

Court No. - 33

Case :- WRIT - A No. - 14117 of 2011

Petitioner :- Union Of India Thru G.M. Northern Railway And Others

Respondent :- Central Administrative Tribunal And Another

Counsel for Petitioner :- Prashant Mathur

Counsel for Respondent :- S.C.,S. Singh,S.S. Sharma

Hon'ble Manoj Misra,J.

Hon'ble Ved Prakash Vaish,J.

We have heard Sri Prashant Mathur for the petitioners. No one has appeared on behalf of the respondents even in the revised call though the name of Sri S. Singh and Sri S.S. Sharma are shown from the respondent' side.

The second respondent was allotted a type-II quarter at Varanasi in connection with his service in the Railways. By order dated 23.09.1995, the second respondent was transferred from Varanasi to Mughalsarai and, thereafter, was relieved on 28.09.1995. The second respondent however did not vacate the allotted quarter. As a consequence whereof, on 01.12.1999, according to the petitioners, a notice was served upon the second respondent to vacate the quarter. The second respondent did not vacate the quarter but chose to challenge the notice by filing Original Application No.506 of 2000. The said original application was disposed of by order dated 21.04.2003 requiring the competent authority to take an appropriate decision on the representation of the second respondent in respect of his liability for damages/penal rent. By the time Original Application No.506 of 2000 was decided, the second respondent had already retired from service on 31.08.2001. However, pursuant to the order of the Tribunal, the competent authority, by his order dated 07.07.2004, took a decision to make certain deductions from the death-cum-retiral benefits available to the second respondent towards penal rent as well as other charges. Assailing the order passed by the competent authority, the second respondent filed a fresh Original Application No.852 of 2005 before the Tribunal.

In the subsequent application, the second respondent took a plea that it was a normal practice for Railway employees posted at Mughalsarai to retain railway quarters at Varanasi and vice versa. It was pleaded that he was never served notice to vacate the quarter and suddenly recovery of penal rent was imposed upon him. It was further claimed by him that neither railway quarter was allotted to him at Mughalsarai nor he had claimed any House Rent Allowance and therefore he was not liable for penal rent.

The Tribunal by the order impugned dated 17th September, 2010 proceeded to set aside the order dated 07.07.2004 and direct that damages/penal rent shall be calculated from the date notice to vacate the quarter was given i.e. 01.12.1999 upto the date the quarter was vacated i.e. 01.08.2001 and after calculating the damages/penal rent, opportunity would be given to the applicant (the second respondent herein) to put forward his case and then any orders for recovery would be passed and, in the meantime, no recovery from death-cum-retirement gratuity would be made; and that the gratuity amount withheld from the applicant (second respondent), shall be paid, and, after calculating penal rent, the applicant (second respondent herein) shall pay the same as per the Rules. It was also observed that it was for the Railway Administration to decide whether to impose penal rent or not. The aforesaid exercise was required to be completed within three months.

The order passed by the Tribunal, in our view, does not seriously affect the right of the petitioners as they were given opportunity to pass fresh order and to recover the penal rent from the second respondent after giving opportunity of hearing to the second respondent.

However, Sri Prashant Mathur, who has appeared on behalf of the Railway Administration (the petitioners), has submitted that the observation made by the Tribunal whether penal rent was payable or not is misplaced in view of the Full Bench Decision of the Tribunal in the case of ***Ram Poojan Vs. Union of India and others, reported in 1996 (1) ATJ 540*** wherein it was held that no specific order cancelling the allotment of accommodation is required after expiry of the permissible/permitted period of retention of the quarters on transfer/retirement or otherwise. He has submitted that in view of the Full Bench decision of the Tribunal, the penal rent becomes admissible and, therefore, the Tribunal was not justified in again remitting the matter back for consideration by the Railway Administration.

We have given thoughtful consideration to the submissions of the learned counsel for the petitioners and have also taken notice of the claim of the second respondent before the Tribunal.

We find that the Tribunal has not addressed the main issue that was raised by the second respondent which was that it was a normal practice for railway employees posted at Mughalsarai to retain railway quarters at Varanasi and vice versa and normal rent continued to be deducted from their salary. The other aspect which has not been considered by the Tribunal is the

claim of the second respondent that no railway quarter was allotted to him at Mughalsarai and that he had not raised a claim in respect of House Rent Allowance.

Under the circumstances, though we do not consider it appropriate to set aside the order passed by the Tribunal but we consider it appropriate to clarify that while considering the matter of the second respondent, pursuant to the order of the Tribunal, the Railway Administration shall also deal with the plea of the second respondent as regards practice of retention of quarters at Varanasi by railway employees who were posted at Mughalsarai as also whether penal rent could be charged from him if he was not allotted any quarter at Mughalsarai and had not staked claim for house rent allowance, which may otherwise be available to him; and whether any liability towards penal rent would be adjustable towards House Rent Allowance that may otherwise be admissible to the second respondent. We, therefore, consider it appropriate to dispose of this petition by maintaining the order of the Tribunal with further clarification/direction as above. The exercise shall be completed by the Railway Administration within a period of three months from today.

With the aforesaid observation/direction, the petition is **disposed of.**

Order Date :- 6.8.2018
AKShukla/-

(V.P. Vaish, J.) (Manoj Misra, J.)