

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 08.08.2014

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W.P.(C) 4918/2014

UNION OF INDIA AND ORS. Petitioners
Through : Sh. Malaya Kumar Chand, Advocate.

Versus

SH. RAJINDER SINGH Respondent
Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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C.M. NO.9853/2014 (for exemption)

Allowed, subject to all just exceptions.

W.P.(C) 4918/2014, C.M. NOS.9851/2014 (for stay), 9852/2014 (to place on record additional documents)

1. The writ petitioners (hereafter “the Northern Railways”) challenge the order of the Central Administrative Tribunal (“CAT”) dated 3.9.2013 in O.A. No.3488/2011, which found that the respondent’s alleged dues claimed by the petitioner were neither ‘admitted’ nor ‘obvious’ and thus could not permissibly be adjusted against the Death-cum-Retirement Gratuity (“DCRG”) owed to him.

2. The respondent was appointed as Head Canteen Manager in Northern Railways on 23.1.1979 and retired from the post on 31.8.2008. When he was appointed, his father, Mr. G R Yadav, being an employee, was allotted a railway quarter during his service. The latter retired from service as Head Clerk, IRCA on 30.9.1981, and was permitted to retain the quarter for an additional two months after his retirement i.e. till 30.11.1981. Despite being issued a final notice dated 4.6.1982 after a registered notice dated 6.1.1982 for vacating the quarter, the respondent did not vacate the quarter. A petition was filed before the Special Railway Magistrate, Delhi ("SRM") under Section 138 of the Railways Act, for seeking eviction of the respondent. The SRM held in favour of the petitioner and denied the respondent any right of possession in the quarter.

3. The respondent requested for regularization of the quarter in his name, after his father's retirement in September 1981; the request was not considered for five years and was later denied on the ground that no sharing permission had been taken by the respondent or his father, thus disentitling him from claiming regularisation of allotment of the quarter allotted to his father. The respondent and his father, who were both residing in the quarter, filed W.P.(C) no. 465/1986 before this Court, challenging the applicability of Section 138 of the Railways Act, 1890 and seeking regularization of allotment of the quarter in the respondent's name. This Court stayed the eviction proceedings. The writ petition was dismissed thrice, following which on 29.9.2008, the Court found that the respondent himself had retired in August 2008,

causing the relief in the writ petition to become infructuous. On 9.4.2009, the respondent vacated the quarter. In the meanwhile, a letter dated 25.5.2009 was sent by the General Secretary, IRCA/DRM Office Complex, New Delhi, intimating that ₹ 22,25,214/- was due as penal rent and ₹ 97,598/- as electricity bill was due as electricity bill, aggregating ₹23,22,812/-. The Northern Railways then claimed that an amount of ₹3,12,771/- was owed to the respondent in the form of DCRG; after adjustment thus, the total amount required to be paid by the respondent was ₹20,10,041.66/- to the Railway Department.

4. Despite requests for release of gratuity, the latest being on 7.12.2009, the respondent was denied his benefits. In reply to an RTI application, he was informed by a letter dated 10.2.2010, that his gratuity would be released only after he vacates the quarter. He responded by a letter of 5.3.2010 that he had already vacated the quarter as of 9.4.2009 and provided a copy of the vacation report. The DRM by its final letter dated 16.3.2010, informed him, that his DCRG would be released only after the final electricity bill and rent recovery letter was received from the competent authority. The respondent filed an Original Application before the CAT asking for release for his gratuity, which led to the order dated 3.9.2013, impugned before this Court.

5. The order of the CAT records that the respondent also sought to challenge a letter dated 25.5.2009 issued to the Railway Authorities, detailing the recoveries that ought to be made in respect of the quarter;

this letter was not addressed to the respondent. The relevant letter is excerpted below:

“ *NORTHERN RAILWAY*

No.33-EQ/1-1986/82
Dt. 25.05.2009

DRM's Office
New Delhi

General Secretary,
IRCA/ORM Office Complex,
S.E. Road, New Delhi.

