

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22687 of 2011

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1. The Union of India through General Manager, Eastern Central Railway Hajipur.
 2. The Divisional Railway Manager, Eastern Central Railway, Danapur.
 3. The Senior Divisional Operation Manager, Eastern Central Railway Danapur.
 4. The Senior Divisional Personnel Manager, Eastern Central Railway, Danapur.
 5. The Sr. D.F.M., Eastern Central Railway Danapur. Petitioners.

Versus

R. D. Pathak, S/o Late Hari Mojan Pathak, Mail Guard E.C. Railway, Patna,
Resident of Quarter Of 462/D Neora Colony, Khagaul, Patna (Bihar)

.... Respondent.

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Appearance :

For the Petitioners : M/s Bindhyachal Singh, Sachin Kumar and Manish
Prakash, Advocates.

For the Respondent : None.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 24-07-2015

The present writ application has been filed by the Railways, being aggrieved by the judgment and order dated 25.05.2011 passed in O.A. No.132 of 2009 by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter in brevity the 'Tribunal'), whereby the action of the Railways in imposing and realizing damage rent in respect of Railway quarter unauthorisedly occupied by the contesting private-respondent was set aside with a direction to refund the same.

In spite of notice and in spite of appearance being there, yesterday no one has appeared on behalf of the private-respondent and today also no one is present. Heard Sri



Bindhyachal Singh, learned counsel for the Railways. He submits that the finding of the Tribunal that the damage rent can only be realized under Section-7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and manner thereby is incorrect. He also submits that Railway Board had by its various circulars provided that as to how the damage rent has to be calculated. These circulars follow the circular in relation to ground on which extension or authorizing to retain Railway quarter after transfer from the station is provided for. He further submits that the Division Bench judgment of this Court in the case of the Union of India Vs. Arun Kumar Ojha, being C.W.J.C. No.925 of 2012 decided on 29.02.2012, for this proposition in that case also, the Tribunal had held that Railways should only to take recourse of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to levy and recover damage rent. This was negated by the Division Bench of this Court pointing out from the various circulars of the Railway Board in this regard.

We have considered the matter and found that the Tribunal was not correct. The question of application of Section-7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 has to be made as to what would be the damage rent that may be in dispute because of the quantum that is

to be fixed but where there are circulars of the Railway Board, which quantify the damage rent in respect of the Railway quarters, then it is known to an employee and there can be no dispute about the quantification.

In the present case, it is not in dispute that the employee was allotted a quarter at Khagaul (Danapur), Patna. He was then transferred to Garhara and then Jhajha. He did not surrender his quarter nor did he take permission to retain it. He was then transferred back to Danapur and managed to get the same quarter reallocated for the time that he was in authorized occupation in between his transfer from Danapur and his return to Danapur. He was charged damage rent. It cannot be disputed that he, having not taken any permission, was in unauthorized occupation. He was liable to pay damage rent. The only question was of quantifying the damage rent, which, as noticed above, has already been fixed by the various circulars of the Railway Board then what is the necessity to move under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and more so when no eviction is sought. He is already allotted the same accommodation on his return to Danapur.

Thus, on the facts aforesaid and the earlier judgment of this Court, which considered the various judgments



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of this Court and the Apex Court, the Tribunal was in error in entertaining and allowing the application. Accordingly, the judgment and order dated 25.05.2011 passed in O.A. No.132 of 2009 by the Tribunal is set aside and the writ application is allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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