

02.02.2021
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RP Ct.04

**M.A.T. 602 of 2020
With
I.A. No.CAN 1 of 2020
With
I.A. No.CAN 2 of 2020**

**Ajit Kumar Singh.
Vs.
Union of India & ors.**

Mr. Achin Kumar Majumder,
Mr. Pratik Majumder for appellant.

Mr. Satyendra Agarwal,
Mr. Bijoy Bag
Ms. Sneha Dutta ... for respondents.

This intra Court appeal has been heard on dispensation of all formalities including service of notice of appeal and on papers disclosed in the stay application, as was on consent of parties recorded in our order dated 27th January, 2021.

Mr. Majumder, learned advocate appears on behalf of appellant and submits, his client was transferred by order dated 18th January, 2019, from Bondamunda (BNDM), to Kharagpur (KGP), divisions. While serving at BNDM he was allowed and thereby in occupation of railway quarter. On transfer, appellant had on 18th July, 2019, applied for quarter at KGP. However, by order dated 6th August, 2019 he was again transferred, on an inter zonal transfer, to Chennai. Appellant moved the writ Court successfully and by order dated 20th August, 2019, the

inter zonal transfer order was quashed. Appellant remained at KGP.

Appellant continued to hold on to his quarter at BNDM on, according to him, not being allowed a quarter in KGP. He stayed in railway barracks at his transferred post. By communication dated 9th April, 2020, the Divisional Security Commissioner /RPF advised appellant to vacate the railway quarter. Mr. Majumder submits, by then lock down consequent to declaration of pandemic Covid-19 had set in. The situation was acknowledged by the Railways per communication dated 31st July, 2020, on subject stated therein to be 'Quarter retention for officers, whose vacation date falls during Covid period', said to be after 24th March, 2020, on outer most limit of 31st October, 2020. Mr. Majumder submits, his client was allotted a quarter in KGP. He vacated the quarter at BNDM in August, 2020, before the date of said outer limit. He also draws attention to two salary slips of his client, for May and June, 2020, in which house rent, at the normal rate, stands deducted.

He refers to rule 81 in Railway Protection Force Rules, 1987, providing for deduction from pay and allowances. He submits, under the rule an opportunity to show cause by his client, the authorities were obliged to give, before deduction of penal rent. He points out from communication dated 22nd July, 2020, impugned in the writ petition, penal rent was claimed from 20th January,

2019 till July, 2020, as imposed by the Divisional Security Commissioner / RPF, (SER). Decision communicated was that an amount of Rs.33,900/- will be recovered on each of 36 instalments with effect from July, 2020, to recover aggregate damages amounting to Rs.12,20,400/-. He submits, no opportunity was given to his client to bring the circumstances for holding on to the quarter after transfer till before he was allotted one, to notice of the authorities.

He relies on judgments of Supreme Court.

State of Maharashtra vs. Jalgaon Municipal Council reported in **(2003) 9 SCC 731**, paragraph 30 on fundamental principle of fair hearing and **Gorakhpur University vs. Dr. Shitla Prasad Nagendra** reported in **AIR 2001 SC 2433**. Following sentences from paragraph 5 of the latter are reproduced below:-

“5.....The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards.”

He adds, the proper authority to determine penal rent would be the Estate Officer.

He submits, there is no provision in the rules empowering Divisional Security Commissioner to either determine or impose or recover penal rent or damages, for alleged unauthorized occupation of railway quarter.

Mr. Agarwal, learned advocate appears on behalf of respondents. He relies on rule 120.2, reproduced below.

“120.2. It shall be a condition of his service that he shall vacate the accommodation on his ceasing to be a member of the Force or on his transfer from that place or whenever an officer not below the rank of Security Commissioner, for reasons to be recorded in writing, finds it necessary and expedient for him to do so.”

He also relies on clause (iv) in rule 146.2. The clause is reproduced below:-

“146.2. (iv) Neglect of duty:.....fail properly to account for, or to make a prompt and true return of any money or property received by him in the course of his duty.”

