General Manager, (Vigilance), directing for recovery of damage charges of Rs. 2,24,207/- in easy instalments from the salary of the Respondent No. 2. A letter dated 12/12/2003, was written by Chief Commercial Manager, asking for directing for recovery of Rs. 2,24,207/- as damage charges from the salary of the Respondent No. 2 in easy instalments. Consequently, a letter dated 15/4/2004, was written by Assistant Personnel Officer, NCR, Allahabad to the Respondent No. 2 for recovery of damage charges of Rs. 2,24,207/- in easy instalments from his salary. Challenging the aforesaid two orders dated 12/12/2003 and 15/4/2004, the Respondent No. 2 filed the O.A. No. 517 of 2004, in the Central Administrative Tribunal, Additional Bench, Allahabad, ("hereinafter called the "Tribunal") which has been allowed by the judgment and order dated 01/4/2005, quashing the aforesaid two orders directing that the amount already recovered be refunded to the Respondent No. 2 within three months. Challenging the order dated 01/4/2005, this writ petition has been filed by the Union of India.

4. Learned Counsel for the Petitioner challenging the impugned order passed by the Tribunal contended that the Tribunal committed error in allowing the Original Application relying on a circular dated 21/9/1976, of the Railway Board which relates to temporary transfer and had no application in the facts of the present case. It is submitted that the damage charges has been realised from the Petitioner only for the period from 04/10/2001 to 30/4/2002, when he was posted as Assistant Registrar in D.R.T. Allahabad and from 01/5/2002 to 17/4/2003, when he was posted as Assistant Registrar in D.R.T., Patna. It is submitted that the Petitioner being posted outside the Railways, his occupation of

the said quarter was unauthorised and the damage charges has rightly been directed. It is submitted that the circular dated 01/6/2001, issued by the Railway Board was applicable which required an order for retention of quarter. It is further submitted that the allotment of the Petitioner having been cancelled immediately after allotment on 30/3/1994, his occupation throughout was unauthorised and damage charges has rightly been directed to be recovered. It is submitted that the recovery of damage charges was only for the period when the Petitioner was posted outside the Railways.

5. Shri A.P. Srivastava, learned Counsel appearing for the Respondent No. 2, submitted that the cancellation of the allotment by letters dated 31/3/1994 and 01/4/1994, were never served on the Petitioner. He submitted that the Petitioner had been throughout in occupation of the said quarter and deduction of the rent from his salary was made throughout. He submits that no notice or opportunity was given to the Petitioner before directing the recovery of damage rent. He further submits that the Petitioner ought to have initiated proceedings for eviction of the Respondent No. 2 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. He has placed reliance on the judgment of the Apex Court in 2001 SCC 1032, Gorakhpur University and Ors. v. Dr. Shitla Prasad Nagendra and Ors. and the judgment of the Central Administrative Tribunal in 2002 (2) ATJ, Brij Behari Prasad v. The Union of India and Ors.

6. We have considered the submission of the learned Counsel for the parties and have perused the record.

7. The specific case of the Petitioner before this Court as well as before the Tribunal is that the allotment of the quarter in favour of the Respondent No. 2 made on 11/1/1994, was immediately cancelled on 30/3/1994, for which letters were issued on 31/3/1994 and 01/4/1994.

8. Learned Counsel for the Petitioner states that the Petitioner was illegally occupying the said quarter and continued in the said quarter in spite of the allotment having been cancelled. It has come on the record that the Station Manager, Varanasi on 20/2/1995, as well as on 23/10/2002 has written for taking disciplinary action against the Respondent No. 2 for recovery of damage charges and penal rent. The case of the Respondent No. 2 is that the said letters were never served on him and he was not aware of the cancellation of the allotment and he remained throughout in occupation. From the letter dated 11/8/2003, issued by the General Manager (Vigilance) which has been brought on the record as Annexure-RA-2, it is clear that the damage rent of Rs. 2,24,207/- has been directed to be realised from the Respondent No. 2 for the following two periods:

(i) From 04/10/2001 to 30/4/2002, when the Respondent No. 2 was posted as Assistant Registrar, Debts Recovery Tribunal, Allahabad.

