

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

Date of decision: 01st November, 2022

IN THE MATTER OF:

+ **LPA 125/2022 & CM APPLs. 8491/2022, 8494-95/2022 & 15399/2022**

ASHUTOSH VASANT

..... Appellant

Through: Mr. Ayush Puri & Mr. Prateek Kumar
Jha, Advocates

versus

THE CHAIRMAN AND MANAGING DIRECTOR RAILTEL
CORPORATION OF INDIA LTD AND ORS

..... Respondents

Through: Mr. Shambhu Sharan, Mr. Yamandeep
Kumar, Mr. Ankit Jain, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The present LPA arises out of the Judgment dated 09.12.2021 passed by the Ld. Single Judge in W.P. (C) 7798/2020 and C.M. No. 25671/2020, impugned in the present LPA.

2. The facts leading up to the filing of the LPA are as follows-

- i. Mr Ashutosh Vasant/Appellant is employed with RailTel Corporation, a Central Public Sector Enterprise registered under the Companies Act, 2013 under the administrative control of the Ministry of Railways. RailTel is a telecom company with a pan-India presence.

- ii. At the time of filing the impugned Writ Petition, the Appellant held the post of Director, Project Operation and Management on the Board of Directors of RailTel. In 1990, the Appellant qualified the Indian Engineering Services and joined the Indian Railways Service of Signal Engineers (in short “IRSSE”) in 1991. In 2002, the Appellant was deputed to the newly established RailTel Corporation, and was permanently absorbed with RailTel on his own volition, to the post of General Manager in April 2008 having tendered his resignation with the Railway Ministry. In 2010, the Appellant was allotted a flat in the RailTel owned housing facility at 941-A, New Sabarmati Railway Colony in Ahmedabad, Western Railway Division.
- iii. The Appellant submits that six mid-session transfers have taken place in between 09.04.2012 and 06.05.2016. The Appellant was transferred from Ahmedabad to Delhi on 24.02.2012. In Delhi, the Appellant was serving as General Manager at the Corporate office of RailTel, where he was posted till 05.07.2013, i.e., up to the date of issue of the second transfer order, whereby he was transferred back to Ahmedabad from New Delhi. The Appellant retained the house allotted to him at Ahmedabad. It is stated that during the academic session of 2013-14, the Appellant’s elder son was in the tenth standard for the academic year in Ahmedabad and the Appellant did not want to disturb his son.
- iv. The Appellant was transferred from Ahmedabad to Gurgaon on 20.05.2014, where he presented himself for joining on

13.10.2014. The Appellant was relieved at Ahmedabad on 24.07.2014, but joined the Gurgaon office only on 13.10.2014. The fourth transfer took place from Gurgaon to Ahmedabad on 05.08.2015. At the Appellant's own request, he was transferred to Delhi/NCR from Ahmedabad on 30.10.2015.

3. Throughout the course of the mid academic session transfers, the Appellant retained the accommodation in Ahmedabad at normal rent rate paid from his monthly salary. He was also allotted a residence at East Kidwai Nagar. The Appellant states that relocating between stations would have presented impediments in his children's education as well as cause logistical problems in relocating his family on account of his father's deteriorating health conditions. He sent representation letters dated 27.06.2015 and 02.07.2015 requesting for a transfer from New Delhi to Ahmedabad, so as to be in close proximity to his family residing in Ahmedabad. It is the Appellant's submission that shifting his family from the old station, i.e., Ahmedabad to New Delhi was not possible on account of his sons being in the middle of their academic sessions in school, in twelfth and tenth grades respectively, and also on account of his father's frail health conditions. Subsequently, *vide* Order dated 05.08.2015, the Appellant was transferred from New Delhi to Ahmedabad while taking into consideration the concerns pointed out by him in the aforementioned representation letters.

4. The Appellant places reliance on Rules 4 and 5 of the IRCON Residential Accommodation Retention Rules, 2009, for retention of accommodation on the grounds of education. In addition, he also places reliance on Office Order No.375 dated 18.12.2014 issued in respect of

employees on deputation. The relevant portion of Railway Board circular is reproduced as under:

“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.”

5. Master Circular No. 49 was issued by the Railway Board, Ministry of Railways dated 20.08.2019. It consolidates all circulars of the Ministry issued from time to time, with respect to allotment and/or retention of Railway Quarters for employees of the Indian Railways. Rule 10.1 of the Master Circular, covers the instance of retention of accommodation subject to payment of normal rent, in the event of permanent transfers in the middle of academic sessions. The relevant part, paragraph 10.1(e)(i), is reproduced below for reference:

“e) On educational ground – definition of “end of academic/scholastic session”

(i) In the event of permanent transfer, retention of Railway accommodation is allowed on educational ground to cover the current academic session only (i.e. end of the academic/scholastic session) plus 15 days. The end of academic/scholastic session

shall, in this case, mean “last paper of annual examination.”