Sub : *Unauthorized Occupation of Rly. Quarter No. 1082 at Thompson Road/New Delhi by Sh. G. R. Yadav, Ex. Hd. Clerk / IRCA retired on 30.09.81.*

Ref :- *(i) Hon'ble High Court /Delhi orders dated 29.09,2008 in C.M. No. 110006/2008 in W.P.(C) 465/1986 (Copy enclosed)*

Sh. G. R. Yadav Ex. Hd. Clerk/IRCA was in occupation of Rly. Quarter No. 108/2 at Thompson Road/New Delhi, He was retired from service on 30.9.81. He was taken permission to retain the above quarter after retirement upto 30.11.81. After retirement of Sh. G. R. Yadav, Ex Hd. Clerk/IRCA his son Sh.Rajinder Singh, Hd. Manager/Canteen under CDO/NZM was residing unauthorized in this quarter who has also been retired from services on 31.08.2008 and vacated above quarter by him on 09.04.2009.

Following recoveries may please be made from the settlement dues of Sh. G. R. Yadav Clerk/IRCA, If recoveries not fulfill from the settlement dues to Sh. Rajinder Singh Ex. Hd. Manager, Canteen under CDO/NZM who was also in unauthorized occupation of above said quarter.

....

Sr. Divi. Engineer/Estate

N. Rly. New Delhi.”

6. The CAT in its order, noted that the Northern Railways had failed to act on or respond to the representation of the respondent for regularisation of the quarter in his name, owing to which the latter was able to reside in the quarter from 1981 till 9.4.2009, when he vacated it, at his convenience. The Northern Railways had never moved this Court seeking to vacate the interim order granting stay on eviction, in the writ proceedings earlier instituted, and only sought to take action against the respondent after he filed his claim for the DCRG, on his retirement in August 2008. Even then, the Northern Railways did not move any Court against the respondent to recover the outstanding dues, but instead only adjusted the DCRG amount from the amount allegedly owed by the respondent to the Northern Railway. Viewed in this light, the CAT found that the Railway Department only had the power under Rule 323 of the Manual of Railway Pension Rules, 1950 under which a claim from a railway servant can only be made if he or she owes “admitted and obvious dues” to the Department. Since penal damages are neither admitted nor obvious, until a determination is made after adjudication by a competent authority, the CAT held that the respondent’s representation must be considered and disposed of by the petitioner within three weeks, the admitted and obvious dues were to be deducted from the former’s DCRG, and on the furnishing of a ‘no demand certificate’ to the respondent, the DCRG is to be released. By recourse to proper procedure, the petitioner can recover the amounts payable as penal rent/damage, if any, from the respondent.

7. The Northern Railways argues that *first*, there is an error apparent on the face of the record, as the CAT has directed the petitioner in Para 19(i) of the order to consider the representation of the respondent for regularization of allotment and respond with the decision in three weeks. However, the decision intimating rejection was made by letters dated 18.9.1995 and 7.9.1995. These letters are sought to be justified by Rule 16(8)(c) of the Railway Service Pension Rules, 1993, which stipulates that retention of a railway accommodation beyond the permissible period would entitle the Northern Railways to withhold, recover or adjust from the DCRG, the normal rent, special license fee or damage rent as may be due from the former employee, and only make payment of the balance amount. Under Rule 16(8)(d), any amount that remained unpaid after the adjustment under sub rule 8(c) could be recovered without the consent of the former employee, from his/her dearness relief. *Second*, the petitioner stated that the order of the SRM dated 31.1.1986 already indicated that there was no right of possession in the hands of the respondent, in respect of the quarter; that this finding of fact could not be interfered with by this Court ordinarily, as held in *Mani v. Phiroz*, (1991) 3 SCC 141. In any event, since the respondent never appealed against the order of the SRM, its findings still stand. *Third*, the petitioner submits that the reliance on *Union of India v. Madan Mohan Prasad* (JT 2002 (Suppl.) SC) was misplaced as the case was premised on the Railways Pension Rules, 1950 whereas the applicable rules in this case are the Railways Services Pension Rules, 1993, wherein recovery of penal rent by adjustment from the gratuity is expressly

permitted as recognised in *Wazir Chand v. Union of India* (JT 2000 (Suppl. 1) SC). Finally, it is argued that this Court, by its order of 29.9.2008, has directed that the respondent should hand over possession of the quarter within four months of his retirement in accordance with the existing rules; however the respondent took much longer to vacate the quarter, and is thus liable for payment of penal rent.

