

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: December 09, 2021

+ W.P.(C) 7798/2020 & CM. No. 25671/2020

ASHUTOSH VASANT

.... Petitioner

Through: Mr. Anirudh Bakhru, Adv.

versus

THE CHAIRMAN AND MANAGING DIRECTOR RAILTEL
CORPORATION OF INDIA LIMITED & ORS.

..... Respondents

Through: Mr. Shambhu Sharan, Mr. Yaman
Kumar and Mr. Shashaank Bhansali,
Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The instant Writ Petition has been filed with the following prayers:-

“On the premises set forth hereinabove, it is most humbly prayed that this Hon’ble Court may graciously be pleased to:-

(a) Quash the Office Orders dated 08.04.2020, 29.04.2020, para (ii) of 15.07.2020 and 24.07.2020 issued by the Respondents directing the Petitioner to pay damage/penal rent to the tune of Rs.38,20,877/- (Rupees Thirty eight lakhs twenty thousand eight hundred and seventy seven only) for the period from

09.04.2012 to 31.03.2020;

(b) *Direct the Respondents to refund a sum of Rs. 2,25,000/- (Rupees Two lakhs twenty five thousand) illegally deducted from the salary of the Petitioner for the months of June, July and August 2020;*

(c) *Issue appropriate Order to permit the Petitioner to retain the House/ Quarter No.941-A, New Sabarmati Railway Colony, Ahmedabad on normal rent till the end of the Bharatnet Project in Gujarat;*

(d) *And pass such other or further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."*

2. The petitioner qualified for the Indian Engineering Services in the year 1990 and subsequently joined Indian Railway Service in Indian Railway Service of Signal Engineers ('IRSSE', for short) as a probationer on December 02, 1991. On January 31, 2002, he joined RailTel Corporation of India Limited ('RailTel', for short), a Central Public Sector Undertaking ('CPSU', for short) under the Ministry of Railways, on deputation. He joined RailTel as Deputy General Manager and was promoted to Joint General Manager and subsequently to Additional General Manager. In June 2010, the petitioner was allotted a Quarter bearing number 941-A, New Railway Colony, Sabarmati, Ahmedabad constructed and owned by RailTel under PSU Scheme of Ministry of Railways.

3. On April 30, 2008, the petitioner resigned from Railway Service and sought absorption in RailTel. On May 01, 2008, he was absorbed to RailTel as General Manager (Marketing), Western Region and Territory Manager at Ahmedabad.

4. It is averred that he was subjected to six mid-session transfers between April 2012 and March 2017. He was transferred from Ahmedabad to Delhi / NCR in the same grade vide order dated February 24, 2012. It is also stated that at this time, the elder son of the petitioner was promoted to Class IX in the academic session of 2012-13 and the father of the petitioner was suffering from Parkinson's Plus disease with no known cure. Therefore, he retained the accommodation at Ahmedabad. It is further contended that IRCON Residential Accommodation Retention Rules, 2009 ('IRCON Rules', hereinafter) and the Master Circular No. 49 dated August 20, 2019 issued by the Railway Board, Ministry of Railways, Government of India provide for retention of accommodation on educational grounds.

5. The petitioner was transferred from Delhi / NCR to Ahmedabad vide order dated July 04, 2013, while his elder son was pursuing Class X in the academic session 2013-14. He was further transferred from Ahmedabad to Delhi / NCR vide order dated May 20, 2014, while his elder son was pursuing class XI in the academic session of 2014-15 at Ahmedabad.

6. It is stated that he was again transferred from Delhi / NCR to Ahmedabad vide order dated August 05, 2015. I may note that this transfer order was issued pursuant to a request made by the petitioner in that regard vide representations dated June 27,

2015 and July 02, 2015. It is also stated that, during this period, the elder son of the petitioner was pursuing Class XII and his younger son had entered Class IX in the academic session of 2015-16. On October 30, 2015, the petitioner was again transferred from Ahmedabad to Delhi / NCR.

7. It is submitted that he was transferred from Delhi / NCR to Bangalore vide transfer order dated May 06, 2016, for a period of six months. At the expiry of the said six months, the posting was extended to May 10, 2017. However, he was posted in Bangalore only till March 30, 2017. It is averred that the transfer order clearly stipulated that the terms and conditions applicable to the assignment would be as per the Office Order No. 375 dated December 18, 2014 titled 'Deputation of employees on Project work'.

8. The Railway Board vide order dated March 30, 2017 appointed the petitioner on the post of Director, Project Operation and Maintenance ('POM', for short) on the Board of RailTel in Delhi / NCR. The petitioner assumed the charge of Director at Bangalore on March 30, 2017 and reported to the Corporate Office at Gurugram on April 03, 2017. He was allotted one room in the Transit-cum-Guest House of RailTel in Gurugram. It is further submitted that the petitioner was planning to shift his family to Delhi / NCR, but his father became seriously ill, and he was constrained to apply for retention of the quarter at Ahmedabad on normal rent vide letter dated May 11, 2017, and admitted his younger son in class XI at Ahmedabad.

9. Reference is made by the petitioner in the writ petition to

a Circular issued by the Railway Board bearing no. 2017/Trans Cell/Process Reform/Estt., dated December 29, 2017. Relevant part of the said Circular is as follows: -

“Sub : Process Reform – Retention of Railway Quarter on education grounds

Full Board in its meeting held on 26.12.2017 considered the issue of retention of railway quarter in the event of permanent transfer of a railway employee and decided in public interest that when the ward of the railway employee is studying in class 9th or class 11th, retention of railway accommodation may be allowed on educational ground to cover the current academic session and also the next academic session (examination) of the ward till the end of the academic/scholastic session of class 10th and 12th respectively plus 15 days.”

