

(2010) 03 BOM CK 0192

Bombay High Court

Case No: Writ Petition No. 3032 of 2009

Union of India (UOI) and Mr.
Sanjay Bhagat, Senior Clerk

APPELLANT

Vs

Mr. Saurabh Prasad, Deputy
Chief Mach. Engineer

RESPONDENT

Date of Decision: March 11, 2010

Acts Referred:

- Administrative Act - Section 13

Citation: (2010) 3 ALLMR 21 : (2010) 4 BomCR 770 : (2011) 1 RCR(Rent) 416

Hon'ble Judges: D.D. Sinha, J; A.A. Sayed, J

Bench: Division Bench

Advocate: Suresh Kumar, instructed by T.J. Pandian, for the Appellant; J.P. Cama, instructed by Rahul G. Walia, for the Respondent

Final Decision: Dismissed

Judgement

D.D. Sinha, J.

Rule returnable forthwith. Heard finally with the consent of Mr. Suresh Kumar, the learned Counsel for the petitioners - UOI and Mr. J. P. Cama, the learned Counsel for the respondent.

2. The petition is directed against the Order dated 8th December 2008 passed by the Central Administrative Tribunal whereby the Original Application No. 158 of 2008 preferred by the respondent came to be allowed and the Order dated 27th September 2007 passed by the petitioner No. 1 was quashed and set aside.

3. The learned Counsel for the petitioners has submitted that the respondent, a Group "A" Officer, was posted as Deputy Chief Mechanical Engineer at Mumbai CST, at the relevant time in the year 2006 and was allotted a railway quarter at Badhwar Park, Mumbai. The respondent by his letter dated 14th August 2006 requested the Authorities for Ex-India Leave from 21st August 2006 to 3rd August 2007 for doing

Master of Engineering in Logistic Program at Massachusetts Institute of Technology . This was considered and the leave was sanctioned of 120 days average pay, 86 days of half leave and 142 days leave without pay. Hence, the total leave which was sanctioned was 348 days.

4. The learned Counsel for the petitioners further submitted that the respondent knew that the leave which was sanctioned was not a study leave as he had already availed study leave of 2 years which is the maximum period permissible in the entire service as per the rules, with effect from 29th June 1998 to 25th June 2000 for doing MBA from Delhi University and that the respondent also knew that he was not entitled to any more study leave as per rules and as such, in the application / note dated 14th August 2006, the respondent clearly requested the Authorities for Ex-India Leave for pursuing his studies. Therefore, the leave granted in 2006 was not study leave but Ex- India leave.

5. The learned Counsel for the petitioners further contended that under Rule 10.2 of the Rules for allotting residential accommodation to the officers, before proceeding on Ex-India leave, the respondent was under obligation to obtain necessary sanction for retention of railway quarter before relinquishing his post as otherwise, the period of retention of quarter if not covered by appropriate sanction of the competent authority, the occupation for the said period is treated as unauthorised and penal rent is levied. Similarly, the respondent was also required to get the certificate issued from the competent authority that he will be posted at the same place of posting to enable him to apply for retaining the quarter for 180 days on the basis of Ex-India leave. The respondent however failed to follow the rules. Though he being a Class I Officer was well aware of the same.

6. The learned Counsel for the petitioner further contended that respondent after coming back from USA submitted his resignation on 6th August 2007 but latter on withdrew the same. It is contended that respondent on realising his mistake of not having obtained from the quarter allotting authority, necessary sanction for retention of railway quarters before moving on to Ex-India Leave, the respondent had submitted letter on 23rd August 2007 addressed to Assistant Secretary (G) Central Railway seeking post-facto sanction for retention of railway quarter RB V/F-74 Badhwar Park. It is the case of the petitioners that when it came to the notice of the authorities about the illegalities committed by the respondent, by an Order dated 27th September 2007 the allotment of railway quarter made in respect of the respondent was cancelled and the occupation of quarter beyond 21st August, 2006 has been treated as unauthorised and the respondent was granted 10 days time to vacate quarter and also warned if he failed to vacate, eviction proceedings would be initiated as per Rules. The matter was referred to the Estate Officer for initiating eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the "P.P.E. Act") and in pursuance thereof the Eviction Case No. 19/07 was registered and a notice dated 2nd

November 2007 was also issued by the Estate Officer to the respondent to appear before him and submit his explanation.

