

(2019) 09 CAT CK 0046

In the Central Administrative Tribunal

Case No : Original Application No. 2411 Of 2016

Usha Anand

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 4, 7

Citation : (2019) 09 CAT CK 0046

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

Bench : Single Bench

Advocate : Sudarshan Rajan, Shailendra Tiwary

Final Decision : Dismissed

Judgement

1. The applicant was serving as Senior Accountant in the respondent - Northern Railway. She was issued a penalty of reduction of post to the grade of Auditor against which she has preferred an OA, which is still pending consideration by this Tribunal.

1.1 In another case, which was instituted against her for alleged misbehaviour with office staff and other colleagues, she was imposed a punishment of compulsory retirement vide orders dated 16.03.2015. The applicant preferred OA No.507/2016 against this punishment of compulsory retirement. Vide order dated 08.08.2019, this OA has since been dismissed in respect of punishment. However, her pension has been protected by operating the punishment order with effect from a date after she was granted Grade Pay of Rs.4200/-.

2. While in service applicant was allotted a Type-II Railway quarter No.170-B-1 at Basant Lane. As per Railway Rules, once the punishment of compulsory retirement was imposed (para 1.1 supra), the rules in respect of further retention of the quarter came into force. These rules read as under:

"A Railway employee on retirement including voluntary retirement and those retired compulsorily, may be permitted to retain non earmarked railway

accommodation for a period of 4 months on payment of normal rent/flat rate of license fee/rent and the next 4 months on educational or sickness account on payment of special license fee, i.e. double the normal rent or double the flat rate of license fee/rent. This is also applicable to audit staff doing railway audit work. The cases of retirement or medical invalidation grounds are also to be treated at par with normal retirement. (Authority Rly. Board's letter No.E(G)2000 QR1-23 dated 01/06/2001)."

3. Accordingly, she was issued following directions vide respondents' letter dated 20.07.2015:

"Please refer to this office letter of even number dated 27.4.15 (copy enclosed) vide which status of unauthorized occupation of Railway Quarter No. 170/B-I at Basant Lane after your retirement (compulsory) was apprised. But you have not submitted any written comments/representation on the matter.

You are, therefore, advised to vacate this Railway quarter within 10 days from the date of issue of this notice failing which eviction proceedings of un-authorized occupants Act 1971 will be initiated against you and recovery on account of damages of un-authorized occupation of above quarter will be made as per extent rules.

This is without prejudice to any other action against you under the rules/Law."

4. Since no representation for retention was submitted, the respondents issued another letter dated 19.08.2015 wherein following directions were issued for recovering damage rent:

"You were retired from service (compulsory) on 19.3.15 vide Dy. CAO/TA letter No.TA/NDLS/Adm.III/042/UA dated 25.3.15. But you have not submitted any representation for retention permission of above noted Railway Quarter. Hence in accordance to the provisions of the extent Railway Rules of allotment of residential accommodation to the staff, you were required to the Railway quarter No.170-B-I at Basant Lane. But you have failed to do so despite service of NOTICE of even number dated 20.7.15 on you. The allotment of the Railway quarter is therefore, stands cancelled in your name w.e.f. 19.3.15. Nevertheless, you are, hereby, again called upon to vacate the above mentioned Railway quarter within 10 (TEN) days from the date of issue of this Notice, failing which the undersigned will be constrained to initiate Eviction proceedings under section 4 & 7 of the public premises (Eviction of unauthorised occupants) Act, 1971 (40 of 1971) besides Disciplinary Action under Discipline and Appeal Rules, 1968 and recovery of following Damage Rent / Penal Rent plus other charges w.e.f. 19.3.15 till vacation thereof from you or your salary / dues.

a) Water charges @ Rs.25.50 per month and conservancy charges @ Rs.4.00 P.M. or as revised by the Competent Railway Authority.

b) Damage / penal Rent @ Rs.132.00 per sq.m. per month (or as revised by the Competent Authority) on 47.62 sq.m. plinth Area w.e.f. 19.3.15 till vacation of

this Railway Quarter.

c) Electricity charges of this Railway quarter w.e.f. 19.3.15 till vacation will be advised by Sr. Section Electric Engineer (power supply) Basant Lane separately."

5. However, by this time, while the statutory appeal was decided and the punishment of compulsory retirement was upheld, the statutory revision preferred by applicant, was not decided as yet. Feeling aggrieved at this delay in decision on her revision petition, the applicant preferred an OA No.3235/2015 which was decided on 31.08.2015 with the following orders:

"3. In the circumstances, OA is disposed of, without going into the merits of the case, by directing the respondents to dispose of the statutory revision dated 26.8.2015 pending before them within sixty days from the date of receipt of a copy of this Order. Till the said revision is disposed of, they shall not evict the applicant from the quarter in which she is residing as on date. No costs."

6. Thereafter, the revision petition was also decided by the respondents and punishment of compulsory retirement was upheld. The applicant had preferred OA No.507/2016 which was decided vide order dated 08.08.2019 (para 1.1 supra) and said punishment was upheld.

7. Said quarter was eventually vacated on 12.10.2015. However, since the quarter was still not vacated within the time allowed, the respondents issued a letter on 18.11.2015 which reads as follows:

"Smt. Usha Anand Retd (Compulsory) A/Cs Clerk N.Railway, Traffic Accounts office was the proper allottee of above type-II Railway quarter. She retired (Compulsary) from Railway services on 19.03.2015. She had not applied for retation (sic.) permission of this Railway quarter on 12.10.15. Hence following rent plus other charges w.e.f. 20.03.15 to 12.10.15, may kindly be deducted from her DCRG under intimation to this office.