It is the case of the petitioner that as his younger son was studying in class XI in the academic session of 2017-18, he is entitled to retain the quarter at Ahmedabad in terms of the Circular till the end of the next academic session plus fifteen days.

10. It is stated that the petitioner submitted several representations requesting for extension of house retention at Ahmedabad on normal rent. However, on April 08, 2020, respondent no. 3 issued an office order declaring the retention of the quarter at Ahmedabad as ‘unauthorised possession’. The order also stated that a process has been initiated for recovery of

₹ 2500/- damage rent per day, for each day beyond the authorised period, as per IRCON Rules. It is averred by the petitioner that the said order dated April 08, 2020 was issued by respondent no. 3 (Additional General Manager [Personnel and Administration], RailTel), who is much junior to the petitioner.

11. Another quarter was allotted to the petitioner at East Kidwai Nagar, New Delhi. However, according to the petitioner, he submitted a representation dated March 11, 2020 requesting to surrender the said quarter to retain his accommodation in Ahmedabad on normal rent.

12. It is further averred that respondent no. 2 issued an office order dated April 29, 2020 quantifying the total amount of damage rent for possession of RailTel's accommodation at Ahmedabad to be at ₹36,19,773/- (Rupees thirty-six lakh nineteen thousand seven hundred and seventy-three only).

13. The petitioner took exception to the office orders dated April 08, 2020 and April 29, 2020 and preferred an appeal dated June 02, 2020 making detailed submissions quoting different rules and Circulars. It is his case that he was looking after the Bharatnet Project of RailTel in Gujarat and for official work he has to visit Ahmedabad frequently. Hence, the retention of his quarter at Ahmedabad is also justified in the economic and business interest of RailTel.

14. It is submitted that respondent no. 2 while disposing of the appeal, calculated the penal rent/arrear damage to the tune of ₹38,20,877/- (Rupees thirty-eight lakh twenty thousand eight hundred and seventy-seven only) for the period from April 09,

2012 to March 31, 2020 (excluding the period of exemption granted by the Ministry of Urban Development for the COVID-19 lockdown, i.e., April and May 2020). It is also averred that the same Authority that issued the office order dated April 29, 2020, i.e. the respondent No.2, also disposed of the appeal preferred by the petitioner. Further, respondent no. 2 vide letter dated September 04, 2020 asked the petitioner to vacate the quarter maintained by him at Ahmedabad by the end of September 2020.

15. It is submitted that the orders of the respondents demonstrate non-application of mind, as the Appellate Authority was bound to assign reasons while dealing with the serious contentions raised in the appeal. However, according to the petitioner, no reasons have been accorded while passing the appellate order.

16. A short counter affidavit has been filed on behalf of the respondents wherein it is stated that the petitioner has availed another parallel remedy and has resorted to the available recourse by filing a representation dated September 28, 2020 before the Chairman, Railway Board (the Reviewing Authority). Acting in response to the said representation, the Railway Board has sought the comments of RailTel vide letter dated September 30, 2020. It is submitted by the respondents that as the petitioner is pursuing an alternate and efficacious remedy, his petition is liable to be dismissed in *limine*.

17. It is the contention of the respondents that the reliance placed by the petitioner on the Railway Board Master Circular dated August 20, 2019 in order to justify his unauthorised and

illegal retention of RailTel accommodation is completely unfounded and untenable as the said Circular is applicable only to Railway employees for the retention of Railway accommodation/quarters, and not to employees of RailTel. The petitioner is not a Railway employee but a permanent employee holding the position of a Functional Director in RailTel. It is further contended by the respondents that even otherwise the petitioner cannot rely on the said Master Circular as it was issued in the year 2019 whereas the petitioner has been in unauthorised possession of the RailTel accommodation since 2012, when he was transferred to Delhi / NCR vide order dated February 24, 2012.

18. It is submitted that the Board of Directors of RailTel, in its 8th meeting held on September 27, 2001, decided to follow the Rules made by IRCON International Limited ('IRCON', for short), a Government of India, Ministry of Railways Undertaking, till the time RailTel frames its own Rules. No Rules have been made by RailTel till date and hence the Rules framed by IRCON are applicable to RailTel. According to the respondents, the petitioner being a Functional Director, was fully aware of the same.

19. It is further submitted in the counter affidavit that the IRCON Rules under Rule 4 and Rule 5 categorically and specifically provide that retention of any accommodation is permissible only for a specific limited period, with the approval of Competent Authority (i.e., the CMD). However, no such permission as stipulated was ever given to the petitioner to retain

the quarter at Ahmedabad. It is also stated that the quarter in question, constructed in June 2010, as per Railway Board's Policy of providing quarters for PSUs on payment of double the cost, was handed over to RailTel at Ahmedabad. At that point of time, the petitioner took possession of the quarter and started residing there along with his family, and ever since he is in possession of the quarter without any valid permission/approval from the Competent Authority.

20. On September 24, 2019, the petitioner was asked to clarify as to how, he was retaining three accommodations simultaneously viz. RailTel's quarter at Ahmedabad, RailTel's Transit Accommodation at Gurugram and RailTel's Flat at East Kidwai Nagar, New Delhi. It is stated that it is not justifiable for one employee to retain three residential accommodations of RailTel, and the petitioner was asked to account for his actions.

21. At this juncture, I may note that it is conceded by the respondents that the petitioner had voluntarily surrendered the accommodation allotted to him at East Kidwai Nagar, New Delhi, but it is vehemently contended that he continues to occupy the other two accommodations without any justifiable reasons or authorisation.

