

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

% **Date of decision: 19th October, 2020.**

+ **W.P.(C) 8170/2020**

INDERJEET SINGH **Petitioner**

Through: Mr. Anuj Aggarwal, Adv.

versus

MINISTRY OF RAILWAYS & ANR. **Respondents**

Through: Mr. Jagjit Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, an Assistant Sub Inspector in the Railway Protection Special Force, has filed this petition (a) impugning the demand, contained in letter dated 22nd May, 2020, for recovery of Rs.8,85,371/- from the petitioner on account of unauthorised retention of Railway quarter and to be realised from the petitioner by deduction from the salary of the petitioner w.e.f. May, 2020 at the rate of Rs.20,590/- per month; and, (b) for a direction to the respondents Indian Railways to refund to the petitioner the amounts deducted from the salary of the petitioner w.e.f. May, 2020 onwards.

2. It is the case of the petitioner, that (i) on his transfer to Delhi in October, 2006, he was allotted a Type III quarter located at 215/A, Type-III, 6th Battalion, Railway Protection Special Force, Dayabasti, Delhi; (ii) on 2nd October, 2015, the petitioner was transferred from Delhi to Gorakhpur and joined duty at Gorakhpur on 12th October, 2015; (iii) at that time the petitioner's wife was undergoing treatment for asthma in Central

Hospital, Delhi and the petitioner's son was pursuing graduation from Delhi; (iv) therefore the petitioner made a request for retention of the subject Railway quarter and was granted time till 17th June, 2016 to vacate the same; (v) the petitioner, under the said permission, retained the said quarter from 1st December, 2015 to 17th June, 2016 and was paying double the license fee/rent therefor; (vi) the respondents Indian Railways, vide letter dated 18th May, 2016 advised the petitioner to vacate the subject Railway quarter on or before 18th June, 2016 and informed the petitioner that else, damage rent would be applied; (vii) however the treatment of the wife of the petitioner continued beyond 17th June, 2016 and the son of the petitioner got admission in Indraprastha University of Delhi and was pursuing his Post Graduation at Delhi; the petitioner was thus not in a position to afford any other accommodation in Delhi and continued to retain the said quarter after 17th June, 2016 also; (viii) a sum of Rs.11,597/- was being deducted from the monthly salary of the petitioner on account of unauthorised occupation of the subject quarter, w.e.f. 18th June, 2016; (ix) vide letter dated 13th April, 2017, an amount of Rs.1,09,398/- was also found to be recoverable from the petitioner for unauthorised occupation of the subject Railway quarter from 18th June, 2016 to March, 2017 and the amount was directed to be recovered in 16 instalments from the petitioner's salary, besides the amount of Rs.11,597/- being already deducted; (x) in July, 2018, a show cause notice and a final notice for vacation of the subject Railway quarter was issued to the petitioner but the petitioner still could not vacate the quarter and the amounts aforesaid continued to be deducted from the petitioner's salary; (xi) between 4th April, 2018 and 14th August, 2018, the Railway Board directed all its General Managers that revision of rate of

damages for unauthorised occupation of Railway accommodation at telescopic penal charges will be applicable from 1st September, 2018; (xii) however no information about this was communicated to the petitioner and the amount of Rs.11,597/- continued to be deducted from the salary of the petitioner; (xiii) on 16th January, 2020, a communication was sent to the Commanding Officer, Gorakhpur where the petitioner was posted, requesting to recover the sum of Rs.8,96,968/- (i.e. the impugned amount), at the rate of Rs.20,590/- per month besides a sum of Rs.92,829.50 paise per month, till the date of vacation of the Railway quarter, from the emoluments of the petitioner, on account of unauthorised retention of Railway quarter; (xiv) the petitioner immediately vacated the subject quarter and handed over possession thereof; (xv) on 5th February, 2020, the petitioner applied for waiver of telescopic penal charges on the ground that the petitioner at Gorakhpur had not availed of any family residential premises or of House Rent Allowance (HRA) and on the contrary had been paying Rs.11,597/- per month between 18th June, 2016 till December, 2019 and the revised rate of damage rent/ telescopic penal charges were never brought to the notice of the petitioner and that from the conduct of the Indian Railways of continuing to deduct Rs.11,597/- per month from his emoluments, the petitioner remained in the dark about the telescopic penal charges; (xvi) the impugned demand dated 22nd May, 2020 for recovery of Rs.8,85,371/- aforesaid on account of unauthorised retention of Railway quarter, to be deducted from May, 2020 at the rate of Rs.20,590/- per month was served on the petitioner; (xvii) had the petitioner been informed of telescopic penal charges earlier, he would have immediately vacated the quarter; and, (xviii) the petitioner earlier filed W.P.(C) No.3822/2020 but W.P.(C) 8170/2020

the same was dismissed with liberty to file afresh on the same cause of action.