1. w.e.f.20.03.15to Damages Rate @ Rs.132.00 Sqm 12.10.15 P/Month on 47.62 Sqm Plinth area i.e Rs 6285.84 P.Month.

2. w.e.f. 20.03.15 to Water charges @ Rs.25.50 P.M. 12.10.15

3. w.e.f. 20.03.15 to Conservancy Charges @ 12.10.15 Rs.04.00 P.M.

4. w.e.f. 20.03.15 to Electricity Charges as intimated 12.10.15 by SSE/Elect./PS/ Basant Lane.

8. It was against charging of the damage rate for the period 20.03.2015 to 12.10.2015 that the applicant had preferred the instant OA.

During pendency of the OA, the respondents had reviewed the matter and in accordance with instructions in force, the said quarter has since been regularised at normal rent for a period of four months subsequent to compulsory retirement i.e. for the period from 20.03.2015 to 19.07.2015. However, for the period 20.07.2015 to 12.10.2015 damage rent has been charged. A letter dated

23.02.2018 has been issued to this effect which reads as under:

"Now the competent authority treating your OA 2411/2016 before the Hon^{ble} CAT, New Delhi as request for retention has accorded post-facto approval to grant you maximum normal retention period of 4 months from 20.03.15 (the day next of your retirement) to 19.07.15. Thus with the above permission the recoveries already advised vide this office letter dated 18.11.15 are revised as under:-

1. w.e.f. 20.03.15 to Normal rent @ Rs.99.00 per 19.07.15 month
2. w.e.f. 20.03.15 to Water charges @ Rs.15.00 per 19.07.15 month
3. w.e.f. 20.03.15 to Damages Rate @ Rs.132.00 12.10.15 P.Sqm per month on 47.62 Sqm plinth area i.e Rs 6285.84 per month.
4. w.e.f. 20.03.15 to Water charges @ Rs.25.50 per 12.10.15 month
5. w.e.f. 20.03.15 to Conservancy charges @ 12.10.15 Rs.04.00 per month
6. w.e.f. 20.03.15 to Electricity Charges as intimated 12.10.15 by SSE/Elect./PS/ Basant Lane.
9. Accordingly, the subsisting grievance in this OA, now relates to the period 20.07.2015 to 12.10.2015 only, as the said accommodation was eventually vacated by the applicant on 12.10.2015.
10. The applicant pleads that she was retaining the said quarter as was allowed by the decision in OA No.3235/2015 (para 5 supra).

Simultaneously, her OA-507/2016 challenging the punishment of compulsory retirement was also filed and was pending (para 1.1 & 6 supra). If this OA were to be decided in her favour, this punishment would have been annulled and there would not have been any need to vacate the quarter.

It was further pleaded that she was under treatment of a private Doctor and she was never advised that she needs to submit a certificate from a Railway Doctor for retention of the quarter beyond four months of compulsory retirement.

11. In view of the foregoing, the period beyond four months of compulsory retirement, i.e. 20.07.2015 to 12.10.2015 also needs to be treated as on normal rent.

12. Per contra, the respondents opposed the OA. It was pleaded that the rules in respect of retention of quarter are in force since long and have been quoted by the applicant also (para 2 supra). These rules are very specific that retention at normal rent is permitted for four months after compulsory retirement. Retention for further four months is also permissible but this shall be on payment of double the normal rent, however, this has to be on grounds of education of children or sickness only.

In the instant case, despite letters having been issued to the applicant (para 3,4,7 supra), no such request was ever received with supporting documents, and accordingly the said period cannot be regularised at normal or double the rent. The respondents have also issued a letter to the applicant to this effect on 23.02.2018 (para 8 supra). She was advised again on 20.03.2018 also to submit certificate from a Railway Doctor within a week. This was never submitted on one plea or another.

Charging of damage rent in such cases is the only alternative which has been implemented and the same cannot be faulted.

13. Matter has been heard at length. Sh. Sudarshan Rajan, learned counsel represented the applicant and Sh. Shailendra Tiwary, learned counsel represented the respondents.

14. The facts of this case are not in doubt. The applicant was issued a penalty of compulsory retirement which was effective on 19.03.2015. Accordingly, the extant rules in relation to retention of the Government accommodation after compulsory retirement come into force. The retention for a period of four months is permitted at normal rent. Even though, this was not initially implemented but during pendency of the instant OA, this has been implemented.

15. In respect of period beyond four months, it was necessary that the applicant makes a representation specifying the grounds along with supporting documents for such retention. This has not been done in the instant case. The plea put forth by the applicant, that she was never advised to make representation, is not acceptable in view of facts to the contrary.

16. It is true that revision petition against the punishment of compulsory retirement was not decided which led to filing of OA No.3235/2015 and Tribunal had directed that "till the said revision is disposed of, they shall not evict the applicant from the quarter in which she is residing as on date." This order by the Tribunal, however, cannot be taken to also mean that such retention was also allowed on normal rent. The rent was to be charged as per prevalent instructions and the same has been implemented by the respondents. This cannot be faulted.

17. Applicant pleaded that her OA No.507/2016 against punishment of compulsory retirement was pending all this while and was decided on 08.08.2019. Accordingly, she needs to be allowed retention at normal rent.

This plea is also not acceptable as no such relief was granted in that OA.

18. In view of the foregoing, there is no merit in the OA and the same is dismissed. No costs.