

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORGINAL APPLICATION NO.200/00577/2016

Jabalpur, this Thursday, the 4th day of June, 2020

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER

Surajit Kumar Das, S/o B.K.Das, Aged about 56 years,
Working as Chief Operations Manager, Metro Railway,
Metro Rail Bhavan, 33/1, JLN Road, Kolkata-700071,
and formerly Chief Operations Manager, South East
Central Railway, New G.M. Building, Bilaspur (CG) - **APPLICANT**
(By Advocate –Shri Manish Verma)

Versus

1. The General Manager, South East Central Railway, New G.M.
Building, Bilaspur (C.G.)-495004
2. Chief Medical Director, South East Central Railway, New G.M.
Building, Bilaspur (C.G.)-495004
3. Deputy General Manager/G, South East Central Railway, New G.M.
Building, Bilaspur (C.G.)-495004 - **RESPONDENTS**
(By Advocate – Shri Vijay Tripathi)

(Date of reserving the order:25.04.2019)

ORDER

This Original Application was initially disposed of vide order dated 01.08.2016. However, the applicant had challenged the said order before the Hon'ble High Court of Madhya Pradesh at Jabalpur by filing Writ Petition No.15574/2016. The said Writ Petition was disposed of vide order dated 19.10.2016 by remitting the matter to this Tribunal to consider his prayer for quashing of the order of imposition of penal rent.

Accordingly, this matter again came up for consideration before this Tribunal.

2. The applicant has made the following submissions:
 - 2.1 He was posted as Chief Operations Manager, South East Central Railway Bilaspur on 13.08.2015. He has been transferred on 27.01.2016 to Metro Railway Kolkata. He has joined the transferred place of post on 01.03.2016.
 - 2.2 He is being subjected to frequent transfers in the recent years. He was working as Chief Operations Manager at Metro Railway, Kolkata during 2010-2013.
 - 2.3 He was transferred from Kolkata to Hubli, a distance of 1925 km where his duration of stay was one year and two months.
 - 2.4 From Hubli, he was transferred to Guwahati, a distance of 2945 km, where his duration of stay was six months from 11.02.2015 to 11.08.2015.
 - 2.5 From Guwahati, he was transferred to Bilaspur on 13.08.2015, a distance of 1745 km.
 - 2.6 Vide order dated 27.01.2016, he was again transferred from Bilaspur to Metro Railway, Kolkata, a distance of 720 km away.
 - 2.7 The applicant has improved the freight loading on SEC Railway by 7% within a period of 6 months, i.e. up to end of January, 2016, whereas the all-India growth was less than 1%.

2.8 Pursuant to his posting at Bilaspur, he was allotted Government accommodation and he shifted his ailing mother aged about 92 years in October 2015. Frequent transfers issued against the applicant has seriously jeopardised the internal peace of his family as well as health of his mother.

2.9 Pursuant to transfer order dated 27.01.2016, he has joined at Metro Railway on 01.03.2016.

2.10 Against his transfer order dated 27.01.2016, he approached this Tribunal in Original Application No.155/2016, which was disposed of on 03.02.2016 (Annexure A-7) directing the Member, Traffic, Railway Board to decide the representation of the applicant dated 31.01.2016.

2.11 Since his representation was not decided with a reasoned and speaking order, he again approached this Tribunal in Original Application No.213/2016. However, no relief was granted by this Tribunal in its order dated 13.04.2016 (Annexure A-8).

2.12 The applicant preferred a Writ Petition No.7278/2016 before the Hon'ble High Court of Madhya Pradesh. However, that Writ Petition was dismissed as withdrawn vide order dated 28.04.2016 (Annexure A-9) with liberty to prefer a representation to retain the quarter for reconsideration of the matter.

2.13 The applicant's mother has been under constant treatment under Railway Hospital of South East Central Railway Bilaspur and under

Apollo Hospital, Bilaspur (on referral by Medical authorities of S.E.C. Railway) (Annexure A-5).

2.14 He submitted a representation to the respondents dated 10.05.2016 (Annexure A-10) regarding proper medical check-up of his ailing mother. However, he was imposed with a penal rent of Rs.46507.52 per month (Annexure A-11).

3. He has prayed for the following reliefs:

“8 RELIEF SOUGHT

(8.1) This Hon'ble Tribunal may kindly be pleased to quash the order dated 24.4.2016(Annexure A-11), in the interest of justice.

(8.2) This Hon'ble Tribunal may further be pleased to hold that the action on the part of the respondent No.2 Chief Medical Director by which he is not contemplating the medical check-up of the mother of the applicant as bad in the eyes of law, in the interest of justice.

