

Per Mrs. Manjula Das, Judicial Member:-

1. Heard Dr. J.L.Sarkar, learned counsel for the applicant and Mr.H.K.Das, learned Railway Counsel appearing on behalf of the Respondents.

2. Dr.J.L.Sarkar, learned counsel assisted by Mr.S.Nath learned counsel for the applicant submits that applicant is a Group A, IRSE posted in N.F.Railway. In 1993 he was posted as AEE/construction (AXEN) N.F.Railway, Maligaon. He was transferred to Rangia E.E/ Cons. by order dated 31.8.2006. On his transfer from Maligaon in 2006 to Rangia, he prayed for retention of his quarter No.295/B, Type-IV, Sarada Nagar, Maligaon on the ground of daughter's education. It was submitted by the learned counsel that the Railway Board vide circular dated 26.10.2009 permitted the railway officers/staff posted at New Division (Pune Division in Central Railway & Rangia Division N.F.Railway) to retain their allotted railway accommodation at the previous place of posting up to 31.08.2009 and vide another circular dated 05.09.2014 the said facilities were extended upto 31.03.2015 on normal rent. It was submitted by the learned counsel that despite the above Railway Boards circulars the respondents issued the impugned order dated 11.09.2012 imposing penal rent of Rs.6,50,044/- intimating the applicant for recovery of damage (panel) rent. According to the

learned counsel, respondents are recovering the said penal rent from the salary of the applicant, however, as per the aforesaid Railway Board's circulars they ought not to have recovered the panel rent inasmuch applicant availed the benefits as per the above Railway Board's circulars. Applicant did make several representations and last one being dated 18.02.2015, however, the department is sitting over the matter and not finalized his prayer, rather recovering the panel rent till date. According to the learned counsel, action of the respondents in imposing the panel rent is not at all sustainable under the law.

3. Mr.H.K.Das, learned Railway Counsel on his arguments submitted that in 1993 the applicant was posted as Assistant Executive Engineer/Construction (AXEN), N.F.Railway, Maligaon and he was allotted Bungalow No.295/B, Type-IV, Sarada Colony, Maligaon. Therefore, he was not paid house rent as the Railway Bungalow No.295/B, Type-IV at Sarada Colony, Maligaon was under his occupation and thereby he was not eligible for house rent allowance. The Rule of Railway provides that an employee, on transfer from one station to another station, which necessitates change of residence, may be permitted to retain the Railway accommodation at the former station of posting for a period of two months on payment of normal

rent of single flat rate of license fee/rent. On the request by the employees, on educational or sickness ground, the period of retention of Railway accommodation may be extended for a further period of six months on payment of special license fee, i.e double the flat rate of license fee/rent. The retention of Railway accommodation on education ground will be possible on production of necessary certificates from the concerned school/college authority by the concerned railway employee. But the applicant did not submit any such certificate earlier. It was only after receipt of office letter No. E/381/Con/Gaz/Vac.Qrs. dated 10.05.2012 , he submitted the same.

4. It is further submitted by the learned counsel that the N.F.Railway, Maligaon issued a letter dated 16.03.2012 to the Finance Department for taking necessary action regarding non-vacation of Railway Bungalow No.295/B Type IV at Sarada Colony, Maligaon by the applicant , w.e.f. 19.09.2006 i.e the date when he was posted as XEN/Com/RNY. Accordingly, an amount to the tune of Rs.6,79,271/- was assessed and vetted by the Finance Department as Damage Rent. The factum of assessment and imposition of Damage Rent was communicated to the applicant vide office letter No.E/381/Con/Gaz/Vac.Qr.dated 10.05.2012.It was only after receipt of

the aforesaid letter, the applicant submitted a copy of his Note No.GCS/2006/1 dated 21.09.2006 praying for retention of Railway Bungalow No.295/B, Type IV at Sarada Colony, Maligaon on education ground. Railway authority however submission of required educational certificates accorded permission for two months w.e.f. 19.09.2006 to 18.11.2006 on normal rent on transfer ground and from 19.11.2006 to 15.04.2007 on double the normal rent on educational ground as per extant provision by re-calculating the damage rent w.e.f 16.04.2007 to 31.08.2012 as vetted by FA Y& CAO/Con, N.F.Railway at Rs.6,50,044/-. The fact was communicated to the applicant vide office letter No.E/381/Con/GAZ/Vac.Qtr dated 11.09.2012.

5. According to the learned counsel the circular provides for retention of Railway accommodation in the previous place of posting in view of their posting in the new division. The circular is prospective in nature and same would not be applicable in the case of applicant who was posted at Rangia vide order dated 31.08.2006 i.e. much prior to coming of the circular.