3. The counsel for the petitioner has contended that the petitioner, prior to 16th January, 2020 was not aware of telescopic penal charges and thus recovery thereof from the petitioner, for the period prior to the petitioner being made aware thereof, is retrospective in nature and bad for this reason alone.

4. Having not found the petitioner to have anywhere in the petition pleaded the date when he vacated the quarter, we enquired so from the counsel for the petitioner.

5. The counsel for the petitioner states that the petitioner vacated the quarter on 31st January, 2020 i.e. immediately after learning of telescopic penal charges vide communication dated 16th January, 2020.

6. We have enquired from the counsel for the petitioner, whether not the petitioner consciously chose to illegally and unauthorisedly retain Government quarter. We have further enquired that if it is so, whether not the petitioner is bound by the penal rent prescribed from time to time for the said quarter. We have yet further enquired, where is the requirement to communicate to the petitioner the rate at which charges for unauthorized retention of Railway quarter would be levied / recovered.

7. The counsel for the petitioner refers to ***S.D. Bandi Vs. Divisional Traffic Officer, Karnataka State Road Transport Corporation*** (2013) 12 SCC 631 to contend that the same lays down that principles of natural justice have to be complied with and further contends that the said principles of natural justice required the respondents Indian Railways to communicate the rate to the petitioner.

8. Per contra, the counsel for the respondents Indian Railways appearing on advance notice has drawn our attention to the order dated 30th June, 2020 in W.P.(C) No.3822/2020 earlier filed by the petitioner and wherein this Court observed/held (i) that as far as the ground urged of the petitioner being not informed of the telescopic penal charges is concerned, the communication dated 13th April, 2017 admittedly received by the petitioner informing the petitioner of the liability of the damage rent at the rate of Rs.11,597/- per month, also informed the petitioner that any other order received from the authorities would be followed and that in our opinion the petitioner stood informed by the said communication that a higher amount per month also could be recovered from him; (ii) that if the Rules lay down damage charges for unauthorised occupation of a particular accommodation and recovery thereof is in accordance with Rules, the same cannot be challenged; and, (iii) that the reasons given by the petitioner for not vacating the accommodation are not such which require any leniency to be shown to the petitioner; the disease of asthma from which the wife of the petitioner is stated to be suffering, is not such which could not have been treated at Gorakhpur; similarly the reason of education of the son of the petitioner was common to all those in transferable jobs and did not entitle the petitioner to retention of accommodation at the station from which the petitioner had already been transferred out.

9. We may mention that W.P.(C) No.3822/2020 earlier filed by the petitioner made the same challenge as made in this petition. However the petitioner then was represented by an advocate who was young and raw. In view thereof and on his request, though after fully hearing him and recording as aforesaid, we had permitted him to withdraw that petition with W.P.(C) 8170/2020

liberty to file afresh on the same cause of action.

10. This petition has been filed in terms of the liberty aforesaid and by engaging a different counsel. However we are constrained to observe that the counsel today appearing for the petitioner has neither pleaded nor argued anything to dissuade us from taking the same view as taken on 30th June, 2020.

11. As far as *S.D. Bandi supra* cited by the counsel today appearing for the petitioner is concerned, the same rather than coming to the rescue of the petitioner is against the petitioner. The Supreme Court therein lamented about the malady of employees continuing to stay in residential accommodation provided by Government of India inspite of ceasing to be entitled thereto and continuing to occupy such accommodation for long and emphasised the need for strict action against those over staying in accommodation allotted by the Government and the promptness with which action against defaulters has to be taken and even called upon such unauthorised occupants of official accommodation to appreciate that their act of over staying directly infringes the right of others. The same though undoubtedly suggested (as distinct from laying down) that principles of natural justice have to be followed but in the context of serving the notice. The same nowhere held that without communicating the rate of charges for unauthorized occupation, charges at that rate cannot be collected. Here, it is not the plea or contention of the petitioner that in the matter of service of notice, principles of natural justice have not been complied with. The petitioner himself has annexed to the petition the notice dated 13th April, 2017 received by him informing him of levy of damage rent at the rate of Rs.11,597/- per month and which rate could be varied in future in