22. It is submitted that the issues raised by the petitioner were dealt with by a Committee consisting of Director (NPM), Director (Finance) and Advisor (HR) as nominated by the CMD. The Committee thoroughly analysed all concerns put forth by the petitioner and after examination and evaluation of all the facts and records, unanimously recommended to the Competent

Authority that the petitioner has been occupying the premises in question unauthorisedly and is, therefore, liable to pay the damage rent as provided in the governing IRCON Rules. The recommendations of the Committee were accepted by the Competent Authority and the same was conveyed to the petitioner vide letter dated July 15, 2020.

23. The respondents submit that the contention of the petitioner that he was transferred six times in mid-session during April 09, 2012 to May 06, 2016 is incorrect and contrary to facts and records. On one occasion, RailTel administration helped the petitioner by transferring his post, along with him, from Corporate Office at Delhi/NCR to Ahmedabad, as per his own requests, as there was no corresponding post at Ahmedabad.

24. It is further submitted that the conduct of the petitioner is dubious as he is presently facing vigilance enquires and is still under investigation. The Ministry of Railways, vide order bearing number 2012/E(0)II/40/31 dated September 24, 2020 divested the petitioner of the charge/ duties of the post of Director (Project, Operation and Maintenance)/ Whole-time Director till further orders and he has been restrained from attending the meeting of Board of Directors during this period.

25. A rejoinder has been filed by the petitioner to the short counter affidavit filed by the respondents. It is stated in the rejoinder that the impugned orders/letters have been issued under the IRCON Rules whereas the accommodation at Ahmedabad falls under the ambit of the Railway Board policy letter dated May 19, 1998, being a house constructed by a PSU on Railway

land. Therefore, the IRCON Rules and the penal/damage rent that is demanded by the respondents there under, are inapplicable to the said accommodation.

26. It is stated that the petitioner cannot abruptly be charged retrospective penal/damage rent especially when there was no whisper of any such alleged illegal retention of accommodation for the previous eight years.

27. It is also averred that apart from retrospectively saddling the petitioner with damage rent to the tune of ₹38,20,877/-, the respondents have also deducted ₹75,000/- per month for the months of June 2020 till date and are continuing to do so purportedly towards recovery of the damage rent in addition to the normal rent. According to the petitioner, this act of the respondents is a malafide attempt to silence the petitioner, a whistle-blower.

28. It is submitted that the aforesaid demand was made only after the petitioner sent an e-mail dated March 18, 2020 to the Director (Finance), revealing several business and administrative lapses in the running of the PSU. It is stated that instead of taking the above in the right spirit and acting upon the same, the respondent no. 1 has taken several vindictive steps thereafter. This includes the knee jerk reaction of assigning the charge of petitioner to another Director on March 23, 2020 with the motive to procure articles/equipment with inferior specifications that were not required by the company at huge costs. Thereafter, several such discrepancies in the finances of the company, including false reporting of turnover and profit in the balance

sheet for the Financial Year 2019-20, engagement of high-cost consultants / advisors unrelated to RailTel's business, continuity of service, granting of regular executive scales of pay to project co-terminus contractual manpower bypassing open recruitment process compromising merit, wasteful expenditure on procurement of Optical Fibre Cable in spite of huge stock piled up, fixing of responsibility for damage to RailTel's finances with fraudulent projections while quoting for USOF subsidy in NE-I & II, objections to procurement of Chinese equipment by adopting inferior specification and unbilled revenues for the Financial Years 2018-19 and 2019-20, were brought to the attention of the respondent no. 1 and the Audit Committee members by the petitioner vide email dated May 20, 2020 and August 06, 2020. Emails were also sent by the petitioner on August 26, 2020 and August 28, 2020 to the Company Secretary with copies to all Board Members, highlighting the discrepancies in financial reporting and manipulation of HR rules to suit certain individuals. It is the petitioner's case that it is in retribution to these acts that the respondents have made up fabricated reports against him leading to divesting of his charge.

29. It is reiterated by the petitioner that he has been occupying the house owned by RailTel at Ahmedabad w.e.f. June, 2010, in full compliance with relevant rules and circulars, and that it is the only accommodation retained by him. It is also submitted that as per Office Order No. PP/2002 dated March 15, 2002, the respondents had decided to provide company/self-leased accommodation to executives in the pay scale of ₹ 5000-

8000 CDA or IDA equivalent that includes the petitioner. It is the case of the petitioner that on each transfer, he has submitted timely applications for house retention on normal rent, to the Competent Authority through HR, and the applications were accepted as established with normal rent recovered regularly by RailTel from April 2012 to March 2020.

30. It is stated that vide letter dated May 11, 2017, the petitioner had duly informed the respondents that the petitioner along with his family were staying at Ahmedabad since he was transferred to the post of CPM/RailWire at Bangalore. The petitioner had also informed the respondents that he intended to retain the house at Ahmedabad and use a room in the Guest House at Gurugram to dispense with official duties as his younger son was awaiting the Class 10 Exam results and his father was bed ridden making it difficult for him to shift his family from Ahmedabad.

31. It is contended that acceptance of normal rent and absence of any order/letter to the petitioner disputing such retention since the past eight years shows that RailTel had accepted such retention without demur. Furthermore, in all the postings the petitioner was made to pay for his in-transit accommodation. According to the petitioner, the respondents, from April 09, 2012 to April 08, 2020 charged normal rent for the retention of the Railway Quarter at Ahmedabad. It is his case that the approved ERP claims for the bimonthly electricity bills for the house retained at Ahmedabad for the period from April 2017 till November 2020 and reimbursement thereof by the

respondents establishes beyond doubt that the accommodation at Ahmedabad was duly allowed to be legally retained by the petitioner.