7. The learned Counsel for the petitioners has contended that inspite of the fact that the notice was issued to the respondent by the Estate Officer under the P.P.E. Act and the proceedings are pending, the respondent has challenged the order dated 27th September 2007 whereby the allotment of railway quarter came to be cancelled by filing Original Application before Central Administrative Tribunal, Mumbai. The Tribunal allowed the Original Application by impugned order dated 8th December 2008. Being aggrieved by the same, petitioners challenged the validity of the said order by filing present petition on the following grounds:

The Central Administrative Tribunal had no jurisdiction to entertain the grievance raised by the respondent in view of the provisions of the P.P.E. Act as per the decision of the Supreme Court in [Union of India \(UOI\) Vs. Rasila Ram and Others](#), . It is contended that respondent who had already availed the maximum permissible study leave and the leave which was granted to him was Ex-India leave and respondent being a Group - A Officer was well aware of the rules, failed to follow the rules and therefore retention of railway quarter resulted in unauthorised occupation and therefore the authorities were justified in cancelling the allotment vide order dated 27th September 2007. Hence the action is consistent with the provisions of rules. It is contended that the Tribunal failed to take into consideration these aspects and therefore the impugned order is bad in law.

8. The learned Counsel for the petitioners further submitted that the Central Administrative Tribunal allowed the Original Application and set aside the Order dated 27th September 2007 on the ground that the same is an administrative order and as such the Tribunal has jurisdiction and the petitioners were having knowledge that the respondent was going on leave for the purpose of pursuing study and therefore it was a study leave and the order cancelling the allotment of railway quarter was in violation of rules of natural justice and therefore the Order held to be bad in law. The learned Counsel for the petitioners has submitted that the judgment of the Central Administrative Tribunal being inconsistent with the Scheme of Rule 10(2) cannot be sustained in law.

9. The counsel for the respondent has submitted that the contention canvassed by the counsel for the petitioners that the Tribunal did not take into consideration the relevant facts and circumstances as well as the law is incorrect. It is submitted that the following facts are taken into consideration by the Tribunal.

10. Respondent was appointed in 1993-94 as a Group - A Officer and posted in the Central Railway. In 2000 the respondent was transferred and posted in Mumbai. On 17th July 2006 respondent was allotted railway quarter in question which was occupied by the respondent along with his family and is residing therein since then. Respondent wanted to acquire Master's Degree in Engineering of Logistics from the

Massachusetts Institute of Technology which is rated 1 in Graduate Engineering Program. Respondent applied for the admission to the said Degree course and was selected and admitted to the said course for session started from 2003. However, as the respondent's services were required at that juncture, it was not possible for the railways to allow the respondent to be relieved from his post to join the program / course starting from August 2003.

11. The learned Counsel for the respondent further contended that the respondent in the interest of railway administration did not join the course in 2003. The next opportunity the respondent got was only in the year 2006. Thus, accordingly he made an application for leave to pursue the Master's Degree which was granted by the competent authority. On 14th August 2006 the respondent while working on the post of Senior Divisional Mechanical Engineer (Cog) applied for leave to pursue Master Degree in Engineering in Logistics (MLOG) program at Massachusetts Institute of Technology in U.S.A. The duration of the course was of about one year. The said leave was only for study purpose and nothing else as has been very clear from the application itself. On 18th August 2006 the competent authority allowed the respondent's leave application by granting him leave for 11 months and 14 days from 21st August 2006 to 3rd August 2007 to be availed out of India for pursuing Master of Engineering in Logistics Program at Massachusetts Institute of Technology, U.S.A. The letter clearly states that the leave sanctioned in favour of the respondent was for study purpose and nothing else. The respondent proceeded for studies in U.S.A. on 25th August 2006. After completion of his studies successfully, he returned to India in July 2007. It is submitted that at no point of time before or after he went to U.S. or while in U.S. or after the respondent returned from U.S. he was ever informed by way of notice, letter or in any other manner that the respondent had to vacate the said quarter or occupy any other quarter. No action of any sort was ever taken with regard to the quarter in question allotted to the respondent.

12. The learned Counsel for the respondent has submitted that after the 2007 and immediately applied for leave from 7th August 2007 till 30th November 2007. The leave was sanctioned by the competent authority of the Central Railway, Mumbai. On 6th August 2007 the respondent in fact applied for resignation from service w.e.f. 30th November 2007 due to personal reasons. However, the respondent withdrew his resignation on 1st November 2007. The same was allowed to be withdrawn by the competent authority.

