

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice SUJOY PAUL
&
The Hon'ble Justice PARTHA SARATHI SEN

WPCT 14 of 2017

ASHISH KUMAR CHATTERJEE
-Vs-
UNION OF INDIA & ORS.

For the Petitioner: Mr. A.K. Gayen, Adv.,
Ms. A.A. Gayen, Adv.
Mr. S. Tanti, Adv.,

For the Respondents: Mr. Pulakesh Bajpayee, Adv.,

Hearing concluded on: 13.04.2026
Judgment on: 22.04.2026

PARTHA SARATHI SEN, J. : –

1. In this writ petition as filed under Article 226/227 of the Constitution of India, the judgment dated 06.10.2016 as passed in OA No. 1551 of 2013 by the Central Administrative Tribunal, Calcutta Bench, Kolkata (hereinafter referred to as the said tribunal in short) is impugned. By the impugned judgment the said tribunal declined to interfere with the reasoned order dated 06.06.2013 as passed by the respondent No. 3 herein.

2. It is pertinent to mention herein that by the said reasoned order dated 06.06.2013 the respondent No. 3 authority noticed that the issuance of memo dated 30.03.2013 (Annexure A- 6) whereby and where under a total amount of Rs 5,56,920/- was directed to be recovered from the salary of the writ petitioner/original applicant on suitable installments is justified. The writ petitioner/original applicant felt aggrieved and thus approached before us by filing the instant writ petition.
3. For effective adjudication of the instant *lis*, we at the very outset propose to look to certain relevant facts which are as under:
- a) On 08.01.1980 the writ petitioner/original applicant was appointed to the post of technician Grade -1 at Jamalpur Workshop.
 - b) In the year 2000 the Railway Authority found the writ petitioner/ Original applicant as surplus staff in the said work shop and accordingly invited option for redeployment in other division and pursuant to such invitation the writ petitioner/original applicant has submitted his option for redeployment at Howrah Division.
 - c) By issuing a memo dated 14.06.2001 Railway Authority redeployed the writ petitioner /original applicant in Howrah Division, as has been opted by the writ petitioner/original applicant himself and in the next month i.e. in the month of July, 2001 last pay certificate was issued to the writ petitioner/ original applicant by the Jamalpur work shop so as to enable him to draw his salary from Howrah Division.

- d) On 30.03.2010 the work shop personnel officer on behalf of the respondent No. 6 herein issued a memo whereby and where under the respondent No. 3 was requested to recover a sum of Rs. 5,86,920/- from the salary bill of the writ petitioner/original applicant on suitable installments noticing that the writ petitioner/ original applicant was in unauthorized occupation of the Railway quarter at Jamalpur as allotted to him from July, 2001 to 20.01.2010.
- e) Feeling aggrieved with the issuance of the memo dated 30.03.2010 the writ petitioner preferred a representation dated 27.07.2012 (annexure A 14) with the respondent No. 3 authority requesting him for waiver of the process of recovery of damage rent, electric charges and water charges pursuant to memo dated 30.03.2010.
- f) Since the said representation dated 20.07.2012 was kept pending for a considerable length of time, the writ petitioner/ Original applicant filed OA No. 183 of 2013 before the said tribunal which came to be disposed of on 01.04.2013, whereby and where under the said tribunal directed the respondent No. 3 authority to dispose of the representation dated 27.07.2012 in accordance with law.
- g) Pursuant to the judgment dated 01.04.2013 (annexure A 15) as passed by the said tribunal the respondent no. 3 authority passed the reasoned order dated 06.06.2013 (annexure A 16) whereby and where under the writ petitioners/original applicant's prayer for waiver as aforementioned was not considered favorably.

h) Challenging the said reasoned order dated 06.06.2013 as passed by the respondent No. 3 as well as the other office orders as issued by the Railway Authority for recovery of the aforesaid sum of Rs. 5,86,920/- from the salary bill of the writ petitioner/ original applicant on suitable installments, the original application No. 1551 of 2013 was preferred before the said Tribunal which was however dismissed by the impugned judgment.