32. Furthermore, it is submitted that the respondents have not issued any notice of cancellation of allotment till date without which damage rent cannot be charged. None of the impugned Office Orders give any notice for cancellation of allotment.

33. It is placed on record by the petitioner that continuing with the vindictiveness as brought out in aforesaid paragraphs, the respondent has deducted the entire Performance Related Pay of Financial Year 2018-19 amounting to approximately ₹ 9 lakh, by adjusting it against the damage rent in December 2020. Further, the deduction of this huge amount as well as the ₹75000 per month being deducted from salary of the petitioner is still shown as income for the purpose of income tax calculation, leading to a double whammy of further deduction of huge income tax amount on these unpaid amounts.

34. It is also submitted that the accommodation retained by the petitioner falls on Railway land. According to Office Order No. 577 dated January 23, 2020, the license fee for the flats on Railway land is to be charged at the rates prescribed by Indian Railways. Thus, the penalty/damage rent demanded from the petitioner and thereafter deducted from the salary of the petitioner without his consent, is erroneous.

35. It is also stated that the petitioner is utilising only one residential accommodation, i.e., Type-V residence in Ahmedabad allotted to him. The Type-VI residence allotted to him in East

Kidwai Nagar, New Delhi on May 20, 2019 was never occupied and has remained unoccupied ever since. The petitioner submitted a representation dated March 11, 2020 requesting to surrender the said quarter. He stated that despite never occupying the house at East Kidwai Nagar and his request to surrender, he had duly paid rent for the entire unoccupied period. The third accommodation mentioned by the respondents is in fact a room in the Guest House in Gurugram that is occupied by the petitioner for dispensing his official duties and he has been paying the rent for the same as charged by the respondents.

36. The allegation of the respondents that, since the petitioner has availed an alternate remedy vide representation dated September 28, 2020 to the Chairman of the Railway Board, his petition is liable to be dismissed is vehemently denied. It is averred that there was a duty to hear the petitioner before any prejudicial order is made against him. The respondents collected normal rent from the petitioner for eight years for the quarter allotted in Ahmedabad and all of a sudden issued the order on April 08, 2020 imposing penal rent with retrospective effect from April 2012 and started deducting ₹75,000/- per month from his salary. It is contended that hence, the representation submitted before the Chairman, Railway Board is not a bar for invoking the writ jurisdiction of this Court in view of the violation of the principle of natural justice.

37. An additional counter affidavit has been filed on behalf of the respondents wherein, apart from reiterating the contentions set forth in the short counter affidavit, it is stated that, the arrear

of damage rent of ₹38,20,877/- has been rightly calculated and sought to be recovered by RailTel by following Rule No. 4 and 5 of the IRCON Rules, and the same was communicated to the petitioner vide Office Order dated April 08, 2020. It is also stated that the said calculation is in conformity with the office order dated December 18, 2014, as the petitioner was posted temporarily for six months in Bangalore. No damage rent has been charged for the period of posting of the petitioner in Bangalore from May 10, 2016 to April 02, 2017.

38. It is contended by the respondents that the allegation of petitioner that he is being victimised as he is a whistle-blower has no substance, is unfounded and baseless. The allegation is only to digress from the issue in question as to whether he is in unauthorised occupation of RailTel's occupation in terms of the applicable rules. According to the respondents, the petitioner is habitual of making baseless and unfounded complaints before various authorities including the CVC and the Railway Board. He had made several similar complaints in the past, including a complaint against the previous CMD which was concluded and closed after due enquiry. Complaints are habitually raised by the petitioner whenever he is not able to extract undue favours from his superiors. His self-proclaimed role of whistle-blower is an effort to make baseless complaints with intent to create a false narrative against his superiors. It is further submitted that the present allegations were made by the petitioner only after questions were raised vide letter dated September 24, 2019 against his unauthorised occupation of accommodation.

39. It is further submitted that the allegations made by the petitioner are inconsequential for the reason that that issue at hand, i.e., unauthorised occupation of RailTel's accommodation has to be dealt with on the merits of the present case. The complaints are not the matter at hand and the same are to be dealt with on merit by respective authorities independently and separately.

40. It is stated that the competent authority never granted permission for retention of the accommodation at Ahmedabad. It is contended by the respondent that this is evident from the fact that the petitioner had sought the approval of the CMD for retention of the house in May 2020, which was not granted.

41. The contention of the petitioner that acceptance of normal rent and absence of any order/letter to the petitioner disputing such retention shows that the RailTel has accepted the retention is denied by the respondents. It is their contention that it is incumbent upon the petitioner to demonstrate the permission to retain RailTel's accommodation as stipulated in the IRCON Rules. In the absence of any such permission, the retention by the petitioner does not become authorised. Therefore, the burden of proof is on the petitioner to show that he was in authorised possession of RailTel's accommodation throughout the period.

42. As regards the reliance placed by the petitioner on the reimbursement of Electricity Bills for the house retained at Ahmedabad for the period from April 2017 till November 2020, it is stated that such reimbursement is not tantamount to authorised occupation and has no bearing on the issue at hand. It

is further stated that reimbursement of electricity bills at the residence of Directors is a policy decision of RailTel and claims for the same cannot be denied.

43. That apart, it is stated that the allegation that the respondent had not issued any notice of cancellation of allotment without which damage rent cannot be charged, is irrelevant. It is their case that since no allotment letter of accommodation at Ahmedabad was issued by RailTel to the petitioner, cancellation of allotment does not arise.

