

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19664 of 2015

- =====
1. The Union of India through the General Manager East Central Railway, Hajipur district Vaishali.
 2. The General Manager(Personnel) /Chief Personnel Officer, East Central Railway ,Hajipur, District- Vaishali.
 3. The Divisional Railway Managae, East Central Railway, Mughal Sarai.
 4. The Divisional Railway Manager(Personnel)/ Senior Divisional Personnel Officer, East Central Railway, Mughal Sarai Division,Mughal Sarai.
 5. The Senior Division,Mughal Sarai.
 6. The Divisiona,l Mechanical Engineer, (Power),Mughal Sarai Division, East Central Railway, Mughal Sarai.

.... Petitioner/s

Versus

1. Krishna Kant Kumar Bharti S/o late Mangal Ram Resident of Railway Quarter No. 361/A, Type II, loco Colony, Gaya, Po Gaya, RS, P.s Delha, District Gaya.

.... Respondent/s

=====

with

Civil Writ Jurisdiction Case No.20554 of 2014

- =====
1. The Union of India through the General Manager, East Central Railway, Hajipur, Vaishali.
 2. General Manager (Personnel)/Chief Personnel Officer, East Central Railway, Hajipur, Vaishali.
 3. Divisional Railway Manager, Mugalsarai Division, East Central Railway, Mugalsarai.
 4. Divisional Railway Manager (Personnel)/ Senior Divisional Personnel Officer Mugalsarai Division, East Central Railway, Mugalsarai.
 5. Senior Divisional Engineer (Co-ordination), Mugalsarai Division, East Central Railway, Mugalsarai.
 6. Senior Divisional Mechanical Engineer, Mugalsarai Division, East Central Railway, Mugalsarai.
 7. Chief Crew Controller (Diesel), East Central Railway, Gaya.
 8. Chief Crew Controller (Diesel), East Central Railway, Mugalsarai.
 9. Office Superintendent, Pay Bill Section, East Central Railway, Mugalsarai.

.... Petitioner/s

Versus

1. Laxman Prasad Son of Late Ram Deo resident of Railway Quarter No. 501/D at Loco Colony, Bageshwari, Gaya, PO - Gaya, PS - Delha, District - Gaya.

.... Respondent/s

=====

with

Civil Writ Jurisdiction Case No.20481 of 2014

=====



The Union Of India
..... Petitioner/s
Versus
Ram Sagar Singh
..... Respondent/s

===== with =====
Civil Writ Jurisdiction Case No.20491 of 2014

- =====
- 1. The Union of India through the General Manager, East Central Railway, Hajipur, Vaishali.
 - 2. The General Manager (Personnel)/Chief Personnel Officer, East Central Railway, Hajipur, Vaishali.
 - 3. Divisional Railway Manager, Mugalsarai Division, East Central Railway, Mugalsarai.
 - 4. The Divisional Railway Manager (Personnel), Senior Divisional Personnel Officer, Mughalsarai Division, East Central Railway, Mughalsarai.
 - 5. The Senior Divisional Engineer (Co-ordination), Mughalsarai Division, East Central Railway, Mughalsarai.
 - 6. Senior Divisional Electrical Engineer (TRS), Mugalsarai Division, East Central Railway, Mugalsarai.
 - 7. Chief Crew Controller (Electric), East Central Railway, Gaya.
 - 8. Chief Crew Controller (Electric), East Central Railway, Mugalsarai.
 - 9. Office Superintendent, Pay Bill Section, East Central Railway, Mugalsarai.

..... Petitioner/s
Versus
1. Ravi Chand Ram Son of Late Hari Ram resident of Railway Quarter No. 103D, Kharkhura Loco Colony, PO - Gaya, RS, PS - Delha, District - Gaya.

..... Respondent/s
===== with =====
Civil Writ Jurisdiction Case No.20492 of 2014

- =====
- 1. The Union of India through the General Manager, East Central Railway, Hajipur, Vaishali.
 - 2. The General Manager (Personnel)/Chief Personnel Officer, East Central Railway, Hajipur, Vaishali.
 - 3. The Divisional Railway Manager , East Central Railway, Mughalsarai. null null
 - 4. The Divisional Railway Manager (Personnel), Senior Divisional Personnel Officer, Mughalsarai Division, East Central Railway, Mughalsarai. null null
 - 5. The Senior Divisional Engineer (Co-ordination), Mughalsarai Division, East Central Railway, Mughalsarai.
 - 6. The Senior Divisional Mechanical Engineer, Mughalsarai Division, East Central Railway, Mughalsarai.
 - 7. The Senior Section Engineer (Loco), East Central Railway, Gaya.
 - 8. The Chief Crew Controller (Diesel), East Central Railway, Mughalsarai.
 - 9. The Officer Superintendent, Pay Bill Section, East Central Railway, Mughalsarai.