13. It is contended by the learned Counsel for the respondent that after the petitioner came back from US and reported at Mumbai office on 6th August 2007, no action or any process was taken up by the railways with regard to the quarter allotted to the respondent in the year 2006. The respondent peacefully continued to stay in the said quarter since he was posted in Mumbai itself. Thereafter one Mr. Sanjay R. Dhoke, Senior Clerk in SDGM's Office who is also known as Sanjay Bhagat

in the Department approached the respondent on CSTM Railway Station while he was going to Shirdi. He informed the respondent that as he had gone out of India he would require to give a formal representation for retention of the said railway quarter for the period he was away in U.S. for study purpose. The respondent was surprised at such a demand as there was no occasion to make such a request, moreover when he had already completed his Degree Course in U.S. and posted in Mumbai itself. The respondent contacted Mr. Sunil Udasi, Assistant Secretary (G) working in SDGM's Office on phone who informed the respondent that the said retention request was only for record purpose. The respondent while on station on 23rd August 2007 wrote a letter which has been treated by the petitioner No. 1 as a request made by the respondent to grant post facto sanction for retaining the railway quarter. It is contended that there was no occasion for the respondent to write the said letter dated 23rd August 2007 since the respondent had already come back from U.S. after finishing his course. After July 2007 respondent has not been to U.S. at all. The respondent has already reported to his office on 6th August 2007. The learned Counsel for the respondent has submitted that it is pertinent to note that the petitioner has taken no action when the respondent left for U.S., while he was in U.S. or on his return from U.S. which shows that railways did not find any irregularity in retention of the railway quarter by the respondent nor the said quarter was required to accommodate some other officer.

14. The counsel for the respondent has submitted that the entire action was initiated against the respondent only after the respondent was asked to write a letter dated 23rd August 2007 in good faith, which was given to Mr. Sanjay Bhagat, which in fact was neither required under the rules nor necessary for the respondent to write to the authorities. It is contended that when respondent came back to Mumbai from U.S. he continued to reside in the same quarter, which was allotted to him before he went on leave. It is contended that the petitioner vide letter dated 27th November 2007 called the respondent back from leave and posted him on the post of Dy. Chief Mechanical Engineer in Mumbai. When the respondent came back to Mumbai he resided in the same quarter on taking charge of the said post on 27th November 2007.

15. The learned Counsel for the respondent has further contended that firstly when the respondent left India for study purpose, he was never asked to vacate the said quarter at any point of time. Secondly when he was in U.S. he was never asked to vacate the quarter. Thirdly, when the respondent came back from U.S. he was never asked to vacate the quarter for whatever reason. Fourthly, the respondent was never even informed or put to notice before issuing the impugned order dated 27th September 2007 that he is required to vacate the quarter as his Ex-India leave exceeds 180 days. It is contended that the respondent could not have taken any punitive action which involves civil consequence without following principles of natural justice. It is therefore contended that the action of the petitioner is illegal, malicious, violative of principles of natural justice and therefore the same is not

sustained in law.

16. We have considered the contentions canvassed by the respective counsels for the parties and perused the impugned judgment of the Tribunal. So far as the issue regarding maintainability of the Original Application before the Central Administrative Tribunal is concerned, the contention canvassed by the learned Counsel for the petitioner in this regard, in our view, suffers from lack of merit. The impugned order dated 27th September 2007 passed by the petitioner whereby the allotment of railway quarter in favour of the respondent came to be cancelled is purely an administrative decision / order passed by the competent authority of the railways and it has no nexus with the provisions of the P.P.E. Act. On the other hand, the retention of quarter depends upon the rules pertaining to allotment of railway quarters and retention thereof, which has nexus with the rules pertaining to study leave and Ex-India leave, which in terms are co related with the service conditions of the employee and are wholly different and distinct from the provisions of the P.P.E. Act. So far as the case of Rasila Ram (supra) is concerned, the Supreme Court has held that once the government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of the Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act and Section 13(q)(v) of the Administrative Act would not confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the P.P.E. Act. In the instant case the Tribunal has held that the order dated 27th September 2007 passed by the petitioner was not under the P.P.E. Act and is an administrative order, and therefore the contention canvassed by the counsel for the petitioners that the Tribunal had no jurisdiction to entertain the Original Application filed by the respondent, in our view, was misconceived and therefore the said contention is rejected.

17. In the present petition, the Order passed by the Central Administrative Tribunal is called in question and therefore the contention canvassed before the Tribunal and the finding recorded in respect thereof are sustainable in law or not is the only aspect, this Court is required to consider in the present petition.