6. Having heard the learned counsel for the parties, perused the pleadings and material placed before me, it is noted that the applicant is in Group-A IRSE posted in N.F.Railway. In 1993 he was

posted as Assistant Executive Engineer/Construction (AXEN), N.F.Railway, Maligaon and allotted Bungalow No.295/B, Type IV, Sarada Colony, Maligaon. He was transferred to Rangia as Executive Engineer/construction by order dated 31.08.2006 by the General Manager/Con/Maligaon in connection with Gauge conversion project of Rangia Murkongselek.

7. On being transferred the applicant applied for retention of the said quarter at Maligaon on 21.09.06 on the ground of education of his daughter and other grounds. Thereafter, he was not paid house rent allowance and regular rent was deducted from his salary till April 2012.

8. For proper adjudication of the matter, the point is to be decided as to whether the O.M. dated 26.10.2009 (Annexure-C) and O.M. dated 05.09.2014 (Annexure-D) are applicable or not. The Circular dated 26.10.2009 (Annexure-C) issued by the Railway Board speaks about the retention of the Railway accommodation at the previous place of posting in favour of the officers/staff posted to Pune Division in Central Railway & Rangia Division in N.F.Railway.

9. As per Railway Board's letter dated 22.05.2009 the Railway staff posted to new zones to retain Railway accommodation at the previous place of posting up to 31.08.2009. On receipt of representations from other Railways, for permitting railway officers/staff posted to New Divisions to retain Railway accommodation at the previous place of posting, the matter has been reviewed by full Board of Railway and it has been decided that retention of Railway accommodation at the previous place of posting in favour of officers/staff posted to Pune Division in Central Railway & Rangia Division in N.F.Railway, may be permitted post facto up to 31.08.2009.

10. Vide Circular No.E(G)2007 QR1-5 dated 05.09.2014 (Annexure-D) issued by the Deputy director Estt.(Gen.) allowed to retain Railway quarter at previous stations up to 31.08.2009 at Rangia Division. The Relevant portion of the said letter is hereunder:-

“The Board, in exercise of its power to relax the existing provisions regarding allotment/retention of Railway quarter and the rent charged therefore, for a class of people, has agreed to extend the relaxation ex post facto beyond 31.08.2009 and up to 31.03.2015 on normal rent.”

11. Now, I am going to the application of the applicant dated 21.9.2006 where the applicant stated that on being transferred he joined as XEN/Con/Rangiya on 18.9.2006 in connection with Rangiya

Murkongselek gauge conversion project. Further stated that his children (one in class-X & other in class-IV) are studying in Kendriya Vidyalaya at Maligaon and in Sarala Biral Gnyan Jyoti School at Amingaon. Hence he need to retain the present Bungalow No.295/B, Saadanagar Colony at Maligaon, where he alongwith the family residing. Accordingly, requested to allow him to retain the above mentioned Bungalow at Maligaon.

12. However, the respondents at Annexure R-1 of their written statement submitted that the applicant neither has vacated the Bungalow nor applied for the permission to retain the same. Further in para 6 of the written statement it was stated that on submission of required educational certificates later on by the applicant, the SDGM, N.F.Railway accorded permission for retention of Railway Bungalow No.295/B , Type IV at Sarada Colony , Maligaon for 2(two) months w.e.f. 19.09.2006 to 18.11.2006 on normal rent on transfer ground and from 19.11.2006 to 15.04.2007 on double the normal rent.

13. The facts remain that the respondents authority acted upon the representation dated 21.9.2006 made by the applicant for retention of the said quarter w.e.f. 19.09.2006 to 18.11.2006 . If so, the point raising by the respondents that the applicant not filed

representation for permission to retain the quarter does not survive.

14. The next question comes relates to the applicability of the circular as referred above.

Undisputedly, the applicant transferred in Rangiya Division N.F.Railway , Rangiya as XEN/Con/Rangiya in connection with Rangiya-Murkongselek gauge conversion project. Vide circular dated 26.10.2009 the Railway respondents extended the benefit of the employees posted in the Rangiya Division, N.F.Railway for retaining the Railway accommodation at the previous place of posting post facto up to 31.09.2009. Thereafter, vide circular dated 05.9.2014 the Railway authority agreed to extend the relaxation ex post facto up to beyond 31.08.2009 to 31.03.2015 with normal rent. As such argument led by the Railway counsel without supporting documents thus fails. Hence, I have no hesitation to set aside the impugned office order dated 11.9.2012 (Annexure-B) and accordingly, the same is set aside and quashed.

15. The respondents are hereby directed to act upon on the basis of Circular dated 26.10.2009 and 05.09.2014 respectively issued by Railway Board and Railway authority apropos the case of the applicant. Further, I direct the respondent authority to consider the

grievances of the applicant narrated in the representations dated 28.8.2014(Annexure-F) and 15.9.2014 (Annexure-G) respectively in the light of the Railway Board's Circular dated 26.10.2009 and 05.09.2014.

16. With the above observations and directions, the O.A. is disposed of. No order as to costs.

(MRS MANJULA DAS)
JUDICIAL MEMBER

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