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accordance with Rules / directions. It is not as if the rate of Rs.11,597/- per month was a contractual rate mutually settled between the petitioner and the Indian Railways and which the Indian Railways could not unilaterally change. The rate of Rs.11,597/- per month was also as per Rules / directions and was unequivocally accepted by the petitioner, obviously because must be lower than prevailing rent of alternate accommodation. The petitioner, inspite of being informed that the said rate could be varied, did not say that the variation be informed to him. Rather, the petitioner by his conduct consented to pay the damage rent at the rate determined by the authorities concerned of the Indian Railways. It was also clear from the said conduct of the petitioner that levy of damage rent at the rate of Rs.11,597/- per month did not serve the requisite purpose of making the petitioner vacate the government accommodation in his unauthorized possession. The petitioner thus cannot now be heard to contend that because the enhancement in rate was not communicated to him, he is not liable to pay the same or that any right vested in him has been infringed. The petitioner even otherwise is deemed to be aware of Rules and Regulations from time to time of his employment. Not only so, there is no right in the petitioner to be informed of any increase in charges for unauthorized occupation, which is the liability in law of the person in unauthorized occupation of any property. A person in unauthorized occupation has no rights as claimed. One of us (Rajiv Sahai Endlaw, J.) in ***Chaman Lal Vs. Delhi Jal Board*** 2018 SCC OnLine Del 9800, LPA No.430/2018 preferred whereagainst was dismissed as infructuous on 10th August, 2018, held that a person in unauthorized occupation does not require any sympathy and does not have any equity in his favour.

12. It is significant to note that there is no challenge to the right of the Indian Railways to prescribe the rates of unauthorized occupation of different kind of government accommodation or to the rates so prescribed by Indian Railways. Supreme Court in the judgment aforesaid cited by the counsel for the petitioner himself as well as in the earlier order in the same matter reported as (2011) 15 SCC 746 directed prompt effective steps to be taken to curb the rampant tendency to continue to occupy government quarter unauthorizedly and taking of prompt steps for dealing with the matter and for vacation of government accommodation in unauthorized occupation of those who are no longer entitled thereto. It cannot be lost sight of that the officers and personnel of Indian Railways entrusted with the task of taking steps for forcible dispossession of those in unauthorized occupation, are friends and colleagues of the unauthorized occupants and are reluctant to take harsh steps. In this respect, we find the Rules / Orders prescribing charges for unauthorized occupation equivalent to market rent of similar accommodation or slightly higher than that and deduction thereof from the dues payable to the unauthorized occupant to be an effective tool for getting rid of those in unauthorized occupation without putting any of their colleagues and friends to embarrassment for forcibly throwing out their colleagues and their family members from government accommodation. It has certainly worked in the case of the petitioner and made the petitioner, who was comfortable in continuing in unauthorized occupation so long as the charges thereof being deducted from his salary were lower than the market rent, vacate the Railway quarter and possibly take accommodation elsewhere on rent, as soon as deduction from his salary for unauthorized occupation was at the market rent or may be slightly

more than that.

13. No case of violation of the principles of natural justice is made out. The petitioner was fully aware of the illegality of his action of retaining the quarter at Delhi inspite of being transferred out of Delhi. We may notice that it is not as if the illegal retention was for a short length of time. The petitioner as aforesaid joined at Gorakhpur on 12th October, 2015 and continued to illegally retain the quarter at Delhi for more than four years i.e. till 31st January, 2020.

14. Government and other employers construct and maintain residential accommodation, not to earn rent therefrom but as a perk to the employees/staff posted at a particular location and who, in the absence of official accommodation would be compelled to pay rent for accommodation sought otherwise and which rent they are unable to afford. The residential accommodation is one of the most lucrative perk of service, as observed in *Union of India Vs. Shankar Raju* (2008) 150 DLT 545 (DB). Owing to paucity of official accommodation, particularly at Delhi, only some are able to avail of the same. The petitioner, by unauthorisedly retaining official accommodation inspite of having been posted out of Delhi, deprived other officials of the Railway/Railway Protection Force from the perk of service to which they would have been otherwise entitled to and which officers would have been compelled to pay market rent for accommodation taken by them on rent and to their detriment. The petitioner, for his own convenience cannot be permitted to cause loss to others.

15. The counsel for the petitioner has then contended that the petitioner is a Group C employee and this Court is required to take a humanitarian approach.

16. We have enquired from the counsel for the respondents Indian Railways whether under the Rules and Regulations any discretion is vested in the Indian Railways to grant any concession. The counsel for the respondents Indian Railways, after taking instructions informs that there is no such provision.

17. The petitioner is a violator of Rule and Regulations and an encroacher on Government accommodation and as such the petitioner deserves no discretion from the Court and this petition does not deserve to be entertained.

18. There is no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

OCTOBER 19, 2020

‘pp’..