

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-3001/2004

New Delhi this the 22nd day of February, 2005.

Hon'ble Sh. Shanker Raju, Member(J)

Sh. R.D. Jaglan,
S/o Sh. Chandgi Ram,
R/o Quarter No. E-69,
Railway Colony, Rohtak.

..... Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The General Manager/Engineering,
Northern Railway,
Baroda House,
New Delhi.
3. The Divl. Railway Manager,
Northern Railway, DRM Office,
Near New Delhi Railway Station,
New Delhi.
4. The Senior Divisional Engineer,
Northern Railway,
DRM Office,
Near New Delhi Railway Station,
New Delhi.
5. The Asstt. Divisional Engineer,
Northern Raiplay, Rohtak.

..... Respondents

(through Sh. R.C. Malhotra, Advocate)

O R D E R

Applicant impugns respondents' orders dated 12.9.2004, 4.10.2004 and
10.11.2004 wherein rejecting the prayer of the applicant for regularization of
Railway Quarter, recovery of penal rent @ Rs. 7213/- P.M. has been ordered
against the applicant.

2. Briefly stated, applicant was posted at Rohtak as PWI and was allotted government accommodation No. E-69. On introduction in the year 2002 track relaying train a machine to replace old track by new track, applicant was posted for a particular purpose of renewal of railway track on 12.8.2002 to PWU and subsequently was transferred to Bahrot, Shamli and then Rohtak on 10.06.2004. The applicant was allowed a maximum period upto 31.3.2004 to retain the accommodation on special licence fee but thereafter a show cause notice was served on the applicant on 23.4.2004 which was refused by the applicant. Deeming it to be service, recovery of penal rent has been ordered. As regards regularization on the ground that non-pooled accommodation is to be allotted from relief to relief, this request was turned down. By an order dated 13.1.2005, Tribunal has accorded stay to the applicant.

3. For waiver of recovery, General Manager on 4.10.2004 rejected the request of the applicant as it was not within his jurisdiction.

4. Learned counsel of the applicant Sh. Yogesh Sharma contended that as per General Manager order dated 4.10.2004, transfer of the applicant was observed to be temporary, as such he was entitled to retain the accommodation. Accordingly vide orders dated 9.9.2004 and October 2004, a recommendation has been made to charge normal rent from the applicant vide letter dated 15.10.2004. DE has also recommended regularization of Quarter No.E-69 in the name of the applicant on his return back from the Shamli.

5. Sh. Yogesh Sharma, learned counsel of the applicant states that there is no indication that the quarter in question was a non-pooled accommodation, as the transfer was temporary, applicant is entitled to retain the accommodation on normal rent and relying upon the decision of this Bench in OA-102/2002 decided on 27.4.2002 (Som Prakash Vs. U.O.I. & Ors.), it is stated that in temporary transfer no penal rent can be recovered and one is allowed to retain the accommodation.

6. On the other hand, respondents' counsel Sh. R.C. Malhotra denied the contentions and stated that the applicant was occupying non-pooled accommodation and stated that way back on 9.8.2002 there was an exchange of non-pooled accommodation E-69 with E-86(A) between applicant and Sh. Saha. Learned counsel relying upon the rules of functioning of committee and allotments of quarters states that non-pooled accommodation has to be allotted from relief to relief. As such, the applicant was shifted even on TRT and this non-pooled cannot be allowed to be retained and by way of sheer indulgence he was allowed on the ground of academic session of his children to retain the quarter till 31.3.2004 on double the licence fee and thereafter for non-vacating the accommodation, a show cause notice was served, has been refused by the applicant which is a deemed service.

7. Learned counsel states that unauthorized occupation entails penal rent which has been rightly ordered against the applicant.

8. As regards waiver of recovery is concerned, it is stated that General Manager is without jurisdiction in non-pooled railway accommodation. It is for the Railway Board to pass necessary orders. As regards regularization is concerned, it is stated that the same cannot be regularized being a non-pooled accommodation..

9. In rejoinder, learned counsel of the applicant rebutted the contentions of the applicant and stated that it was never told to the applicant that the accommodation was non-pooled and as there is no provision of mutual exchange of non-pooled accommodation for want of evidence on record that accommodation No. E-69 and E-86(A) was non-pooled accommodations, the contention put forth by the respondents is misconceived.

10. I have carefully considered the rival contentions of the parties and perused the material placed on record.

11. As per Chapter XVII of IREM Vol.II which lays down provisions for accommodation of railway servants. Rule 1701 provides that where it is

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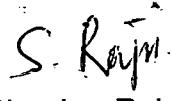
necessary for several reasons to provide quarters for certain railway servants near to their work, no railway servant has any right to be provided with quarters. As per Rule 1719 for a non-gazetted officer railway servant, General Manager has the power to exempt payment of rent to the maximum period of 3 months when railway servant is temporarily transferred to a post. It is not disputed that the applicant has been attached with a special assignment of TRT and along with TRT was posted at several places from Rohtak. General Manager vide its communication dated 4.10.2004 has admitted that applicant was transferred on temporary basis.

12. As regards non-pooled accommodation is concerned, the respondents have not brought any record to indicate that the quarter was non-pooled as the only evidence is a document showing that two quarters were exchanged. Be that as it may, non-pooled accommodation cannot be mutually exchanged. Accordingly, I have no hesitation to draw an inference that in case the mutual exchange has taken place between the quarter of the applicant and Sh. Saha, the same is not a non-pooled accommodation. Moreover, the applicant was allowed to retain the quarter upto 31.3.2004 on double the rent but he was on temporary transfer till 8.12.2004. In case of temporary transfer, one is allowed to retain the accommodation from the transferred place as per IREM Vol.II ibid and also in the light of the decision in the case of Som Prakash (supra). Moreover, as per registration of applicant determination of priority and rank in bulk allotment Clause-f assuming accommodation is non-pooled one, it has to be allotted relief to relief but in exceptional cases if incumbent is not in a position to vacate the quarter or has not vacated for a specific reason, the incoming incumbent be allotted a quarter of same type but the non-pooled accommodation must be vacated. The above instructions further provided in Clause-E that staff allotted non-pooled quarters when directed to vacate it should be offered an alternative accommodation at the station and given change as early as possible on priority to release non-pooled quarter.

13. I also find that applicant who was earlier working as PWI has now been redesignated as SSE which according to learned counsel of the applicant is an equivalent post.

14. In the light of above, retention of the quarter of the applicant when he was on temporary transfer till 8.12.2004 and thereafter for want of allotment of a new accommodation cannot be treated as unauthorized.

15. Moreover, the show cause notice issued to the applicant on 23.4.2004 is stated to be refused but one Sh. Chaltey Lal in his thumb impression stated that applicant - TRT had been refused this is not a clear refusal. Before effecting recoveries from the applicant for penal rent prior opportunity has to be afforded. The action ensued civil consequences and is ⁱⁿ consonance with the principles of natural justice. Moreover, for want of any definite evidence or the material to show that the quarter in possession of the applicant is non-pooled accommodation, O.A. is partly allowed. Impugned orders are set aside. Respondents are directed to change normal rent from the applicant and to either regularize the present accommodation in the name of the applicant or on priority basis allot him an alternative accommodation of the same type. Till then, the applicant shall be allowed to retain the present accommodation. ^{It} further direct that till an alternative accommodation is provided, the applicant be charged only normal rent. Any recovery effected from the applicant of damage rent shall be restored to him, however, without prejudice to normal rent. The directions shall be complied with expeditiously but not later than three months from the date of receipt of a copy of this order. No costs.


(Shanker Raju)
Member(J)

/v/v/