44. It is also contended that the reliance placed by the petitioner on Office Order No. 577 dated January 23, 2020 prescribing the license fee for RailTel's flat, is misplaced and irrelevant for adjudicating the issue at hand. It is stated that said Office Order is regarding fixation of license fee of RailTel's residential accommodations on Railway land and elsewhere. However, it cannot be read to mean that unauthorised occupation of RailTel's residential accommodation on Railway land or elsewhere shall be governed by Railway Rules.

SUBMISSIONS

45. Mr. Anirudh Bakhru, learned counsel appearing on behalf of the petitioner has reiterated the contentions set forth in the writ petition and the rejoinder to the counter affidavit. Additionally, he has submitted that the petitioner, is a founding member of RailTel, and is entitled to one accommodation as a condition of service. As such, the petitioner at all times must have an accommodation and can only be asked to vacate after another accommodation has been provided.

46. It is submitted by Mr. Bakhru that the IRCON Rules under which the impugned orders have been issued do not govern and are inapplicable to the present case. On May 19, 1998 the Railway Board issued general guidelines under which the Railway PSUs including the respondents were allowed to construct houses on Railway land. It is stated that 50% of such constructed house would be licensed by the Railways to the PSU for a period of 30 years and the rest 50% would be used by the Railway Administration. The ownership will remain with the Railways and after lapse of 30 years the house would be taken over by the Railways. Under Clause 8 of the Draft Guidelines, it is stated as follows:

“8. These houses will be allotted only to railway officers on deputation to the concerned PSUs or who have come on absorption. The allotment and retention of these houses will be governed by the Railway rules and consultants/advisers to PSUs will not be eligible.”

47. It is submitted that the fact that Railway rules and not the IRCON Rules (being rules framed by a PSU), are applicable in the present case is demonstrated by the fact that the allotment letter dated April 08, 2010 bearing ref. no. ED/G/57/1 Vol-V was issued by the Railways allotting the accommodation at Ahmedabad to the petitioner. Furthermore, the applicability of the Railway rules is also admitted by the Office Order dated January 23, 2020 issued by the respondents. The Railway rules, on the other hand, provide for retention of accommodation at the

station from where the officer is transferred on educational grounds to cover the current academic session of the ward under Rule 10 of the “Master Circular No. 49 on Allotment of Quarters and Retention thereof on transfer etc.”. Owing to the fact that on the six occasions the petitioner was transferred, his children were enrolled at a school at Ahmedabad, he was allowed to retain the Railway Quarter.

48. According to Mr. Bakhru, it is an admitted fact that the petitioner is entitled to one accommodation, under which he is occupying the Railway Quarter. He also submitted that though the petitioner had never occupied the accommodation allotted to him at East Kidwai Nagar, New Delhi, and had surrendered the same, he paid full rent for such unoccupied period as demanded by the respondents. He had also made full payment for the occupation of one room at the Guest House of RailTel at Gurugram, stated to be transit accommodation.

49. He further submitted that as is clear from the facts, the issue of so-called unauthorised occupation never arose and there was never a whisper of any such alleged illegally retained accommodation before April 08, 2020. Yet, in compliance of the same, the petitioner is occupying only one accommodation. Further, the petitioner can only shift after cancelation of the current accommodation and allotment of a fresh accommodation out of the flats allotted for Board Members, which has not been done till date.

50. According to Mr. Bakhru, the petitioner had occupied the Railway quarter lawfully as per the directions of the respondents

and as such no damage rent can be charged. The retention of the Railway quarter is covered from 2012 till date vide the permission granted to retain the same on educational grounds and the permission to retain one accommodation. Despite this, the respondents continue to extract damage rent by deducting around 70% of the salary of the petitioner on a monthly basis.

51. He also submitted further that, in view of the COVID-19 lockdown, the respondents, vide letter June 26, 2020, allowed the petitioner to retain the Railway quarter at normal rent from March 17, 2020 to May 31, 2020 during the first wave of the pandemic under directions of Ministry of Housing and Urban Affairs. However, during the second wave when similar directions were passed by the Ministry for the period from April 01, 2021 to June 30, 2021 and an extension to July 15, 2021, the respondents despite having knowledge of the same, continued deduction of damage rent of ₹ 2500/- per day from the salary of the petitioner.

52. It is submitted by Mr. Bakhru that the impugned orders are a counter blast to the complaints of the petitioner revealing and highlighting the poor management and consequent losses to the public exchequer and are fraught with malice. He stated that the constitution of a committee to enquire into the issue of retention of accommodation and divestment of the charge of Director/POM away from the petitioner, were done with an eye to extract revenge upon him.

53. Mr. Bakhru further stated that the respondents have harassed the petitioner by sending periodical notices threatening

eviction of his only accommodation without providing another accommodation. He seeks the prayers made in the petition.

54. Mr. Shambhu Sharan, learned counsel appearing on behalf of the respondents, has ingeminated the contentions put forth in the counter affidavits. He has also submitted that, even if the contention of the petitioner that the applicable Rules are Railway Rules and not the IRCON Rules is assumed to be accepted, the core issue at hand is the unauthorised occupation of the residential accommodation cannot be condoned. He stated that both the Rules are largely similar, and both provide for damage rent, which under the Railway Rules would roughly be the same as that under the IRCON Rules.

55. That apart, Mr. Sharan has placed reliance upon Paragraph 11.11 of the Master Circular issued by the Railway Board on August 20, 2019 to contend that, on expiry of the permitted period indicated, allotment of quarters to an employee is deemed to have been automatically terminated. The relevant portion of the Circular is reproduced as under: -

“11.11. On expiry of the permissible/permitted period indicated in all the cases, the allotment of quarter in the name of the employee at the old station will be deemed to have been terminated automatically.”