4. At the time of hearing, Mr. Gayen, Learned Advocate appearing on behalf of the writ petitioner submits before this court that on conjoint perusal of the office order dated 14.06.2001 and the copy of the last pay certificate as issued in the month of July 2001 it would reveal that the writ petitioner/ original applicant was redeployed in Howrah Division since he was declared surplus in Jamalpur Workshop. Drawing attention to annexure A 12 at page 74 of the instant writ petition being a copy of the memo dated 07.05.2012/12.06.2012 issued by the Additional Divisional Railway Manager to the writ petitioner/original applicant it is argued that by issuing the said memo an assurance was given to the writ petitioner/ original applicant that on getting clarification from Jamalpur workshop the deducted amount would be returned in consultation with accounts.

5. It is submitted that despite issuance of such memo dated 07.05.2012/12.06.2012, the earlier memo dated 30.03.2010 (annexure 6) was neither recalled nor revoked.

6. It is further submitted on behalf of the writ petitioner that the respondent authority while issuing the memo dated 30.03.2010 vis-à-vis while passing the reasoned order dated 06.06.2013 has measurably failed to consider Railway Board circular No. R.B.'s No. E(G) 2003 QR1-18 of 8.9.2004 (RBE No. 197/2004, Sl. No. SE 209/2004) wherein it was categorically indicated that a Railway Employee like the writ petitioner/original applicant is entitled to retain the Railway accommodation at his previous place by paying normal rent. It is further submitted that while passing the impugned judgment the said tribunal has also miserably failed to consider the true purport of the aforementioned circular dated 08.09.2004.
7. In his next limb of submission learned Advocate appearing on behalf of the writ petitioner/ original applicant further submitted that for the sake for argument though not admitted that in the event the writ petitioner/ original applicant retained his quarter as allotted to him by the Railway Authority at his previous place of posting, the proper course would be to recover the alleged damage rent and other charges by taking recourse to the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 hereinafter referred to as the 'said act of 1971' in short). It is further submitted on behalf of the writ petitioner/ original applicant that in the impugned judgment the tribunal has miserably failed to assign any cogent reason regarding non applicability of the said Act of 1971.
8. It is thus submitted that it is a fit case for allowing the instant writ petition by setting aside the impugned judgment dated 6.10.2016 by granting

appropriate relief/reliefs to the writ petitioner in terms of the prayers made in the original application before the said tribunal.

9. Per contra, Mr. Bajpayee Learned Advocate appearing on behalf of the Railway Administration supports the impugned judgment. It is submitted by him that from the office memo dated 14.06.2001, vis-à-vis the copy of the last pay certificate as issued in the month of July, 2001 it would reveal that after becoming surplus at Jamalpur workshop, the writ petitioner on his own volition opted for his redeployment in Howrah Division.
10. It is further submitted on behalf of the Railway Administration that the writ petitioner/original applicant after joining at Howrah Division had drawn his house rent allowance in every month and at the same time he retained his quarter as allotted by Railway Administration at Jamalpur, till 20.01.2010. It is thus submitted that for such illegal retention of the Railway quarter the Railway Authority is very much justified in issuing the memo dated 30.03.2010 whereby recovery to the tune of Rs. 5,86,920/-was directed from the salary bill of the writ petitioner/original applicant in suitable installments.
11. It is further submitted on behalf of the Railway Administration that in view of the facts and circumstances as quoted in the foregoing paragraphs no fault may be found in the action of the Railway Administration while issuing the said memo dated 30.03.2010 as well as while passing the reasoned order dated 06.06.2013.
12. It is further submitted on behalf of the Railway Administration that the said tribunal in the impugned judgment dated 06.10.2016 has assigned

sufficient reasons for non applicability of the said Act of 1971. It is thus submitted that it is a fit case for dismissal of the instant writ petition.

13. We have meticulously gone through the entire materials as placed before us. We have given our due consideration over the submissions of the Learned Advocates for the contending parties.

14. For effective adjudication of the instant writ petition we at the very outset propose to look to the memo dated 30.03.2010, the relevant portion of which is appended herein below in verbatim :-

“Accordingly, the damage rent, Electric rent and water charges for the above period have been calculated and the same stand as under :

A.	<i>Damage Rent of quarter</i>	<i>Rs.</i>
(i)	<i>For the period From July 2001 to November/ 2008 @ Rs. 5466/- per month</i>	<i>459065/-</i>
(ii)	<i>For the period from Dec. 2008 to Jan 2010 @ Rs. 5465 per month</i>	<i>6910/-</i>
	<i>Total</i>	<i>528172/-</i>
B.	<i>Electric rent</i>	
(i)	<i>For the period from April 2001 to Sep 2008</i>	<i>23589/-</i>
(ii)	<i>For the period from Oct 2008 to Jan 2010</i>	<i>4384/-</i>
	<i>Total</i>	<i>27928/-</i>
C.	<i>Water Charge</i>	
(i)	<i>For the period from 01.01.2005 to 20.01.2010</i>	<i>825/-</i>
	<i>Grand Total</i>	<i>5,86,920/-</i>

Thus, a total amount of Rs 5,56,920/- (Five lakhs six thousand nine hundred twenty only) is required to be recovered from the salary bill of Sri Chatterjee on suitable installments to be fixed at your end.