8. Rules 15 and 16 of the Railway Services Pension Rules, 1993 (hereinafter the “Pension Rules”) read as follows:

“15. Recovery and adjustment of Government or railway dues from pensionary benefits-

(1) It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purposes of this rule, the expression “railway or Government dues” includes-

(a) dues pertaining to railway or Government accommodation including arrears of license fee, as well as damages (for the occupation of the Railway or Government accommodation beyond the

permissible period after the date of retirement of allottee if any; (Authority: Railway Board letter No. F(E)III/2010/PNI/4 dated 28.03.12)

(b) xxx xxx xxx

(4) (i) A claim against the railway servant may be on account of all or any of the following: -

(a) xxx

(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,

(c) xxx

(ii) xxx

(iii) Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealised the following courses should be adopted: -

(a) In respect of the dues as mentioned in sub-clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.

(b) In respect if the dues as mentioned in sub-clause (b) of clause (i) of this sub-rule-

(1) The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc. should not be withheld and the surety shall sign a bond in Form 2.

(2) If the retiring railway servant is unable or nor willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub-clause (iii).

(3) The authority-sanctioning pension in each case shall be competent to accept the surety bond in Form 2 on behalf of the President.

(c) xxx

(iv) In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are withheld from the gratuity payable to them shall not be disproportionately large and that such amount are not withheld or the sureties furnished are not bound over for unduly long periods. To achieve this the following principles should be observed by all the concerned authorities:-

(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus twenty-five per centum thereof.

(b) Dues mentioned in clause (I) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.

(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to

disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(d) As soon as proceeding of the nature referred to in rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact to the Account Officer.

16. Adjustment and recovery of dues pertaining to Government or railway accommodation-

*xxx
xxx*

xxx

(7) A railway servant shall vacate the railway accommodation immediately after his retirement.

(8)

(a) In case where a railway accommodation is not vacated after superannuation of the railway servant or after cessation of his service such as on voluntary retirement, compulsory retirement, medical invalidation, or death, then, the full amount of retirement gratuity, death gratuity or special contribution to provident fund, as the case may be, shall be withheld.

(b) The amount withheld under clause (a) shall remain with the railway administration in the form of cash.

(c) In case the railway accommodation is not vacated even after the permissible period of retention after the superannuation, retirement, cessation of service or

death, as the case may be, the railway administration shall have the right to withhold, recover, or adjust from the Death-cum-retirement Gratuity, the normal rent, special licence fee or damage rent, as may be due from the ex-railway employee and return only the balance, if any, on vacation of the railway accommodation.

(d) Any amount remaining unpaid after the adjustment made under clause (c), may also be recovered without the consent of the pensioner by the concerned Accounts Officer from the dearness relief of the pensioner until full recovery of such dues has been made.

(e) Dispute, if any, regarding recovery of damages or rent from the ex-railway employee shall be subject to adjudication by the concerned Estate Officer appointed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (40 of 1971).

(Authority: Railway Board's letter No. F(III)/97/PN1/14 (Amendment) dated 24.5.2000)"

9. The Pension Rules create two separate bases for the withholding of pensionary benefits, *first*, for dues (including damages or rent) owed by the railway employee to the administration under Rule 15, and *second*, a blanket withholding of full pensionary benefits if the railway quarter allotted to an employee is occupied beyond the employee's superannuation. Under the first circumstance, the scheme of the rules is clear in its intent that the primary duty is upon the Government to assess and ascertain the dues owed by the railway employee to the railway administration (Rule 15(1)). Railway dues encompass within its ambit unauthorised occupation of railway accommodation, beyond the date of retirement of the allottee (Rule