6. A note was served upon the Appellant on 24.09.2019 by the General Manager, Administration and Security at RailTel, directing the Appellant to hand over possession of two of the three accommodations in his possession at that time. The note appended queries demanding explanation as to why the Appellant chose to retain separate accommodations simultaneously in respect of the period 2012-2020. In a reply note dated 09.10.2019 to the queries raised in the above notice, the Appellant reasoned that shifting his family in the time that transpired between multiple mid-session transfers would have interfered with his sons' education, and would also be logistically difficult for his family, considering that his father was suffering from an advancing case of Parkinson's disease.

7. Respondent No. 3/Additional General Manager (Personnel and Administration) issued an order on 08.04.2020, declaring the Appellant's possession of Type-V quarter at Ahmedabad as unauthorized. The order issued a demand for payment of damage rent to be calculated at the rate of Rs. 2,500 per day as per IRCON Residential Accommodation Retention Rules, 2009, for the entire period that the quarter had been in the Appellant's possession. The relevant extract of this Order is reproduced below:

“One type-V accommodation, at ADI, is under unauthorized possession of Shri Ashutosh Vasant/DPOM. Calculation for damage rent for recovery of Rs. Two thousand five hundred (2500/-) only, per day, for each day, beyond the authorized period, as damage rent, as per IRCON's Residential Accommodation Retention Rules, 2009 (applicable policy for RCIL) is under process.”

8. On 11.03.2020, the Appellant wrote to the Respondent No. 2, informing of his decision to surrender the house allotted to him in East Kidwai Nagar, New Delhi with a further request to retain the accommodation allotted to him in Ahmedabad. The Appellant surrendered the said accommodation with the expectation that he would be permitted to retain the quarter in Ahmedabad, and placed strong reliance on the Ministry of Railways Master Circular No. 49 dated 20.08.2019 and on the Rule 4 and note (i) to Rule 5 of IRCON Rules, to advance his case for retention of the quarter allotted to him in Ahmedabad. Rule 4 and note (i) to Rule 5 of the IRCON Rules read as follows:

“4. Definitions

- (i) Competent authority : Competent Authority for permitting retention by an employee beyond the prescribed period on normal rent under Rule 5 will be Managing Director (now CMD);*

5. Note (i)

Retention on normal rent/special license fee for the permissible period will be based on the recommendations of the controlling officer/ED/Director as the case may be and with the approval of MD.”

9. In a reply to the above Office Order, the Appellant sent a representation letter to Respondent No. 2. He relied on note (i) appended to Rule 5 of the IRCON Residential Accommodation Rules 2009 to state that in his case the Master Circular issued by Ministry of Railways would be applicable and that normal rent only for the period between April 2012 to July 2019 would be payable for the retained accommodation at Ahmedabad.

10. Subsequently, the office of Respondent No. 3/General Manager (Administration and Security), RailTel, issued an Order on 29.04.2020

pursuant to the Office Order dated 08.04.2020, directing the Appellant to pay damage rent in respect of the period between 09.04.2012 till 31.03.2020, which was calculated to the tune of Rs. 36,19,773/-. The Order further stipulates per day damage rent to be Rs. 2,500/- per day, starting from April 2020.

11. A letter dated 15.07.2020 was issued by the Respondent No. 2, wherein the Appellant was informed that his retention of the Ahmedabad accommodation amounted to unauthorized occupation of the flat for the period from 2012 to 2020. This letter upheld the demand for payment of damages raised on the Appellant, albeit with a liberty to retain the house at normal rent for the period from 17.03.2020 to 31.05.2020. In paragraph (ii) of the letter, it was remarked that the Appellant being in possession of multiple accommodations of RailTel simultaneously at different points of time was totally impermissible.