It is therefore requested to please arrange to recover the above amount from the salary of Sri Chatterjee on suitable installments and credited to this unit under intimation to this office at the earliest.”

15. It thus appears from the said memo dated 30.03.2013 that the Railway Authority by issuing the said memo sought to recover Rs. 5,86,920/- from the Salary of the writ petitioner/original applicant in installments on account of his unauthorized occupation of the allotted Railway quarter at Jamalpur from July, 2001 to 20.01.2010 towards damage rent, electric charges and water charges.
16. In course of his submission, Learned Advocate appearing on behalf of the writ petitioner/original applicant though placed his reliance upon the Railway Board circular dated 08.09.2004 but on being asked by us on a number of occasions he could not place any document and/or any material to substantiate that the said circular dated 8.09.2004 was brought to the notice of the respondent No. 3 or to the tribunal. In view of such, we find that the defence taken by the writ petitioner/ original applicant pursuant to the said circular dated 08.09.2004 was brought to our notice for the first time which in our considered view is not at all permissible.
17. As rightly argued by the Learned Advocate for the Railway Administration that since the writ petitioner/original applicant was transferred to Howrah

Division along with his post by submitting his option for Howrah division by no stretch of imagination the writ petitioner/ original applicant can retain the Railway Quarter as allotted to him at Jamalpur especially when he drew house rent allowance regularly from Howrah division. In view of such we find no illegality and /or irregularity on the part of the Railway Administration in issuing the memo dated 30.03.2013 wherein recovery of Rs. 5,86,920/- was directed. In view of such we are of the considered view that the said tribunal while passing the impugned order was very much justified in not interfering with the said recovery process under cover memo dated 30.03.2010.

18. The other argument as advanced on behalf of the writ petitioner/original applicant that the Railway Authority ought to have taken recourse to the said Act of 1971 appears to be not convincing at all to us in view of the fact that the in the impugned judgment; more specifically in paragraph 8 thereof the said tribunal placed its reliance upon some previous judgments of different Benches of the Tribunal as well as of Calcutta Bench wherein it was consistently held that for recovery of damage rent, resort to the provision of the said Act of 1971 is not at all necessary and in this regard the said tribunal placed its reliance upon the judgment of **P.R. Subramaniam and Ors.** reported in **1978 SCC (L&S) 35**. Accordingly, in absence of any material irregularity and/or palpable illegality in the impugned order, we are not inclined to interfere with the view taken by the Tribunal sitting in writ jurisdiction.

19. At this juncture we propose to look to the judgment of the Hon'ble Supreme Court in the case of **Central Council for Research in Ayurvedic**

Sciences Vs. Bikartan Das & Ors. reported in **(2023) SCC OnLine SC 996 : (2023) 16 SCC 462** wherein the cardinal principles regarding issuance of writ of certiorari have been discussed in the following manner:

"50. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact A situation of the case. While administering law, it is

to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

53. *The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in T.C. Basappa v. T. Nagappa, AIR 1954 SC 440. The Court held that a writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner' so long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows:*

"7. In granting a writ of 'certiorari', the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views for those of the inferior tribunal.....

8. The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Sumner in King v. Nat Bell Liquors Limited ([1922] 2 A.C. 128, 156). One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise.....

9. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction."

54. *Relying on T.C. Basappa (supra), the Constitution Bench of this Court in the case of Hari Vishnu Kamath (supra), laid down the following propositions as well established:*

"(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous."

[Emphasis Supplied]

20. In view of the discussion made herein above and in view of proposition law as decided in the case of **Central Council for Research in Ayurvedic Sciences (Supra)** we thus find that while passing the impugned judgment the said tribunal has taken a plausible view which requires no interference.
21. As a result the instant writ petition fails and is hereby dismissed.
22. Interim order if there be any, stands hereby vacated.
23. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, C.J.)

(PARTHA SARATHI SEN, J.)