56. He further contended that the provision of retention on the ground of education is not a matter of right, but subject to approval of competent authority, with certain conditions and procedure. Reference in this regard is made to Paragraph 10.1 (c)

of the Master Circular, which is reproduced as below:-

“In the event of transfer during the mid-school/college academic session, the permission to be granted by the competent authority for retention of railway accommodation in terms of item (a) above will be subject to his/her production of the necessary certificates from the concerned school/college authority.”

It is stated that the contention of the petitioner about mid-session transfers and validity of the retention of the accommodation at Ahmedabad on the ground of education of his children is not acceptable in light of the detailed analysis contained in the Committee Report dated June 05, 2020.

57. Mr. Sharan submitted that the contention of the petitioner that he has a right to have one accommodation and therefore, he has a right to have an accommodation at Ahmedabad is misplaced and erroneous. All RailTel's employees including the petitioner are entitled for residential accommodation at the place of their posting; subject to availability, seniority, scale etc., or they are paid House Rent Allowance as per their entitlement in view of their grade/scale and category of the city they are posted.

58. He further contended that the reliance placed by the petitioner on letter dated September 24, 2019 to contend that he was given an option to retain one accommodation out of three and he opted accommodation at Ahmedabad, is misleading. The letter merely calls upon the petitioner to clarify as to why he is holding three accommodations. He was also called upon to pay

the cost related to such wrongful retention. It is stated that this did not permit the petitioner to retain accommodation at Ahmedabad as it would be against the basic rule that an employee would get an accommodation at the place of posting. Even otherwise, General Manager (Administration and Security), who is the author of the said letter, was not the competent authority to grant permission for allotment / regularisation of any accommodation.

59. He further submitted that the petitioner was appointed and has been functioning as a senior executive in RailTel. He has also worked as a CMD. An executive in such position is expected to follow the rules/procedure set and lead by example, which he failed to do, and therefore, necessary action was taken against him as per extant rules. He seeks the dismissal of the petition.

60. Having heard the learned counsels for the parties and perused the record, in substance the challenge in this petition is to the following four orders issued by the respondents directing the petitioner to pay damage / penal rent to the tune of ₹ 38,20,877/-:

- i. order dated April 08, 2020, wherein the respondents have calculated the damage rent for recovery at ₹ 2,500/- per day, for each day beyond the authorised period as per IRCON Rules;
- ii. order dated April 29, 2020, wherein the respondents have claimed arrears of damage rent for possession of the accommodation at Ahmedabad for the period between April 9, 2012 – March 31, 2020 at ₹ 36,19,773/-;

- iii. order dated July 15, 2020, wherein the respondents have rejected the representation of the petitioner with regard to retention of house at Ahmedabad on normal rent and refund of ₹75,000/- deducted from his salary;
- iv. order dated July 24, 2020, wherein the arrears of damage / penal rent for the period April 09, 2012 to March 31, 2020 has been reviewed and revised at ₹ 38,20,877/-.

61. The facts in brief as noted from the above are that the petitioner who was an IRSSE Officer joined the Railways on December 02, 1991. On January 21, 2002 he joined RailTel under the Ministry of Railways on deputation. While working so, he was absorbed in RailTel on May 01, 2008 and was given the designation of General Manager (Marketing), Western Region and Territory Manager at Ahmedabad and was allotted the accommodation in question being 941-A, Type-V, New Railway Colony, Sabarmati, Ahmedabad by an order issued by the Divisional Office, Western Railway, Ahmedabad on April 08, 2010.

62. The case of the petitioner as contended by Mr. Bakhru is that the accommodation allotted to the petitioner was constructed by RailTel on Railway land and the circular issued by the Railway Board on May 19, 1998 contemplates that the Railways have decided that the PSUs under it may be allowed to construct houses on Railway land to overcome the shortage of houses. As per the circular, the houses would be allotted only to Railway

Officers on deputation to the concerned PSUs or who have come on absorption. The allotment and retention of the houses would be governed by the Railway Rules and consultants / advisors to PSUs would not be eligible. As such, the accommodation allotted to the petitioner which he continues to retain since 2010 till date, is regulated by the said circular with regard to allotment of quarters and retention thereof on transfer etc., whereas the case of the respondents is that in terms of the decision of the Board of Directors dated September 27, 2001, RailTel is to follow the IRCON Rules till its own rules are framed.

63. Since an issue has been raised, as to which Rules would govern the allotment of quarter to the petitioner, i.e., Railway Rules or IRCON Rules, it is necessary to answer the said issue as it shall have a bearing on the prayers sought by the petitioner in this petition. Para 8 of the Circular dated May 19, 1998 on which reliance has been placed by Mr. Bakhru reads as under:

“8. These houses will be allotted only to railway officers on deputation to the concerned PSUs or who have come on absorption. The allotment and retention of these houses will be governed by the Railway rules and consultants / Advisers to PSUs will not be eligible.”

