

RESERVED**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH****Original Application No.21/70/2018****Hyderabad, this the 3rd day of March, 2020*****Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

Pathina Venkata Appalanaidu, S/o. late Appa Rao,
 Aged about 39 years, Occ: J.E. (P.Way),
 O/o. Senior Section Engineer /P-Way/Koraput,
 East Coast Railway, Koraput Dist., Odisha – 764 020,
 R/o. H. No. A2-161, C/o. Shri Vijay Kumar,
 Vil: Nuvaguda, Nuvaguda P.O., Borigumma District, Koraput, Odisha.
 ... Applicant

(By Advocate: Mr. V. Ravindranath Reddy)

Vs.

1. Union of India, Rep. by its General Manager,
East Coast Railway, Rail Sadan, Chandrasekharpur,
Bhubaneswar, Odisha – 751 017.
2. Principal Chief Engineer,
East Coast Railway, Rail Sadan, Chandrasekharpur,
Bhubaneswar, Odisha – 751 017.
3. Addl. Divisional Railway Manager,
East Coast Railway, Visakhapatnam – 530 004.
4. Sr. Divisional Personnel Officer,
Waltair Division, East Coast Railway,
Visakhapatnam – 530 004.
5. Sr. Divisional Engineer (Central),
East Coast Railway, Waltair Division,
Visakhapatnam – 530 004.
6. Asst. Divisional Engineer (P-Way),
East Coast Railway, Koraput Dist., Odisha – 764 020.

... Respondents

(By Advocate: Mr. N. Srinivasa Rao, SC for Railways)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. OA is filed is filed aggrieved for being imposed with a minor penalty and recovery of HRA from the applicants salary.



3. Brief facts of the case are that the applicant joined as JE (P-Way) on 21.01.2013 at Malligura Railway Station and hired a private residential accommodation in a nearby village. After 2 years, he received a letter dt. 9.4.2015 intimating that Railway quarter Type-II 2B has been allotted to him w.e.f. 26.7.2013. In response, applicant resisted recovery of HRA by clarifying that he hired private residential accommodation and did not stay in official quarters. Peeved by his response respondents issued a charge memo dt. 14.05.2005 and imposed the penalty of stoppage of increment for 2 years which on appeal was confirmed by the appellate authority and there on when petitioned to the revision authority, penalty was reduced to stoppage of increment by one year. Aggrieved, OA has been filed.

4. The contentions of the applicant are that the respondents have come to the conclusion that he was staying in the official quarters and ordered recovery of HRA without a fair inquiry. On questioning the correctness of allotment of quarter with ante date and insisting that he was not staying in the quarters, respondents issued the charge memo. Imposing a penalty without a due inquiry is arbitrary and unfair. Recovering and denying HRA even though applicant did not stay in the quarters is illegal and arbitrary.

5. Respondents in the reply statement have stated that after inquiry conducted by ADEN/Koraput with 3 engineering staff members it was concluded that the applicant was occupying the quarters. Based on the fact finding inquiry done, DPO /WAT was advised recovery of HRA paid and further disciplinary action was initiated which finally ended in withholding of increment for one year by the revision authority. For imposing a minor penalty disciplinary inquiry is not required. Respondents claim that the applicant never gave the address of the private accommodation hired by him. Applicant cannot stay in other than Govt. accommodation without the permission of the superior. Applicant actually stayed in the quarter and this is confirmed by his admission before the revision authority. Occupying Govt. accommodation and drawing HRA is irregular which has invited the concomitant disciplinary action as well as recovery of HRA and its further drawal.



6. Heard both the counsel and perused the pleadings on record.

7. I) The dispute is about allotment of quarter and drawal of HRA. Applicant reported at Malligura station on 21.01.2013 and he claims that since he had not applied for a quarter he has hired a private accommodation in a village close by. Respondents issued a letter of allotment of railway quarter w.e.f. 26.07.2013 vide their letter dated 9.04.2015, after a lapse of 2 years of the applicant reporting at Malligura Station consequent to his predecessor vacating the quarter. Primarily an employee can occupy an official accommodation only after it is allotted to him and definitely not

without an allotment letter. The quarter is also not a post attached quarter as is clear from the letter of allotment. The revision authority while reducing the penalty of withholding increment for a period of one year has recorded as under:



“ The EX ADEN/KRPU in his fact finding inquiry report had established the fact that the CO was in occupation of a Railway Quarter (Type –II) at MVG supported by necessary witnesses. Hence the CO is guilty of charges framed against him. However, I am of the view that while residing in a private accommodation, the CO used to temporarily stay in qrts No. Type –II /2B or other Qrts at MVG, especially during the Hudhud Cyclone in oct, 2014. It is also a fact that the CO is not staying in the Railway Quarter allotted to him, as confirmed by him during the personal hearing and vide his representation dated 27.04.2017. ”

The above finding of the Revision authority makes it abundantly clear that the applicant was staying in a private accommodation and temporarily used the official quarters when required. The applicant did not apply for a quarter. Respondents as stated supra allotted the quarter w.e.f. 26.7.2013 to the applicant after 2 years of his reporting at Malligura station, by a letter dated 09.04.2015 after the quarter was vacated by the predecessor of the applicant. This is rather unusual. It appears that there was some lapse on behalf of the respondents in monitoring the vacation of quarters and their occupation. Otherwise allotment of quarters with an ante date is not the general accepted norm. Moreover, an employee cannot be forced to occupy a Govt. quarter unless the rules specify so. Ld. Counsel for the applicant was submitting that the quarter is inhabitable and this is one another reason for the applicant not to occupy the quarter. Applicant did indicate the residential proof in the cause title of the OA. It was not beyond the competence of the respondents to direct the applicant to provide the residential address and verify it independently to arrive at the truth.

Therefore, affirming that the applicant did not produce the residential proof of the private accommodation hired by him is too meek a submission to take serious cognizance of. Respondents also did not produce any rule wherein it is made mandatory that the applicant has to stay in an official accommodation. Hence, it is not proper on part of the respondents to recover HRA from the applicant when he has not occupied the quarter on a regular basis and continuing to deny the same.



II) In regard to the penalty of withholding an increment, the revision authority has observed that the applicant was staying temporarily in the Railway quarters on occasions when required like at the time of Hudhud cyclone. The ADENs fact finding inquiry did establish that the applicant was in occupation of the quarter. Perhaps this inquiry synchronised with the temporary occupation of the quarter by the applicant. Therefore, the ADEN report cannot be brushed aside. The applicant has been asserting all through out that he did not occupy the quarter which turned out to be untrue by his own admission before Revision authority about temporarily occupying the quarter when required. An employee of his stature should have placed the facts as it is before the respondents to forestall unpleasant consequences that are likely to arise when some variation is detected in the facts submitted. The fact finding inquiry is a preliminary inquiry and the need to confront the applicant at that stage with witnesses is not required. Information can be elicited from reliable sources and the submission of the applicant that the witnesses inquired during the fact finding inquiry were working under the ADEN does not materially change the substance of the

fact under inquiry. The intrinsic factor is reliability and not more. Moreover, minor penalty is a simpliciter. Once the charge memo is issued and explanation is received nothing more need to be done to impose a minor penalty as observed by the Hon'ble Supreme Court in Supreme Court of India, I.D.L. Chemicals Ltd. vs T. Gattaiah And Ors. on 22 February, 1995, Equivalent citations: (1996) IILLJ 346 SC, 1995 Supp (3) SCC 573 as under:



The penalty of stoppage of two increments simpliciter was imposed upon the appellant. He was given a charge-sheet and his explanation was called and taken into consideration. Nothing more need to be done so far as the procedure for imposing minor penalty is concerned. No fault can be found with the penalty of stoppage of two increments imposed by the Bank upon the appellant.

The claim of the applicant that an inquiry has to be conducted before imposing a minor penalty, which incidentally in the instant case is withholding of one increment, is not in line with the Hon'ble Apex court directions on the issue and hence requires no consideration. Besides, the above observation combined with the finding of the revision authority does not call for any intervention on behalf of Tribunal in respect of the penalty imposed. The action of the respondents is not in any way erroneous to be set aside or modify.

III) Hence, in view of the aforesaid circumstances the respondents are directed to consider refunding of the HRA amount recovered and pay the applicant HRA from the date due if he continues to be not occupying the quarter. It is open to the respondents to allot a quarter, which is habitable as

per Quarter Allotment Rules and proceed against the applicant for any infringement, if provided under the Rules and in accordance with law.

IV) With the above direction, the OA is partly allowed, with no order as to costs.



/evr/

(B.V. SUDHAKAR)
MEMBER (ADMN.)