(ii) From 01/5/2002 to 17/4/2003, when he was posted as Assistant Registrar, Debts Recovery Tribunal, Patna.

9. In the counter affidavit, filed before the Tribunal it was stated that although the Respondent No. 2 was unauthorisedly living in the said quarter from 01/4/1994, but taking a lenient view of the matter, damage charges have been imposed only for the period when the Petitioner was posted on deputation out of Varanasi. The reasons which have been given by the Tribunal for allowing the application are contained in paragraph 7 of the impugned order which is quoted below:

7. There is full substance in the arguments on behalf of the applicant. Vide Railway Board Circular No. E(G) 74/Qr 1-3 of 21.9.1976, in case of temporary transfer for period upto 4 months or more the transferred staff may be permitted to retain quarters for whole period of transfer on normal rent. In the instant case the applicant had been posted on deputation (which can be treated as transfer) and his period of deputation on the first occasion was only 7 months where after, he joined the Railway and served for 8 months before proceeding again on deputation which lasted just 4 months. As such there is absolutely no reason as to why the applicant should not be given the benefit of this Rule. The Respondents have not only discriminated the applicant but also have taken into account even that period which the applicant spent in his own Railway Department in between the two spells of deputation. Further no notice was given to the applicant before resorting to recovery of damage rent and lastly, the Respondents have not resorted to invoking the provisions of eviction of (Unauthorised Occupants) Act, 1971 as held by the Tribunal vide the case of R.P. Mondal (Supra).

10. The main reason given by the Tribunal is that as per the Railway Board's circular dated 21/9/1976, in case of temporary transfer for a period upto 4 months or more the transferred staff may be permitted to retain the quarters for whole period of transfer on normal rent. The Tribunal held that the Respondent No. 2 was posted on deputation which can be treated as transfer and his deputation on the first occasion was only for 7 months and thereafter he joined the Railway and again he went on deputation for 4 months and there is no reason as to why the benefit of Railway Board's circular dated 21/9/1976 be not given. The Railway Board has issued circular on 01/6/2001 on the Subject "Retention of Railway quarter on transfer, deputation, retirement etc." The relevant paragraph of the circular has been quoted in paragraph 12 of the rejoinder affidavit and copy of the circular has been placed before the Court for perusal. Paragraphs 3 and 4 of the circular are relevant which are quoted below:

3. Railway officers/staff proceeding on deputation to other PSUs etc.

Railway officers/staff posted on deputation to other Railway and non Railway PSUs/Societies already established for more than five years would be permitted to retain the Railway quarters only for a period of two months on normal rent chargeable from the date they have joined Public Sector Unit. After this period, they will be treated as unauthorised occupants and action taken accordingly.

4. Railway officers/staff posted to Central Ministries at Delhi under Central Staffing Scheme.

Railway officers/staff proceeding on deputation to other Central Government Ministries under the Central Staffing Scheme may be allowed retention of Railway houses subject to the following:

(a) Railway employees must apply for the General Pool accommodation for the level of entitlement plus one level below within fifteen days of his/her joining the new post under Central Staffing Scheme.

(b) The retention of existing Railway accommodation shall be permitted till the first house is allotted to him/her from the General Pool either of the type he/she is entitled to or of one level below irrespective of its location,

OR

The retention of existing accommodation shall be permitted till the time a person junior in the waiting list for General Pool accommodation gets an accommodation allotted in the normal course;

Whichever is earlier.

(c) The rent chargeable would be at normal rate for two months and, thereafter, on payment of special licence fee, i.e. at double the normal licence fee.