8.2(A) That this Hon'ble Court may kindly be pleased to quash the order dated 24.5.2016 (Annexure A/12) in the interest of justice.

(8.3) That, this Hon'ble Tribunal may, further be pleased to award the cost of instant lis in favour of the applicant.

(8.4) Any other relief(s), direction(s), instruction(s), which this Hon'ble Tribunal deem fit and proper looking to the above facts and circumstances of the case be also awarded in favour of applicant in the best interest of justice”.

4. The respondents have made the following submissions in their reply:

4.1 He belongs to Group A service of Government of India and is in Senior Administrative Grade (SAG). As per service condition, he can be posted anywhere in India.

4.2 South East Central Railway is a freight oriented zone and considering the administrative requirements, a Higher Administrative Grade (HAG) officer has been posted along with the post vide Railway Board's order dated 27.01.2016. The transfer order dated 27.01.2016 is a chain order transferring 07 officers of Indian Railway Traffic Services (IRTS) of different Zonal Railways.

4.3 The transfer of the applicant as Chief Operations Manager, Metro Railway, Kolkata does not involve any lowering of his rank. The transfer of the applicant has been necessitated due to administrative interest. The applicant has submitted an application dated 12.04.2016 (Annexure R-3) for retention of Government accommodation as per relevant provision on the ground of mother's sickness. The respondent No.3 has duly considered the application keeping in view the guidelines applicable for retention of Railway accommodation as circulated vide Establishment Circulars dated 01.06.2001 and 13.11.2002 (Annexures R-5 & R-6), wherein it has been provided that the retention of Railway quarter on grounds of self or a dependent member of the family of the Railway employee can be granted on production of requisite Medical Certificate from the authorised Railway Medical Officer. Since the applicant has not

produced requisite medical certificate, he was informed that the permission of retention of Government accommodation cannot be granted.

4.4 The applicant again submitted an application on 10.05.2016 to respondent No.2 for medication examination of his mother. The mother of the applicant got examined on 19.05.2016 by Additional Chief Health Director/Cardiology at Central Hospital, Bilaspur with all the necessary investigation. During the medical examination, it was observed that her present clinical condition is stable in regard to her Renal and Cardiac status and all other clinical parameters. Further, she never needed any hospitalisation during the last eight months from October 2015 to May 2016.

4.5 The Chief Medical Director has observed that the mother of the applicant is physically fit for travelling by any conventional mode of transport and her present medical ailments do not warrant for quarter retention and accordingly, informed the applicant vide letter dated 24.05.2016 (Annexure R-7).

5. The applicant has filed the rejoinder in which the following submissions have been made:

5.1 His mother is a patient of serious Cardiac ailment. She is having Hypertension, Diabetes, Angina with frequent high rate uncontrolled

Atrial fibrillations for which she is required to be under constant medical supervision and surveillance.

5.2 The respondents have cleverly and with mala fide intent, sidestepped the spirit and intention of the circular by talking about the “stability” of clinical parameters on a particular day and have not even bothered to offer any comments about the diseases/sickness that applicant’s mother is suffering from, which have earlier been confirmed by the medical authorities at Kolkata.

6. Heard learned counsel of both sides and perused the pleadings available on record.

7. Learned counsel for the applicant vehemently argued that the mother of the applicant is 92 years old. She was examined two years earlier by Chief Specialist/Cardiology/B.R. Singh Hospital Kolkata who certified (Annexure A-3) that she is a known patient of serious cardiac ailment. She is having Hypertension, Diabetes, Angina with frequent high rate uncontrolled Atrial fibrillations.

7.1 These ailments do not go away at this old age. The authorities at SECR have deliberately avoided to issue the medical certificate to harass the applicant.

7.2 The environment of Bilaspur was suiting the health of the applicant’s mother and therefore, at this advanced age, it was preferable that she stays at Bilaspur.

8. Learned counsel for the respondents highlighted the rules regarding retention of Railway quarters beyond two months of transfer which provided for production of medical certificate from the Medical Officer.

8.1 The Medical Officers examined the mother of the applicant and declared that she is physically fit for travelling by any conventional mode of transport.

8.2 In view of the above, the applicant has correctly been imposed penal rent.

FINDINGS

9. Now, after the remand of the matter by the Hon'ble High Court, the only question to be left for consideration in this case is whether the imposition of penal rent was justified or not, since the applicant had already vacated the quarter.