12. The Appellant preferred an appeal challenging the Office Orders issued by Respondent No. 2 dated 08.04.2020 and 29.04.2020 before the CMD, whereby the Appellant sought a waiver on the demands raised for payment of damage rent as stipulated for in the aforementioned communications. In the letter the Appellant reiterated his case for retaining the official accommodation allotted to him in Ahmedabad, on the grounds that his retention of the accommodation, till the completion of Bharat Net project of RailTel in Gujarat, would be financially prudent and justified in the interests of RailTel. The Respondent No. 2 issued an Order dated 24.07.2020 disposing off the appeal, and in partial modification of the order dated 29.04.2020, revised the damage rent arrear amount to Rs. 38,20,877/- for the period between 09.04.2012 to 31.03.2020, recoverable from the Appellant's

salary or final settlement dues. Relevant extract of the appeal disposal order dated 24.07.2020 is as below:

“..Arrear damage/penal rent for the period from 09.04.2012 to 31.03.2020, has been reviewed and the revised total amount of arrear for this period comes to Rs. 38,20,877/- (Calculation Sheet as concurred by Finance, is enclose). Accordingly, in partial modification of Office Order No. RCIL/2019/P&A/10/1 dated 29.04.2020, Rs. 38,20,877/- will be recovered from your Salary/PRP/Final settlement dues.”

13. It is pertinent to mention that *vide* note dated 26.06.2020, the Appellant was allowed to retain the accommodation in Ahmedabad, in light of the first wave of the COVID-19 pandemic. The Appellant wrote multiple letters to Respondent authorities challenging the damage rent demand raised. On 04.09.2020, the Appellant received an office letter from Respondent No. 2 directing him to vacate the Ahmedabad accommodation by the end of September, 2020. In other terms, this letter also informed the Appellant that the issues raised by him *vide* the earlier representations sent by him stood disposed of after due consideration of the appropriate authorities.

14. Being aggrieved by the office orders dated 08.04.2020, 29.04.2020, 15.07.2020 and 24.07.2020, the Appellant filed the writ petition on 17.09.2020, with prayers before for this Hon'ble Court to quash the above-mentioned office orders, and also to set aside the demand raised for recovery of penal rent amounting to Rs. 38,20,877/-. Other prayers sought were for directions to the Respondents to refund a sum of Rs. 2,25,000/- being the penalty amount charged and deducted from the Appellant's salary for the months of June, July and August, 2020; and to issue an order permitting the Appellant to retain the Quarter No. 941-A, New Sabarmati Colony,

Ahmedabad on payment of normal monthly rent till the completion of the Bharat Net Project in Gujarat. While the impugned writ petition was pending disposal, the Ministry of Railways *vide* their order no. 2012/E(O)II/40/31 dated 24.09.2020 divested the Appellant of his duties as Director (Project Operation and Management) thereby barring him from attending meetings of the Board of Directors until further orders.

15. It was contended by the Respondents that the Appellant was an employee of RailTel and, therefore, the Appellant cannot place reliance upon circulars issued by the Railways as it is not applicable to other organizations. It was further contended that on the expiry of the period, which permits the retention of accommodation on transfer, if the Appellant continues to occupy the accommodation then he becomes an unauthorized occupant of the premises and is liable to pay penal rent. The Respondents also place reliance upon certain Office Orders to contend that Railways is competent to decide the licence fee for RailTel flats which are constructed on the land owned by the Railways.

16. The Appellant contended that the Circular issued by Railways on 19.05.1998 protects him and he was entitled to retain the quarters at Ahmedabad which has been in his possession since 2010. The Appellant also challenged the calculation of penal rent.

17. The Ld. Single Judge held that the retention of flat at Ahmedabad was not in accordance with the Rules. However, the Ld. Single Judge held that the calculation of damage rent was to be computed as per the Railway Rules, and not as per the IRCON Rules. The Ld. Single Judge observed that the letter dated 24.09.2019 only sought an explanation as to why the Appellant was in possession of three accommodations simultaneously, being the accommodations at New Sabarmati Colony, Ahmedabad; East Kidwai Nagar,

New Delhi, and one room at the Guest House in Gurugram. In terms of this letter, there is no mention of a choice being offered to the Appellant, to choose between any one of the three accommodations he was in possession of as of the date of issuance of the letter. On the question of whether or not the imposition of damage rent itself was justified, the Ld. Single judge observed that the Railways Circular dated 29.12.2017 could not be construed as having retrospective application to the case of the Appellant, who was transferred out of Ahmedabad on 30.10.2015.

18. While holding that the impugned office orders were issued pursuant to IRCON Rules, the Ld. Single Judge observed that the Appellant would be liable to pay damage rent as per Railway Rules, and to this extent, ordered for recalculation of damage rent in the following terms:

“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 Railways 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.”

19. The Appellant, thereafter, preferred the present LPA challenging the impugned Judgment dated 09.12.2021 passed by the Ld. Single Judge.

