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Court : Central Administrative Tribunal CAT Patna

Decided On : Jul-04-2000

Judge : S N Vice, H a L.

Appellant : Krishna Chandra Rai

Respondent : Union of India (Uoi) and ors.

Judgement :

1. The applicant, being an employee under the Eastern Railway, has filed the instant OA for direction upon the respondents Railway for refund of a total sum of Rs. 46,387/-, being the penal rent already realised from him during the period from 1st July, 1979 to 1st May, 1994, for his continued occupation and retention of the railway quarters bearing No 414/A, situate at New Colony, Post Office Road, Khagaul, Patna, under Danapur Division of Eastern Railway.

2. The applicant's case, in short, is that while he was working on the post of Guard at Danapur, under Danapur Division of the Eastern Railway, he was allotted a railway quarters No. 414/A at Danapur with effect from 17th July, 1977. Subsequently, on 6th June 1979, the applicant was transferred from Danapur to Garhara, under the same Danapur Division of Eastern Railway. After lapse of a little more than two years, the applicant was transferred back from Garhara to Danapur, vide office order dated 31st December, 1981. There was yet another transfer order dated 15th July, 1986, by which the applicant was posted as TNC at Garhara from where by an office order dated 17th November, 1986, he was transferred and posted as Guard at Jhajha. Subsequently, he was transferred from

Jhajha to Mokama under the same Danapur Division by an office order dated 5th March, 1990. Ultimately, the applicant was transferred from Mokama to Danapur by an office order dated 18th September, 1992.

3. Be it recorded here that, as per admitted pleadings of the parties, the applicant retained his occupation in quarters No. 414/A, situate at Danapur even after his transfer from there w.e.f. 6th June, 1979, during his posting from place to place, as referred to above. The quarters at Danapur was ultimately re-allotted w.e.f. 2nd May, 1994, in favour of the applicant. This being the position, the applicant had to pay penal rent for the period from 6th June, 1979 (when he was transferred from Danapur to Garhara) to 2nd May, 1994 (when there was re-allotment of the quarters). The penal rent was realised from the applicant during the aforesaid period inspite of his various representations filed by him from time to time. The realisation of penal rent was, however, stopped by an order dated 2nd May, 1994 (Annexure-4), of the respondents when the aforesaid quarters was re-allotted to the applicant.

4. A question has, therefore, been posed whether, the applicant was entitled to refund of the penal rent already realised from him? 5. In the backdrop of the admitted facts, as referred to above, it was urged on behalf of the applicant that no penal rent could be realised from him for the reasons that after his transfer from Danapur to other places (referred to above), he was never allotted any quarters on the places of the transfer, nor any house rent was ever paid to him. It was further urged that the penal rent could not be imposed upon him so long his tenancy at Danapur was not determined. It was contended that no eviction, process was initiated against him, nor there was any formal order of cancellation of the allotment.

6. In support of the above contention raised on behalf of the applicant, reliance was sought to be placed on a earlier judgment of this Tribunal dated, 8th September, 1993, passed in OA 212/92 (Mostt.

Phulmati Devi v. Union of India and Ors.) as also an order dated, 23rd April, 1975, of the Calcutta High Court passed in the case of Rabindra Nath Bose v. General Manager, Eastern Railway; reported in 1976(1) SLR 692. As against the above

pleadings of the applicant's side, we find that the respondents rather, very rightly urged that the applicant's occupation in the quarters-in-question would be deemed to be unauthorised after his first transfer from Danapur to Garhara until it was re-allotted by the order dated, 2nd May, 1994 (Annexure-4). We are not at all hesitant to accept the contention of the respondents in view of what has been ultimately set at rest by a Full Bench decision of the Central Administrative Tribunal from Allahabad Bench in the case of Ram Pujan v. Union of India; reported in 1996 (3) SLR 92. This has the overriding effect on all earlier decisions.

7. In the aforesaid authoritative decision of the Full Bench in Ram Pujan's case (supra), the Tribunal, making reference to the Railway Board's letter No. E(G) 83-RN2-6, dated 17th December, 1983, and yet another letter No. E(G) 8E QR 1/90, dated 15th January, 1990, has decided in no uncertain terms, placing reliance on various earlier decisions of the Hon'ble Supreme Court, and Benches of Central Administrative Tribunal, as follows: "(i) In respect of a railway employee in occupation of a railway accommodation, no specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied.

(ii) The retention of accommodation beyond the permissible period, in view of the Railway Board's circular, would be deemed to be unauthorised occupation and there would be an automatic cancellation of allotment and penal rent/ damage rent can be levied according to the rates prescribed from time to time in the Railway Board's circular." 8. Regard having had to the aforesaid principles laid down in the case of Ram Pujan (supra), we have no alternative than to accept the contention raised on behalf of the respondents which, in our opinion, would definitely counter all the contentions raised by and on behalf of the applicant.

9. It is true that during the relevant period from 6th June, 1979, to 2nd May, 1994, the applicant happened to be posted at Danapur for certain period twice, but the facts remains that there was no proper allotment of the quarters-in-question in his favour till 2nd May, 1994.

We do not find any plea raised, nor even any paper produced to make out a case that the applicant occupied the quarters, during the period-in-question, with permission of the respondents authority.

Merely, because the applicant happened to be transferred back for certain period at Danapur, it would not necessarily mean that the occupation has been regularised. There was no order either to extend the occupation of the quarters beyond the permissible limit of two months after the transfer, or for regularisation of any part of the unauthorised occupation. For this reason, we do not propose to go for any sort of interference. It would not be out of place to mention here that the applicant was, of course, entitled to retain the quarters for the concession period of two months from 6th June, 1979, on payment of normal rent. Since the split-up figure of the rent realised from the applicant has not been made available on the record, it is difficult to say that any penal rent has been realised from him for the said concession period of two months after his first transfer from Danapur to Garhara.

10. Apart from what has been discussed and found on merits, there was definitely a point of limitation staring on the facts of the case. The penal rent realised from the applicant started from the year 1979, when he was transferred from Danapur to Garhara, and it continued till 2nd May, 1994, when it was actually stopped by an order dated 2nd May, 1994 (Annexure-4). The applicant did file representations from time to time as per exhibits-3 series, but he did not come-up early for legal remedy from a Court of Law. The lapse on his part has neither been explained for condonation of delay, nor will it absolve with the legal requirement to come-up for a legal remedy in time. The instant case was filed only on 13th July, 1998, i.e., after a long lapse of four years when even the realisation of the penal rent had been completed and stopped. That being as such, the instant case was also hit by limitation under Section 21 of the A.T. Act, 1985.

11. In the result, the instant OA is dismissed as being time barred as also on merits. There shall be, however, no order as to costs.