11. According to paragraph 3 of the above circular of the Railway Board, staff is permitted to retain the quarter only for a period of 2 months on normal rent chargeable on the date they have joined the unit and after this period, their continuance will be treated as unauthorised. Thus, when the Petitioner joined as Assistant Registrar, Debt Recovery Tribunal, Allahabad on 04/10/2001, he could have at best retained the quarter for a period of 2 months only and thereafter his occupation shall be treated to be unauthorised according to the Railway Board's circular dated 01/6/2001. Although, it is the case of the Petitioner that after cancellation of allotment of the Respondent No. 2 he became unauthorised occupant w.e.f. 01/4/1994, but in the present case the damage rent has been directed to be recovered only for the period as noted above i.e. from 04/10/2001 to 30/4/2002 and from 01/5/2002 to 17/4/2003. The Petitioner, as per their case have taking lenient view directing for recovery of the aforesaid period, it is not necessary for the purpose of this case to enter into or decide the issue of cancellation of allotment. Thus, we proceed to confine the case only with regard the claim of Respondent No. 2 only for the aforesaid periods. At this stage, it is relevant to note that the Respondent No. 2 in the counter affidavit filed in this writ petition has claimed two deputations for the following two periods:

(i) From 04/10/2001 to 27/5/2002 when he was posted as Assistant Registrar DRT, Allahabad; and

(ii) From 12/12/2002 to 16/4/2003 when he was posted as Assistant Registrar DRT, Patna.

12. The Tribunal in its impugned judgment has given following reasons for allowing the O.A. filed by the applicant.

(a) The applicant was entitled for the benefit of Railway Board's Circular dated 21/9/1976, under which the temporary transfer for period up to 4 months or more the employee, is permitted to retain the quarter for the whole period of transfer on normal rent.

(b) The applicant has been discriminated and damage rent has been taken into account even for that period in which the applicant spent in his own Railway Department between the two spells of deputation.

(c) No notice was given to the applicant before resorting to recovery of damage rent.

(d) The provisions of the Eviction of (Unauthorized Occupants) Act, 1971 has not been resorted to by the Respondents.

13. The first reason given by the Tribunal relying on the Railway Board's circular dated 21/9/1976 is misplaced. The circular dated 21/9/1976 is no more applicable. There being a specific Railway Board's circular having been issued on 01/6/2001; The first deputation of the Respondent No. 2 was w.e.f. 04/10/2001, i.e. subsequent to the aforesaid circular. According to Clause 3 of the circular extracted above, the Respondent No. 2 could have retained the quarter only for a period of 2 months on normal rent chargeable from the date he joined the deputation post and after the said period the Respondent No. 2, has to be treated as an unauthorised occupant and action taken accordingly. In the counter affidavit filed in the writ petition the Respondent No. 2 himself has brought on the record the copy of his application dated 09/1/2002, copy of which has been filed as Annexure-CA-8 to the counter affidavit addressed to the Deputy Chief Commercial Manager (Claims) by which he prayed for grant of permission to retain the quarter till 30/6/2002. There is neither any pleading nor any material to show that the Respondent No. 2 was permitted to retain the quarter while he was on deputation. Thus, the reasons given by the Tribunal that the Respondent No. 2 could have been allowed to retain the quarter for the entire period of his deputation is incorrect. The Respondent No. 2 after the period of 2 months became unauthorised occupant and was liable to pay damages, and there was no error in the orders issued for recovery of damage rent. The second and third reason given by the Tribunal is with regard to taking into the account the period under which the applicant worked in his own Railway Department in between the two spells of deputation. The third and fourth reason given by the Tribunal is that the no notice was given to the applicant and the provisions of the Act, 1971 were not invoked. Taking into the consideration the facts and circumstances of the present case, we are of the view that the Respondent No. 2 was liable to pay the damage rent during the period of his deputation, he having become unauthorised occupant after two months of joining his deputation post.

14. Insofar as, the computation of period for liability of damage rent is

concerned, in the counter affidavit filed in the writ petition the Respondent has stated in paragraph 10 that after the first deputation at Allahabad he joined Railways at Varanasi and thereafter joined as Assistant Registrar, DRT, Patna on 12/12/2002, whereas in the order dated 11/8/2003, the second period for which damage rent has been charged is from 01/5/2002 to 17/4/2003. Interest of justice be served in giving liberty to the Respondent No. 2 to submit a representation to the General Manager, (Vigilance) Head Office Baroda Delhi, who had issued letter dated 11/8/2003, for computing the damage charges for the period Respondent No. 2 was actually on deputation. We make it clear that liberty shall only be with regard to the extent of period and amount of damage charge and it shall be open for the General Manager (Vigilance) to verify from the concerned authorities the relevant period during which the Respondent No. 2 was on deputation so as to fix the damage rent accordingly. The said exercise shall be completed within a period of 3 months from today, in case the Respondent No. 2 submits an appropriate representation within two weeks from today.