15(3)). Any adjustment of pensionary benefits against assessed and ascertained dues has to be in accordance with sub-Rule 4 (Rule 15(2)). If at the time of sanction of pensionary benefits, any dues remain unassessed or unascertained, then the pensionary benefits cannot be arbitrarily withheld; the procedure in sub-rule 4(iii) needs to be followed. These rules make it clear that there is heavy emphasis that the dues must be ascertained and assessed. The amount of gratuity withheld, if any, under Rule 15, cannot be disproportionately large, or for unduly long periods, according to sub-rule 4(iv). Under the second circumstance, Rule 16 specifies the injunction against residing in the quarter beyond the railway employee's superannuation, and also states that the entire DCRG shall be withheld if there is unauthorised occupation of the railway quarter (Rule 16(8)(a)). However, Rule 16(8)(e) clearly states that all disputes as regards damages and rent dues shall be adjudicated by the concerned authority under the Public Premises Act, 1971.

10. Thus, it is clear that for unauthorized occupation of the railway quarter beyond superannuation, the full gratuity may be withheld, in the form of cash in the hands of the railway administration. However, if the quarter is occupied even beyond the permissible period of retention, Rule 16(8)(c) states that dues may be adjusted against gratuity, and only the balance, if any, must be returned to the employee. However, it must be noted that these dues must be assessed and ascertained dues. This is clear from the requirement in Rule 15(4)(iii), which mandates a procedure to be followed, if dues remain

unassessed or unascertained at the time of sanction of pension; this involves furnishing a surety, or requiring that an amount of gratuity “as may be considered sufficient”, be withheld, till dues are assessed and adjusted. The purport of these provisions is clear: the sanction of pensionary benefits cannot be denied or delayed arbitrarily, pending assessment of dues owed to the railway administration.

11. This Court notes that even as of 10.2.2010, the Northern Railway maintained that the gratuity would be released to the respondent only on his vacating the quarter. If it was the government’s position that the respondent had not vacated the quarter as of that date, then the government ought to have commenced proceedings under the Public Premises Act, 1971, in order to assess and ascertain the dues resulting from unauthorised occupation. The procedure under this Act requires that a show-cause notice should be issued to the railway servant, stating the grounds on which eviction is proposed to be undertaken, according to Section 4 of the Act. Arrears of rent and damages are to be assessed according to the procedure under Section 7 of the Act must be followed. Section 7(2) stipulates that assessment of damages for use and occupation of premises may be undertaken by the Estate Officer, after which the occupant is required to pay such damages within the time specified in the order. Particularly crucial in this regard is Section 7(3) of the Act which reads:

"(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice,

why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer."

12. This provision requires that a show-cause be issued before an order is passed by the Estate Officer under Section 7(2) that requires payment of damages. Since Rule 16(8)(e) of the Pension Rules triggers the applicability of procedure under Section 7 of the Public Premises Act, 1971, it is only after this procedure has been fully complied with can dues (damages and rent) be considered to be 'assessed and ascertained'. Only after this procedure is followed, can the DCRG be adjusted against the dues by the petitioner.

13. The petitioners have admitted in their pleadings that a stay order against evicting from or dispossessing the respondent and his father of the quarter, was granted in WP(C) 486/1986 on 27.2.1986. No attempt was made by the petitioners to seek vacation of the stay or appeal against it. Thus, the continued occupation of the quarter by the respondent and his father was permissible given that this stay was never vacated. The respondent in his application has not produced any documents to indicate when he started seeking regularisation of the quarter in his name. However, the writ petition was disposed of by this Court finally in September 2008 on the ground that it had become infructuous, since the respondent had superannuated in August 2008. This order expressly reserves the right of the respondent to advance any defence in respect of damages for unauthorised occupation of the quarter. Had the Northern Railways complied with the procedure and

scheme of the Pension Rules, damages and rent due or payable to the railway administration would have had to be 'ascertained and assessed', and any disputes in that regard would have to be subject to proceedings under the Public Premises Act, 1971. The respondent applicant would then be entitled to advance any explanation or defence in respect of the damages to be assessed.

