

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

RA No. 04 of 2020

Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)

1. Union of India represented through the General manager, East Coast Railway, Rail Sadan, At-Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017.
2. Chief Personnel Officer, E.Co.Railway, Rail Sadan, Chandrasekharpur, Dist-Khurda-751 017.
3. Chief Administrative Officer (Con.), E.co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017.
4. Deputy Chief Personnel Officer (Con)/Coorder/E.Co.Railway Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017.
5. Deputy Chief Engineer (Con.)Design, E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017.

.....Review applicants.

VERSUS

V.Y.Naidu, aged about 69 years, S/o. Late V.Pantayya, Retired Sr.Clerk under Deputy C.E./(C)/Design/Bhubaneswar – resident of Krishna Apartment, 3rd Floor, West Block, Plot No.305, Visakhapatnam PO-Yandad, Andhra Pradesh.

...Respondents

For the Review Applicants: Mr.B.B.Patnaik, Counsel

For the respondents: Mr.N.R.Routray, Counsel

Heard & reserved on: 15.07.2020

Order on :30.07.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

This Review Application (in short referred as 'RA') is directed against the order dated 22.11.2019 of this Tribunal passed in OA No. 137/2019 (Annexure-A/1 of RA). The RA is filed by the respondents in the OA, being aggrieved by the impugned order dated 22.11.2019. The MA No. 64/2020 has also been filed for condoning delay in filing the RA. The operative part of the impugned order dated 22.11.2019 is as under:-

“8. In view of the factual circumstances as discussed above, the respondents are directed to release the amount withheld from the DCRG of the applicant, after recovering the rent/penal rent for retention of quarter for the period from 27.9.1994 to 1.8.1995 as per the provisions of the rules, within a period of two months from the date of receipt of the copy of this order. Since the amount has been withheld from the DCRG even after approval of the Railway Board in respect of the proposal at Annexure-A/6, the respondents are directed to also pay the interest on the amount which was withheld in excess of the penal rent recoverable from the applicant for the period from 27.9.1994 to 1.8.1995. The interest will be payable to the applicant at the rate applicable to the provident fund from 30.6.2009 till the date of actual disbursement to the applicant, within a period of two months and in case of failure to release the withheld amount as stated above along with interest, the respondents will be liable to pay the interest @ 12% as claimed in the OA for the above subject to recovery of the interest so paid from the officials found responsible for the delay as per the provisions of law.”

2. The OA was filed by the respondent of the RA (applicant in OA), challenging decision of the authorities to recover the penal rent amounting to Rs. 3,83,624/- for occupation of a quarter at Cuttack from 1990 till his retirement from service on 30.6.2009 from his DCRG. It was pleaded in the OA that the case of the applicant in OA was covered by the letter dated 24/28.4.2008 (Annexure-A/6 of the OA), by which proposal was sent to the Railway Board to regularize the retention of the quarter. The OAs filed by similarly situated employees, who were allowed benefits as claimed by the applicant in the OA were also cited by him. In the Counter, it was averred that the case of the applicant of the OA was different from other employees, whose cases were cited in the OA, since after his transfer from Cuttack to Bhubaneswar, he was transferred again from Bhubaneswar to Sambalpur w.e.f. 27.9.1994 and then transferred back to Bhubaneswar w.e.f. 1.8.1995. Taking into account the facts of the case as per the pleadings on record, the OA was disposed of by this Tribunal vide order dated 22.11.2019, with the findings that the applicant of the OA was entitled for refund of the amount recovered towards penal rent after deduction of the penal rent for the period from 27.9.1994 to 1.8.1995 as per the rules, with interest from 30.6.2009 till the date of actual disbursement.

3. The review applicants (respondents in OA No. 137/2019) have filed this RA challenging the order dated 22.11.2019 on the following grounds:-

(i) The applicant of the OA was transferred from Cuttack from 1.3.1993 to 26.9.1994 for posting in Construction organization of the Railways at Bhubaneswar and then he was transferred to Sambalpur and continued there from 27.9.1994 to 31.7.1995. As per the letter of Railway Board, the allotment of quarter at Cuttack can be regularized till his shifting to Sambalpur i.e. upto 26.9.1994 and his retention of the quarter at Cuttack thereafter till retirement from service on 30.6.2009 was without any valid permission and hence, it was unauthorized.