15. Now coming to the last submission that the provisions of the Act, 1971, was to be invoked against the Respondent No. 2, suffice it to say that the orders which have been issued by the authority are only with regard to the realisation of damage rent from the Respondent No. 2 for the period during which he occupied the quarter. It was not necessary for the railway authorities to have invoked the provisions of the Act, 1971 for the aforesaid purpose. The order issued for recovery of damage rent against the Respondent No. 2 cannot be faulted on this grounds.

16. The judgment relied on by Shri A.P. Srivastava, counsel appearing for the Respondent No. 2 in Gorakhpur University (supra) is now to be considered. In the aforesaid case, the Respondent Dr. Shitla Prasad who was working in the Gorakhpur University was appointed as Vice Chancellor of the Lucknow University, but he continued to be in occupation of the quarter at Gorakhpur during the period from 20/5/1986 to 19/5/1989, the penal rent was sought to be recovered for the aforesaid period which was set-aside by the High Court. From the judgment of the Apex Court in the aforesaid case, it is clear that the Gorakhpur University during the relevant period accepted normal rent from the Respondents. The aforesaid fact has been noted in paragraph 4 of the judgment which is to the following effect.

4. The relevant facts so pointed out from the materials on records before us are that, every month the normal rent that was payable was being remitted continuously to the University and the same was being accepted without demur till 23-3-1996 when the quarter was vacated, that in spite of a request and application made, as per practice in vogue for the allotment of the quarter in the name of his son who is also in the employment of the Appellant-University as Lecturer no orders were passed thereon, that there are resolutions of the University to waive penal rent and grant of such benefit to persons even as late

as in 1996, showed that a different stand and treatment to the Respondent alone constituted hostile discrimination, that it was unreasonable to charge also rates stipulated by the Government in the year 1998 in the case of the Respondent who retired in 1990 and vacated in 1996 and that the Appellant not only did not choose to take any action to get the Respondent vacated in accordance with law but on the other hand acquiesced in the occupation by accepting regularly the normal rent. A grievance has also been made that no notice or opportunity was given before determining and fixing liability for the penal rent. It was also contended that apart from these facts demonstrating lack of bona fides in the Appellant, the withholding of information about the dismissal of the appeal filed by it on 22-7-1996 in SLP (C) C.C. No. 329/96, against the earlier decision of a Division Bench reported in S.N. Mathur v. Gorakhpur University Gorakhpur 1996 (2) ESC 211 (All) taking the very same view as in the present case in respect of another employee of the Appellant-University, indicated the unethical approach of the University and, therefore, this appeal is liable to be dismissed as of no merit.

17. In the present case, it is not the case that the Respondent No. 2 that during the period when he was on deputation, any rent was paid by him and was accepted by the Railways. Another judgment which has been relied by the counsel for the Respondents in Brij Behari Prasad (supra) is a case where the Tribunal permitted filing of representation by the employee against the penal rent. No ratio has been laid down in the said judgment which may help the Respondents in the present case.

18. In view of the foregoing discussion, we are of the view that the Tribunal committed error in allowing the O.A. filed by the Respondent No. 2. The Order of the Tribunal dated 01/4/2005 cannot be sustained and is hereby set-aside. However, as observed above, liberty is given to the Respondent No. 2 to submit a representation to the General Manager (Vigilance) with regard to the computation of period for which the damage rent has been fixed. The General Manager, (Vigilance) shall confine his consideration on the representation of the Respondent No. 2 only to the extent of the relevant period during which the Respondent No. 2 was on deputation, and in event it is found that the amount of Rs. 2,24,207/- is incorrect the same may be modified accordingly and the damage rent be accordingly adjusted.

19. The writ petition is allowed to the extent as indicated above. The parties shall bear their own costs.