64. Further in response to the submission made by the learned counsel for the respondents by relying upon the meeting of the Board of Directors held on September 27, 2001, Mr. Bakhru has drawn my attention to Annexure P-14, which is an office order dated January 23, 2020 wherein it is stated that the license fee for the RailTel flats on Railway land shall be as per

the rates of Indian Railways as revised from time to time. Though a reading of Para 8 of the circular dated May 19, 1998 of the Railway Board states that the houses shall be allotted only to Railway Officers on deputation to the concerned PSUs or who have come on absorption, it is not clear whether the accommodation / houses shall also be allotted to Officers who have been absorbed in the concerned PSUs. In any case, the allotment of the accommodation to the petitioner i.e., in the year 2010, being post his absorption in RailTel, i.e., in the year 2008, presumption is, this accommodation is regulated by the Railway Rules. If the accommodation allotted to the petitioner was to be regulated by the IRCON Rules, there was no occasion for RailTel to issue office order dated January 23, 2020 which specifically states, RailTel flats on Railway land shall be regulated by the rates of the Indian Railways. That apart, even Annexure R-6 (Colly) at Page 56 indicates that the accommodation was taken from the Western Railway for use of TM/ADI/RailTel. Hence, it must be held that the license fee with regard to accommodation in question shall be regulated by the rates of the Indian Railways.

65. Now the question is whether the demand of damage / penal license fee from the petitioner in terms of the impugned order is justified. The respondents vide their impugned order dated July 24, 2020 has calculated the same as ₹ 38,20,877/- for the period between April 09, 2012 to March 31, 2020.

66. During the aforesaid period, the petitioner was posted out of Ahmedabad either at Delhi / Gurugram / Bangalore. There is no denial to the fact that even under the Master Circular issued by

the Railways and also the IRCON Rules, an officer transferred from one station to another could retain the accommodation allotted to him for a period of two months. No doubt, the rules issued by the Railways contemplate that if the transfer is effected in the mid-academic session, on educational ground an officer can retain the accommodation till the completion of the academic session. The IRCON Rules also speak of retention of accommodation on educational ground. Mr. Bakhru during his submissions had relied upon a circular issued by the Railways on December 29, 2017 which contemplate, if the ward of a Railway employee is studying in Class IX or Class XI, retention of Railway accommodation may be allowed on educational ground to cover the current academic session and also next academic session (examination) of the ward i.e., till the end of the academic / scholastic session of Class X or Class XII respectively plus 15 days. In other words, if the ward is in Class IX or XI, even on transfer such an employee can retain the accommodation till the completion of the session of the next class, i.e., Class X or XII plus 15 days. The reliance on the circular is misplaced as the same was issued in December, 2017, and shall have prospective effect and the petitioner was transferred out of Ahmedabad in October 30, 2015 to Delhi / NCR and continues to be out of Ahmedabad till date and as such has no applicability. In view of the aforesaid position of the rules, I intend to examine the claim of the damage / penal rent by the respondents from the petitioner.

67. The initial transfer of the petitioner was on February 24, 2012 when the elder son of the petitioner was in Class-VIII and

younger son was in Class-V. The new academic session starts in the month of July, 2012. The petitioner having been transferred in February, 2012, could have retained the accommodation at Ahmedabad till last examination date, i.e., somewhere in April, 2012. Mr. Sharan is justified to contend that this was the opportune time for him to shift his family to Delhi / NCR. The fact remains that the petitioner did not shift his family to Delhi / NCR and continued to occupy the accommodation at Ahmedabad even beyond the permissible period of April 23, 2012. Suffice to state, the benefit of mid-academic session would not be available to the petitioner on his transfer from Ahmedabad to Delhi / NCR on February 24, 2012, which post he had joined on April 09, 2012. For the reasons best known to the petitioner, he continued to occupy the house at Ahmedabad. At least, no order has been placed on record to show that a request made for continuance was allowed. It is not known whether this fact was even brought to the notice of the Divisional Office of Western Railways at Ahmedabad, who had allotted the accommodation to the petitioner in the year 2010. While working in Delhi / NCR, the petitioner vide letter dated June 4, 2013 requested his transfer back to Ahmedabad for at least one year citing the reason of his son being in Class X and serious illness of his father. This request of the petitioner was accepted by transferring him to Ahmedabad along with the post of General Manager (Marketing) temporarily vide office order dated July 4, 2013. This has resulted in him occupying / retaining the accommodation at Ahmedabad for the session 2013-2014. It is clarified here that

the respondents have not claimed damage / penal rent for his stay during the period July 5, 2013 to July 24, 2014 in Ahmedabad. The third transfer of the petitioner was from Ahmedabad to Delhi / NCR vide transfer letter dated May 20, 2014 before the starting of the new academic session. It appears that the petitioner did not join his place of posting at Gurugram, immediately. He made representation on June 28, 2014 citing his family commitments and illness of his father, that apart, the entry of his elder son into Class XI. Though while being posted at Ahmedabad vide letter dated July 4, 2013 it was clearly stated that his transfer to Ahmedabad was only for a period of one year. Because of his non-joining the place of posting, the respondents issued another order dated July 15, 2014 directing him to report to the Corporate Office at Delhi / NCR by July 21, 2014.

68. It is the case of the respondents that the petitioner evaded the orders and did not join the place of posting at Gurugram. In response, the petitioner vide his e-mail dated July 28, 2014 citing that his elder son being in Class-XI sought a permission to allow him to work from Ahmedabad. He had also applied for leave from July 29, 2014 to August 14, 2014 and even extension from August 15, 2014 to August 29, 2014. He had finally joined his place of posting at Gurugram on October 13, 2014. The petitioner having been transferred from Ahmedabad to Delhi / NCR on May 20, 2014 could have retained the accommodation till July 19, 2014 and not thereafter. There is no order authorising the petitioner to continue in the accommodation thereafter. Despite that, the petitioner continued to hold on to the