14. However, the Northern Railways appears to have completely substituted the proceedings under the Public Premises Act, 1971, by their own calculations of damages and rent allegedly owed to the railway administration, as evident from the letter of 25.5.2009. This requirement could not have wantonly be done away with, on a whim, by the administration, as it is mandated specifically under Rule 16(8)(e) and merited generally, under the scheme of the Pension Rules. This Court notes that there is ample authority for the proposition that pensionary benefits cannot be arbitrarily withheld, as these are 'not a bounty, payable on the sweet will and pleasure of the government'. *Ref. Subrata Sen v. Union of India*, AIR 2001 SC 3634, *D S Nakara v. Union of India*, (1983) 1 SCC 305, *Deokinandan Prasad v. State of Bihar*, (1971) 2 SCC 330. It is a right of government employees, and compliance with the procedure is mandatory, if pension is sought to be withheld by the government, to whatever extent permitted by the Rules.

15. There is another aspect in this case that must be emphasised. The limitation period for making a monetary demand under contractual agreement is three years from the day the money becomes

due, as evident from the Schedule to the Limitation Act, 1963. Article 52 of the Schedule stipulates three years (from the date the arrears become due) as the limitation period for claiming arrears of rent. In this light, it is apparent that this claim for arrears of rent and damages is hopelessly time-barred.

16. The Northern Railways refused the requests for regularisation in 1995, going by its own documents and pleadings. Consequently, the arrears of rent and damages, had they been assessed and ascertained, were due from 1995. Given the limitation period, the claim for arrears and damages could have been made only within 3 years from the date the arrears became due. Even under Section 7 of the Public Premises Act, the Estate Officer can order recovery of rent arrears that are 'payable'; the term 'payable' was recognised by the Supreme Court to mean arrears that are not time-barred in *New Delhi Municipal Committee v. Kalu Ram*, AIR 1976 SC 1637, (1976) 3 SCC 407:

Does section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 create a right to realise arrears of rent without any limitation of time? Under section 7 the Estate Officer may order any person who is in arrears of rent 'payable' in respect of any public premises to pay the same within such time and in such installments as he may specify in the order. Before however the order is made, a notice must issue calling upon the defaulter to show cause why such order should not be made and, if he raised any objection, the Estate Officer must consider the same and the evidence produced in support of it. Thus the Estate Officer has to determine upon hearing the objection the amount of rent in arrears which is 'payable.' The word 'payable' is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. 'Payable'

*generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws. If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of at right to claim a debt otherwise time-barred. Construing the expression "any money due" in section 186 of the Indian Companies Act, 1913 the Privy Council held in *Hans Raj Gupta and Ors. v. Official Liquidators of the Dehradun Mussorie Electric Tramway Company Ltd.* that this meant moneys due and recoverable in a suit by the company, and observed : "it is a section which creates a special procedure for obtaining payment of moneys; it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights." We are clear that the word payable" in section 7, in the context in which it occurs, means "legally recoverable." Admittedly a suit to recover the arrears instituted on the day the order under section 7 was made would have been barred by limitation. The amount in question was therefore irrecoverable.*

[emphasis added]

17. This Court is thus compelled to observe that the rent arrears and damages ought to have been assessed and ascertained in proceedings under the Public Premises Act, 1971, and claimed, within three years from when they became due. Even assuming, in favour of the Northern Railways that their case was that arrears and damages were owed (and thus due) on a continuing basis, a claim can only be made for arrears due over the last three years of unauthorised occupation;

the remaining arrears are all barred by time under the Limitation Act, in blocks of three years from when they continually became due. This Court, however, also underlines that this is not their case in either their pleadings or on the record before the CAT and this Court. Therefore, there is no permissible way for the Northern Railways to claim arrears owed from 1.10.1981 till the date of superannuation of the respondent, as it has attempted to do by its letter of 25.5.2009.

18. For the above reasons, we find no merit in the petition and it is accordingly dismissed along with the pending applications, with costs at ₹25,000/- payable to the Delhi High Court Legal Services Committee.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

AUGUST 08, 2014