10. The Railways have issued consolidated instructions vide RBE No.100/2001 dated 01.06.2001 (Annexure R-5) on the subject dealing with the retention of Railway accommodation by Railway employees in the event of transfer/retirement etc. The relevant extract are given below:

“1 Permanent Transfer

(a) A railway employee on transfer from one station to another which necessitates change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of 2 months on payment of normal rent or single flat rate of licence fee/rent. On request by the employees, on educational or sickness account, the period of retention of railway accommodation may be extended for a further period of

6 months on payment of special licence fee, i.e. double the flat rate of licence fee/rent.....

(b) Where the request made for retention of railway quarter is on grounds of sickness of self or a dependent member of the family of the railway employee, he will be required to produce the requisite Medical Certificate from the authorised Railway Medical Officer for the purpose.”.

10.1 On perusal of these instructions it is clear that an employee, on transfer from one Station to another, which necessitates a change of residence, is permitted to retain the Railway accommodation at the former station of posting for a period of two months on payment of normal rent. However, on medical grounds, the period of retention of Railway accommodation can be extended for a further period of six months on payment of special licence fee, i.e. double the flat rate of licence fee/rent, when a request is made along with medical certificate.

11. The applicant's request for retention of quarter for six months was rejected by the impugned order dated 12.04.2016 (Annexure A-2) and in the said order it has also been mentioned that the allotment of quarter was deemed to be terminated from 12.04.2016 warranting payment of damage rent beyond 12.04.2016.

12. On the date of hearing on 19.10.2016 before the Hon'ble High Court it was submitted that the applicant had already vacated the quarter in question.

13. The Chief Medical Director/SECR has refused to give medical certificate to the applicant's mother for retention of home.

14. It is undisputed that the applicant was being subjected to repeated transfers in the period 2013 to 2016, and that too over long distance. His stay at Hubli, Karnataka, where he was transferred from Kolkata, was one year and two months. Next, he was transferred to Guwahati, Assam, where his stay was six months. From Guwahati, he was transferred to Bilaspur, where again transfer order dated 27.01.2016 was issued for Kolkata after he had spent less than six months at Bilaspur.

15. It is also noted that none of the transfers were due to promotion.

16. The claim of the applicant that frequent transfers issued against him seriously jeopardised the internal peace of his family as well as health of his 92 years old mother is definitely very convincing.

17. The applicant unsuccessfully tried to get judicial relief for his transfer from Bilaspur to Kolkata.

18. Retention of quarters at old place of posting is a welfare provision by the Government to alleviate the problems of the employee due to transfer. Checks have been incorporated in the rules to stop misuse of the provisions.

19. In the instant case, we find that the age of applicant's mother was about 92 years which comes under the category of super senior citizen, being above the age of 80 years. At this age, even to accomplish ordinary

every day tasks involves a great deal of effort on the part of the person. This effort multiplies when he/she is suffering from disease.

20. It has not been disputed that Doctors of Eastern Railway in 2014 had stated (Annexure A-3) that applicant's mother was suffering from Hypertension, Diabetes, Angina etc. There is merit in the argument of the learned counsel of the applicant that at this age, these ailments do not go away. Also, it is undisputed that she has been undergoing treatment of Railway Hospital as well as Apollo Hospital, Bilaspur.

21. In the face of above facts, the contents of medical certificate dated 24.05.2016 (Annexure R-7) appear more to be mechanical statement of facts rather an instrument of staff welfare, as is the spirit of rules. Thus, it is apparent that the impugned medical certificate has been issued as per the dictate of the railway administration.

22. Combined with the fact that the applicant has been subjected to transfer over length and breadth of the country from Kolkata to Hubli to Guwahati to Bilaspur to Kolkata every few months does indicate administrative bias against the applicant. It is noted that transfer guidelines dated 31.08.2015 issued by Railway Board (Annexure A-6) mention a minimum tenure on a particular post at a time to be 2 years.

23. It has been brought to my notice that the quarter was vacated within the six month period. Also, the applicant's mother left for her heavenly abode on 04.01.2017.

24. Thus, having taken into account the peculiar facts of the case, I am of the considered view that the charging of penal rent beyond 12.4.2016 was not justified on the part of the railway administration. Accordingly, impugned medical report dated 24.05.2016 as well as the order dated 25.4.2016 imposing penal rent for the period of retention of quarter beyond 12.04.2016 are not sustainable.

25. In the result the Original Application is allowed. The impugned orders are quashed and set aside. The applicant may be charged the rent as per rules as if he has been granted permission to retain the quarter for a period of six months beyond two months after transfer. The excess recovery made, if any, may be refunded to the applicant within 30 days from the date of communication of this order. No costs.

**(Navin Tandon)
Administrative Member**

rkv/am