accommodation. Immediately thereafter on June 25, 2015, he made a request for relocating him to Ahmedabad citing reasons of his elder son being in Class-XII; younger son being in Class IX and the illness of his father for at least the academic session, i.e., 2015-2016 till August 2016, which is after the commencement of the fresh academic session of 2016-2017. In any case, the request of the petitioner was acceded to and the petitioner was transferred from Delhi / NCR to Ahmedabad on August 05, 2015 when the elder son was studying in Class-XII and younger son in Class-IX. Pursuant to this transfer, the petitioner had joined his place of posting at Ahmedabad. While working so, on the superannuation of one Kabal Singh on October 30, 2015, the Board of RailTel decided to recall the petitioner from his place of posting at Ahmedabad and posted him on a position of higher responsibility as In-charge of the entire Northern Region and accordingly a transfer order was issued on October 30, 2015 transferring the petitioner to Delhi / NCR. It may be stated here that the transfer being mid-academic session, the petitioner would get the benefit of retaining the house at Ahmedabad. In any case, the respondents have not included this period for the purpose of calculating damage / penal rent. While working so in Delhi / NCR, the petitioner on May 6, 2016 was transferred to Bangalore on temporary posting. He was transferred back to Delhi / NCR and was posted as Director of RailTel on March 13, 2017. He continues to be posted in Delhi / NCR as on date. No damage rent has been charged during the posting in Bangalore. I have also noted that the petitioner has

been seeking retention of the quarter in Ahmedabad multiple times with self-announced deadlines for vacating the same, but did not adhere to those timelines. Rather he gave new reasons for extending the retention. The respondents are right in saying that he always tried to devise new alibis for continuing his possession. That apart, I have noted from the Committee Report dated June 05, 2020 annexed to the petition as R-6 (Colly) that the petitioner, while looking after the charge of CMD, even proposed in the Board meeting held on January 15, 2018 to relocate the Corporate Office of RailTel from Delhi / NCR to Gujarat. Being unsuccessful in this endeavor, on September 19, 2019, he further proposed to the Board of Directors that the Office of Director (POM), which he was holding, be shifted from Delhi / NCR to Gujarat. It would seem from this, that the petitioner had no intention of shifting out of Ahmedabad.

69. One of the submissions of Mr. Bakhru was by relying upon the note dated September 24, 2019 of General Manager (Administration and Security) wherein he, after noting the fact that the petitioner was utilising the residential facilities at (1) Ahmedabad, (2) Gurugram and (3) East Kidwai Nagar, New Delhi, had called upon the petitioner to release two facilities out of the three residential accommodations, consequent to which, the petitioner released the facility at East Kidwai Nagar. The contention of the petitioner that this would justify the retention of the accommodation at Ahmedabad till date and that the respondents could not have claimed the penal / damage rent, is unmerited. It is not known how the General Manager

(Administration and Security) could have asked the petitioner to release two facilities, out of the above three. The petitioner having been posted in the Corporate Office at Delhi / NCR, could retain the accommodation at either Gurugram or New Delhi. In no case, could he have retained Ahmedabad. The rules do not permit the retention of the accommodation at Ahmedabad, more so when he is not posted there. Rule 11.11 relied upon by Mr. Sharan, as reproduced in para 55 above is clear that the petitioner could not have retained the accommodation in Ahmedabad after he has been transferred out. In fact, it is the case of the respondents that General Manager (Administration and Security) who is the author of the letter was not competent to grant permission for retention to the petitioner. So, it follows the claim of the respondents of penal / damage rent for the period post 2019, also cannot be faulted.

70. The submission of Mr. Bakhru that as the petitioner has paid normal license fee for period of retention, the respondents cannot charge penal/ damage rent, is unmerited. This normal rent is being paid by the petitioner on his own volition as no document has been shown to say that such a claim was made by the respondents. In any case, the unauthorised retention shall entail action according to the rules which contemplate payment of penal/damage rent. The plea of Mr. Bakhru that the petitioner has been victimised as he is a whistle blower is also unmerited as the same can have no bearing on the action being taken by the respondents in accordance with the rules. The plea is clearly an afterthought. In fact, the respondents have stated that the

complaints are to be dealt with on merit by the respective authorities. The plea of Mr. Bakhru that the petitioner at all times must have an accommodation and can only be asked to vacate, after another accommodation has been provided, to justify the retention of accommodation in Ahmedabad is an afterthought and contrary to the record. This I say so, the petitioner all throughout has been representing the retention of accommodation in Ahmedabad and not for allotment of an accommodation in Delhi/Gurugram.

71. My discussion above justifies the claim of damage / penal rent against the petitioner for the period mentioned in the impugned order. But the claim of the damage / penal rent cannot be on the basis of IRCON Rules. It has to be as per the rates prescribed by the Railways. This I say so, in view of my finding that the accommodation allotted to the petitioner in the year 2010 was constructed on the land of the Railway and the fact that even the order dated January 23, 2020 specifically states that RailTel flats on Railway land shall be regulated as per the rates of Indian Railways. To that extent, the impugned orders passed by the respondents calculating the damage / penal rent as per the IRCON Rules need to be set aside. The respondents shall recalculate the damage / penal rent as per the Railway rates for the period, the petitioner had retained the accommodation in Ahmedabad, though transferred out. On such calculation, the respondents shall adjust the amount already recovered from the petitioner and if, any amount is payable, the same shall be claimed by the respondents as per rules. Till such time the

aforesaid exercise is carried out by the respondents, no further recovery shall be made from the salary of the petitioner. The impugned orders dated April 08, 2020, April 29, 2020, July 15, 2020 [to the extent of para (ii)] and July 24, 2020 are set aside.

72. The petition and the connected application are disposed of. No costs.

V. KAMESWAR RAO, J

DECEMBER 09, 2021/jg