He then hands up and relies on Master Circular no.49 (updated in August 2019) regarding allotment of quarters and retention thereon on

transfer etc., as issued by Government of India, Ministry of Railways. He relies on clause (a) in paragraph 10.1, clause (a) in paragraph 11.1.1, clauses (a), (b) and (c) in paragraph 12.2 and paragraph 15 read with its annexure D.

He submits, clause (a) in paragraph 10.1 is regarding retention of railway quarter on request by the employee. Grounds for such request have been given in the paragraph. Admittedly appellant does not have any of the grounds nor did he make any request. Clause (a) in paragraph 11.1.1 is automatic termination of allotment on, inter alia, transfer. This happened on the date of first transfer to KGP. Clauses (a), (b) and (c) in paragraph 12.2 provide for withholding of retiral benefits on superannuation or cessation of service, including the administration having right to recover or adjust from death cum retirement gratuity, inter alia, damage rent due from ex-railway employee. Paragraph 15 brings into effect revision of rates of damage for unauthorized occupation of railway accommodation and appellant having had held on to type-IV accommodation, became liable to pay penal rent and damages at forty times the rent.

He then relies on clauses (i) and (j) in definition rule 2, for meaning of 'Division' and 'Divisional Security Commissioner'. Rules 39 to

39.6, he relies on for powers and responsibilities of Divisional Security Commissioner. He also relies on section 21 in Railway Protection Force Act, 1957 regarding power of Central Government to make rules.

He cites following judgements of Supreme Court.

- (i) **Wazir Chand vs. Union of India** reported in **(2001) 6 SCC 596**;
- (ii) **Grid Corporation of Orissa vs. Rasananda Das** reported in **(2003) 10 SCC 297**;
- (iii) **Secretary, O.N.G.C. Ltd. Vs. V.U. Warriar** reported in **(2005) 5 SCC 245**.

He submits, law declared by Supreme Court leaves no doubt that on unauthorized occupation of government quarter, penal rent can be imposed and recovered from the unauthorized occupier.

Mr. Majumder in reply submits, **Wajir Chand** (supra) was in respect of unauthorized occupation of government quarter after the employee attained superannuation. So also are the facts in **Grid Corporation of Orissa** (supra) and **Secretary, O.N.G.C Ltd.** (supra).

We have not been shown a rule that authorizes or empowers Divisional Security Commissioner or any other officer to impose or recover penal rent or damages from an in-service

employee of the Railways. Necessarily we have to accept Mr. Majumder's submission that then, this case becomes one of deduction of penal rent from the pay and allowances of appellant. The positive, of a notice regarding deduction to be made or opportunity to show cause why it should not be made, could not be asserted or shown to us from the materials on record in the writ petition. **Gorakhpur University** (supra) comes to aid of appellant. On this ground alone the demand becomes liable to be quashed and set aside.

We have been through the several clauses of relied upon paragraphs in the Master Circular. We have not been able to find that contents thereof refer to in-service employees. The decisions relied upon by Mr. Agarwal all relate to unauthorized occupation by ex-employees. In this situation we cannot be unmindful of the facts. Appellant was advised on 9th April, 2020 to vacate the quarter in BNDM and thereafter rent for the quarter was recovered from his salary, for the months of May and June 2020, at normal rate of rent. The Railways own position, consequent to setting in of the pandemic, regarding vacating of quarters during the period mentioned above, prevents it from acting otherwise in case of appellant, who had surrendered the quarter before expiry of outer limit of said period.

This appeal is from interlocutory order refusing interim relief and giving direction for affidavits. We can pass interim order in terms of prayer (e) in the writ petition, restraining respondents from acting or continuing to act on basis of order dated 22nd July, 2020, till disposal of the writ petition. However, after above adjudication, nothing remains to be decided in the writ petition, by the first Court, as can be decided independently of our findings. Hence, we quash and set aside order dated 22nd July, 2020 and allow the writ petition. Copy of the writ petition handed up is kept in the file.

The appeal and connected applications are accordingly disposed of.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)