.... Petitioner/s

Versus

1. Guru Dayal Munda S/o (Late) Jitan Munda R/o village - Taranpur, PO -
Mughalsarai, PS - Aliganj, District - Chandauli.

.... Respondent/s

=====

Appearance :

(In CWJC No.19664 of 2015)

For the Petitioner/s : Mr. D. K. Sinha, Sr. Advocate,
Mr. Bindhyachal Singh &
Mr. Manish Prakash

For the Respondent/s : Mr. Gautam Saha

(In CWJC No.20554 of 2014)

For the Petitioner/s : Mr. D. K. Sinha, Sr. Advocate &
Mr. Bijoy Kumar Sinha

For the Respondent/s : Mr. Gautam Saha

(In CWJC No.20481 of 2014)

For the Petitioner/s : Mr. D. K. Sinha, Sr. Advocate &
Mr. Bijoy Kumar Sinha

For the Respondent/s : Mr.

(In CWJC No.20491 of 2014)

For the Petitioner/s : Mr. D. K. Sinha, Sr Advocate &
Mr. Bijoy Kumar Sinha

For the Respondent/s : Mr. Gautam Saha

(In CWJC No.20492 of 2014)

For the Petitioner/s : Mr. D. K. Sinha, Sr. Advocate &
Mr. Bijoy Kumar Sinha

For the Respondent/s : Mr. Gautam Saha

=====

**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 20-12-2016 Heard learned counsel for the petitioner Railway and
learned counsel for the respondents.

2. All these matters arise out of different orders passed
by the Central Administrative Tribunal, Patna Bench, Patna in
different Original Applications by which the O.As. were allowed
and recovery of penal rent from the salary of the
applicants/respondents have been set aside with a direction to



refund the excess rent realized and to deduct the house rent only admissible as per rules.

3. Aggrieved by the aforesaid orders, these writ applications have been filed by the Railways. Various points have been argued and decisions have been cited by learned counsel for the Railways in support of his stand, particularly the decision of a Division Bench of this Court dated 29.02.2012 passed in C.W.J.C. No. 925 of 2012 (The Union of India & Others Vs. Arun Kumar Ojha) wherein it has been held that in case of a serving employee, the Railway has necessary power under the Service Rules to realize special rent as well as damage rent as specified in the Railway instructions and circulars subject to the right of the employee to claim post facto hearing on a representation seeking review which is warranted by the principles of natural justice as well as fairness in State action, relying on various instructions and circulars of the railways.

4. In the light of the aforesaid decision and other similar decisions, it is asserted by learned counsel for the Railways that the decision of the Tribunal in all the cases is erroneous.

5. On the other hand, reliance was placed by learned counsel for the applicants-respondents on a Circular dated 03.12.1990 issued by the Divisional Railway Manager, Eastern Railway, Mughalsarai to all the Branch Officers, Mughalsarai



regarding retention of Quarters by running and train staff of Electrical (TRS), Mechanical (Power), operating and Commercial Branches on being transferred from Mughalsarai to Gaya and Sone Nagar/Dehri on Sone and vice versa, referring to an earlier office letter dated 14.11.1990, and informing that the recovery of rent of the Railway quarters which has been retained by the Running Staff & TTE/TCs of TRS, Mechanical (Power), Operating and Commercial Branch at the Stations mentioned above will be at the normal rate since 1.11.1990.

6. The Tribunal, however, although taking note of the said letter has essentially, in all but one of the cases, relied upon the fact that the petitioner railway had not acted in accordance with the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act, 1971 and without following the said procedure, it cannot recover the said amount. In C.W.J.C. No. 19034 of 2014 reliance was on the factual aspects of the matter and liberty was, accordingly, granted while setting aside the order of recovery with a direction to refund the amount recovered, to take steps afresh in accordance with law.

7. Before us, learned counsel for the respondents have strongly relied upon the aforesaid Circular dated 03.12.1990 and submitted that all the respondent employees are covered by the categories mentioned therein and, thus, there could be no recovery



of penal rent/damage rent from 1990 from these categories of employees.

8. Learned counsel for the Railway does not deny the aforesaid factual position that all these applicants-respondents are covered by the said Circular dated 03.12.1990.

9. So far as the findings of the Tribunal with regard to non-compliance with the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act, 1971 is concerned, it has been clearly laid down by the Division Bench of this Court in Arun Kumar Ojha's case (supra) that the Railway is within its right and has necessary power under the Service Rules to realise special rent as well as damage rent as specified beforehand; the employee would be entitled to seek review by post facto hearing as warranted by the principles of natural justice as well as fairness in State action, which must be considered on the basis of various instructions and circulars of the Railways. The said view is reiterated in several decisions of this Court. Thus, the finding that even in the case of serving employee, there can be no recovery of damage rent/penal rent without taking recourse to the Public Premises Act, does not appear to be correct as per the decision of this Court in the case of Arun Kumar Ojha (supra).

10. However, in our view, the same would have no effect so far as the quashing of the recovery orders by the



Tribunal is concerned in view of the clear position enunciated by the Circular dated 03.12.1990 of the Divisional Railway Manager, Eastern Railway, Mughalsarai. Hence, the petitioner cannot make any recovery of any penal rent or damage rent from the applicants-respondents for such retention of quarters upon their transfer to the concerned Stations.

11. In the aforesaid view of the matter the order of the Tribunal is held to be valid to the extent that it directs refund of the excess penal rent/damage rent recovered from the respondents but without any liberty to the petitioners to proceed afresh in the matter against the respondent employees.

12. The writ applications are, accordingly, dismissed with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

(Arun Kumar, J)

Amin/-

U			
---	--	--	--