18. The perusal of paragraph 6 of the impugned order shows that the only rule of the Master Circular dated 20th April 2007 circulated by the Government of India, Ministry of Railways relied by the petitioner in order to demonstrate that the retention of quarter by the respondent was not in accordance with the said Rule 10.24 of the said circular. For the sake of convenience, we reproduce the said rule, which reads thus:

10.24. Leave ex. India.

An employee on leave ex-India not exceeding 180 days may be permitted to retain the quarter on payment of normal rent / flat rate of licence fee/ rent for the entire period, provided the entire period of leave or any portion thereof is spent outside

India and the competent authority certifies that the employee will be reposted to the place of posting on expiry of the leave period.

The contention of the petitioner No. 1 before the Tribunal was that the respondent had neither applied for retention of quarter nor informed the petitioner No. 1 in this regard before proceeding on Ex-India leave. The respondent also did not obtain any certificate from the competent authority that he would be reposted to the place of his original posting on expiry of the leave period, and therefore violated the procedure stipulated under Rule 10.24 of the Circular which deals with leave Ex-India, consequently action taken by the petitioner No. 1, cancelling / termination of allotment of railway quarter with effect from 21st August 2006 vide impugned order dated 27th September, 2007 is just, proper and is sustainable in law.

19. In the instant case it is not in dispute that the respondent was granted leave for 11 months 14 days with effect from 21st August 2006 to 3rd August 2007 for the purpose of pursuing higher education for obtaining Masters Degree in the subject of Engineering in Logistics Programme at Massachusetts Institute of Technology, USA. It appears that the leave sanctioned in favour of the respondent was for the study purpose. The said leave was granted by the Authorities on 18th August 2006. The respondent proceeded for his higher studies in U.S. on 25th August 2006 and after completion of his studies successfully in U.S., respondent returned to India in July 2007. It is not in dispute that on his return from U.S. he reported at the office of the petitioner No. 1 on 6th August 2007 and applied for leave from 7th August 2007 till 30th November 2007 which was sanctioned by the competent authority.

20. In the back-drop of the above referred facts, it is evident that the respondent went to U.S. for higher studies only after leave for study sanctioned by the competent authority on 18th August 2006, and on completion of studies in U.S. came back to India in July 2007 and was posted in Mumbai only. In these circumstances there was no occasion for the respondent to send alleged letter dated 23rd August 2007 to the competent authority praying for grant of leave Ex-India when it is admitted fact that after July 2007 respondent has not been to U.S. at all. It is also not in dispute that the petitioner No. 1 never issued any notice or letter to the respondent while he was in U.S. or after his return to vacate the said quarter or occupy any other quarter in order to initiate any other action against the respondent before 23rd August 2007 on the ground that the respondent proceeded on leave without following the procedure stipulated in Rule 10.24 of the Master Circular. It is in these circumstances, the Tribunal in paragraph 8.3. has observed thus:

8.3. It is crystal clear from the above said sanction of leave granted to the applicant by the respondents that it was for study and that it was well within the knowledge of the respondents. The leave was being sanctioned to the applicant for allowing him to pursue Master's Degree in Engineering in Logistics Program at the Massachusetts Institute of Technology, USA. In the above circumstances, the

respondents cannot contend that they were unaware about the Study Leave granted to the applicant or that the applicant did not apply for the same. Moreover, the applicant was on the rolls of the respondents during the period when he was pursuing his Masters Degree in the USA. He was never asked to vacate the quarter either at the time of sanctioning the leave or even thereafter till he returned probably because the authorities were well aware that the applicant was going only for a limited period of 11 to 12 months and would join back at the same place after the study was over. In the circumstances, the impugned order dated 27.09.2007 passed by the respondents cannot be sustained in the eyes of law and on facts. Also, this order is passed retrospectively, which is not permissible in law. Admittedly, the applicant was not asked to vacate the quarter in question either at the time of grant of leave in question or till he completed his Master's Degree. The action of the Respondents is, therefore, held to be unjust and unfair.

The above referred findings recorded by the Tribunal, in our view, are just and proper in the facts and circumstances of the present case and are sustainable in law.

21. The contention canvassed by the learned Counsel for the petitioners pertaining to Rule 10.2 of Rules for allotting the residential accommodation is concerned, this contention was not canvassed before the Tribunal and therefore the Tribunal had no occasion to consider the same. In the circumstances, it will not be possible for us to permit the petitioners to raise the said contention for the first time in the present writ petition.

22. For the reasons stated hereinabove, the petition suffers from lack of merits. Same is dismissed. No order as to costs. Rule disposed of.