(ii) The facts of the OA No. 137/2019 were not similar to the facts of the OAs cited by the applicant because of his posting at Sambalpur with effect from 27.09.1994.

(iii) There is apparent error in the impugned order dated 22.11.2019 since the above facts were overlooked. The retention of the quarter at Cuttack for the period after his transfer from Sambalpur to Bhubaneswar from 1.8.1995 till his retirement cannot be treated as authorized as per the Railway Board's letter dated 17.4.2018 (Annexure-A/4 of the RA) and in view of the audit observations, although penal rent recovered for the period from 1.3.1993 to 26.9.1994 was refundable to the applicant of the OA.

4. Mr. B. B. Patnaik, learned counsel for the review applicants was heard. He also filed his written notes of arguments, broadly reiterating the grounds taken in the RA. Apart from his submissions in support of the MA No. 64/2020 filed alongwith the RA to condone the delay, he argued that the case of the review respondent (applicant in OA) was not similar to other cases cited in the OA and his case was not covered by the letter of the Railway Board dated 17.4.2018, since the review respondent, after his transfer from Cuttack to Bhubaneswar w.e.f. 1.3.1993, was transferred from Bhubaneswar to Sambalpur on 27.9.1994 to 31.7.1995 and hence, his case for waiver of penal rent for the period from 1.8.1995 till his retirement is not covered by the Railway Board letter dated 17.4.2018 (Annexure-A/4 of the RA).

5. Per contra, Mr. N.R. Routray, learned counsel for the review respondent (applicant in OA) countered the submissions of Mr. Patnaik and argued that the grounds taken in the RA have been discussed in paragraph 7 of the impugned order and hence, there is no error apparent on the face of the record. He further submitted that there is no pleading in the OA to show if any notice was issued by authorities for vacation of the quarter at Cuttack and no proceedings under the Public Premises Act was initiated against him for vacation of the quarter in question. Hence, it was submitted that the RA was liable to be dismissed. A written note was also submitted by Mr. N.R. Routray.

6. Before proceeding to consider the RA on merit, it is necessary to consider the MA No.64/2020 filed by the review applicants with prayer to condone the delay in filing the RA since the impugned order was sent by the counsel and it was received in the office of the review applicants on 24.12.2019. The RA is filed on 22.1.2020 which is within 30 days from the date of receipt of the impugned order by the Railway authorities. There was no objection from the review respondent on such contentions in the MA. Hence, the grounds

mentioned in the MA are found to be satisfactory, for which, the MA is allowed and the delay in filing the RA, if any, is condoned.

7. The oral as well as the written arguments by both the parties in this RA have been considered by me. Review applicants have argued in the RA that the fact that the review respondent (applicant in the OA) was transferred to Sambalpur from Bhubaneswar w.e.f. 27.9.1994 till 31.7.1995 and then back to Bhubaneswar from 1.8.1995 onwards, for which, his case was different from other employees cited in the OA, who were allowed refund of penal rent. It is further argued that ignoring these facts amounted to an apparent error in the impugned order and hence, the RA be allowed.

8. On perusal of the records of the OA and the RA, it is clear that the applicant in the OA, who is the respondent in the RA (referred in short as 'RR'), was transferred to Bhubaneswar from Cuttack w.e.f. 1.3.1993 till 26.9.1994 for posting in Construction organization and then he was transferred to Sambalpur on 27.9.1994. He was transferred from Sambalpur to Bhubaneswar w.e.f. 1.8.1995 and he continued there till his retirement on 30.6.2009. The document at Annexure-A/20 of the OA shows that the RR retired as Sr. Clerk for Engineering Construction department at Bhubaneswar. In para 4.11 of the OA, the RR had claimed that his case was similar to other employees of Construction department, whose penal rents for retention of quarters at Cuttack were waived and deductions from DCRG were refunded as per the order of the Tribunal in different OAs. RR had submitted a representation dated 4.2.2019 (Annexure-A/23 of the OA) to the railway authorities for return of the amount of Rs. 3,83,624/- recovered from his DCRG towards penal rent.