20. Pursuant to the directions in the impugned Order passed in W.P. (C) 7798/2020, the Respondent No. 2 issued a letter dated 20.12.2021, which is under challenge in the present LPA. The said letter re-calculated the damage amount as per applicable Railway Rules and regulations. The calculation of damage rent arrears was bifurcated into two periods, the first one beginning from 09.04.2012 and going up to 31.03.2020, and the second period subsisting between 01.04.2020 to 30.11.2021. The letter mentions that Rs. 13,27,147/- has already been recovered as arrear damage/penal rent, and the balance amounts being Rs. 43,13,497/- and Rs. 88,60,540/, would subsequently be deducted from the Appellant's salary/PFP/final settlement dues, for the durations between 09.04.2012 to 31.03.2020 and 01.04.2020 to 30.11.2021 respectively.

21. The Appellant in the meanwhile continued to submit representations, challenging the backdated recovery of damage dues and vacation orders as being premised on baseless and arbitrary grounds. In furtherance of these challenges, the Appellant also filed RTI applications soliciting information on the status of the decisions taken by the Respondent authorities in his case with respect to the representations raised against the backdated recovery of damage dues.

22. Heard learned Counsel appearing for the Parties and perused the material on record.

23. At the outset, the Ld. Counsel for the Appellant contended that the Ld. Single Judge has erred in not considering that the Appellant has been in legal occupation of the accommodation at Ahmedabad on educational grounds. It is

contended that timely requests for retention of the accommodation in question were ignored by Respondent authorities despite multiple representations.

24. It is further submitted that as per Railway Rules, retention of accommodation on educational grounds is permitted when the officer is transferred out station in the middle of academic sessions. To reiterate this contention, reference is made to Rule 10 of the Master Circular issued by the Ministry of Railways, that allows for retention of accommodation during permanent transfers, on educational grounds and subject to payment of normal rent. In respect of the period from 2012 till present, the Id. Counsel avers that the conduct of the Appellant in paying the normal rent from his salary for the Ahmedabad accommodation suggests his cooperation. Despite this, the Respondents deducted approximately 70% from his salary every month in lieu of recovering the arrears of penal rent. Reliance is placed on letter dated 26.06.2020, which allowed the Appellant to retain his accommodation in the first COVID-19 lockdown period. It is stated that during the second lockdown from 01.04.2021 up to 15.07.2021, the Respondents exacted damages to the tune of Rs. 2,500/- per day from the salary of the Appellant. The Ld. Counsel for the Appellant continues to state that the Respondents have throughout endeavoured to evict the Appellant from his accommodation with ulterior motive.

25. The allotment or retention of accommodation is subject to applicable rules and conditions. The Appellant could not have retained the accommodation endlessly. Conditions of allotment and retention are subject to prior approval of the competent authority. The Appellant had not obtained a prior approval for retention of the accommodation from the appropriate authority.

26. This Court is in agreement with the finding of the Ld. Single Judge in holding that in the event of an out of station transfer, retention of accommodation is not permissible. Rule 11.1.1 of the Master Circular dated 20.08.2019, reproduced as follows:

“11.1.1 Automatic termination of allotment on expiry of permitted period

a) 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. Retention of quarter by the employee after expiry of the permissible period will be treated as unauthorised. During the period of unauthorized occupation, the employee would be required to pay damage rate of rent in respect of the Railway quarter. Realisation of damage of rent should not be pended on the ground that the employee has appealed or the case of the employee has been referred to the Ministry of Railway for regularization of the excess period of retention.”

The aforementioned terms make it abundantly clear that in the event of retention beyond the permissible period, the same would tantamount to unauthorized occupation of the premises, and such retention of the property would attract the liability of payment of damage rent for the entire duration of said unauthorized occupation.

27. The Appellant was moved out of Ahmedabad on 30.10.2015. For the duration he was stationed out of Ahmedabad, he has been in retention of the flat at Sabarmati Railway Colony, Ahmedabad. Since this is a case that falls within the contours of a situation stipulated as per terms of Rule 11.1.1 of the Master Circular mentioned above, we are of the firm belief that the demands

raised for payment of damage rent on the basis of rates calculated under Railway Rules are grounded in sound reasoning and are not unfounded. Moreover, Annexure “D” to the Master Circular prescribes the payment of damage rent, with increments in their calculation with every subsequent month that is in the officer’s retention after the expiry of the permissible period of retention of accommodation.

28. In view of the foregoing observations, we do not find any reason to interfere with the reasoning expounded by the Ld. Single Judge laid down in the impugned Judgment dated 09.12.2021.

29. This appeal is accordingly dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

NOVEMBER 01, 2022

Rahul/ss