9. In para 5 of the Counter filed in the OA, it was stated that the case of the RR was not similar to others cited in the OA, since he was posted at Samblapur on transfer from 27.9.1994 till 31.7.1995. It was not the case of the review applicants (respondents in OA) that the RR was not posted in Construction department at Bhubaneswar on transfer from Samblapur w.e.f. 1.8.1995. These contentions were considered in the impugned order dated 22.11.2019 and it was held that except for the period from 27.9.1994 to 1.8.1995 when the RR was posted at Sambalpur, his case was similar to other applicants as mentioned in the OA No. 137/2019 for rest of the period for which penal rent was charged and the amount was recovered from RR's DCRG.

10. The review applicants have furnished the letter dated 17.4.2018 (Annexure-A/4 of the RA) of Railway Board. It is noticed that the letter dated 17.4.2018 was not furnished by the parties in OA No. 137/2019. The aforesaid letter dated 17.4.2018 clarified that for retention of quarters at Cuttack by the

staffs posted to Construction organization at Bhubaneswar, the Railway Board circular dated 15.1.1990 Annexure-R/1 of the Counter) will not be applicable. It was stated in the letter dated 17.4.2018 as under:-

“3. Accordingly, provisions of Railway Board’s letter dated 15.01.1990 prescribing quarter retention time limits on transfer from one station to another, are not attracted in this case and there is no reason to recover damage/penal rent from the allottee Railway officials for retaining quarters at Cuttack. It is not a case of regularization of overstay or waiver of damage rent but a case where change of residence is not necessary upon transfer. The policy of 15.01.1990 permits retention of quarters in such cases and treating aforesaid as unauthorized retention and recovery of damage/penal rent is not in consonance with the policy instructions.”

11. It was held in the impugned order dated 22.11.2019 that the case of the RR after his posting at Construction organization at Bhubaneswar on transfer from Sambalpur from 1.8.1995 will be similar to other cases cited in the OA. It is noted that there is nothing on record to show that the authorities had taken action to cancel allotment of the quarter at Cuttack to the RR and to treat retention of the quarter as unauthorized after his transfer from Bhubaneswar to Sambalpur w.e.f. 27.9.1994. After RR’s transfer to Bhubaneswar from Sambalpur w.e.f. 1.8.1995 till his retirement from service on 30.6.2009, there is nothing on record to show if any action was taken by the authorities under law to declare his retention of the quarter at Cuttack to be unauthorized or to levy penal rent. In such factual background, the impugned order dated 22.11.2019 was passed with directions cited in first paragraph of this order.

12. Taking into consideration the Railway Board letter dated 17.4.2018 (Annexure-A/4 of the RA) and the fact that no record had been furnished by the review applicants in OA as well as in RA to show if any action was initiated by the competent authority against the RR (applicant in OA) treating his retention of quarter at Cuttack from 1.8.1995 till retirement from service as unauthorized, I am of the view that the argument of the review applicants that not treating the aforesaid period as unauthorized is an apparent error in the impugned order dated 22.11.2019, has no force and hence, the impugned order cannot be reviewed by this Tribunal on such grounds.

13. However, it is noted that as per the order dated 22.11.2019, interest on the excess penal rent recovered from the RR is payable from 30.6.2019 till the date of actual disbursement, whereas in the OA, the relief sought regarding interest was the interest from the date of recovery till the date of actual disbursement. Since the claim in the OA was for payment of interest from the date of recovery, allowing payment of interest to the applicant in the OA from 30.6.2009 is an error apparent on the face of the record, which can be

corrected through review of the order dated 22.11.2019 under Order 47 rule 1 of the CPC, 1908.

14. For the reasons mentioned above, this Review Application is allowed only to the extent that the words "*The interest will be payable to the applicant at the rate applicable to the provident fund from 30.6.2009*" in paragraph 8 of the impugned order dated 22.11.2019 shall be replaced by the words "*The interest will be payable to the applicant at the rate applicable to the provident fund from the date of recovery of the amount in question*", so that the interest as per the order dated 22.11.2019 is payable to the review respondent (applicant in OA) from the date of recovery of the amount in question, as claimed in the OA. The impugned order dated 22.11.2019 passed in O.A.No.137 of 2019 stands modified accordingly.

15. Copy of this order be handed over to the learned counsels for both the parties. There will be no order as to cost.

(Gokul Chandra Pati)
Member(A)