

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

OA No.765/92

Date of decision:

September 2, 1992

Sh.Faquira

...

Applicant

versus

Union of India through

Ministry of Railway &anr. ...

Respondent

CORAM: THE HON'BLE SH.T.S.OBEROI, MEMBER(J)
THE HON'BLE SH.P.C.JAIN, MEMBER(A)

For the Applicant

...

Sh.S.P.Sharma,
Counsel.

For the Respondents

...

Sh.P.S.Mahendru,
Counsel.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*.
2. To be referred to the Reporter or not? *Yes*.

JUDGEMENT

(DELIVERED BY HON'BLE SH.T.S.OBEROI, MEMBER)

The applicant's case briefly is that he joined the Railway service on 11.5.70 and before his transfer to Delhi, he served at Karnal & Rohtak Divisions where he was availing of Government accommodation. He had to request for his transfer to Delhi because of his wife's illness and for her treatment at Delhi, but non-availability of accommodation at Delhi, added to his miseries. His case further is that as one of the 18 quarters at Ghaziabad was found vacant and with the oral permission of his senior officers, he occupied one of the said quarters at Ghaziabad, since 5.3.91. However, he has been asked to pay a penal rent in respect of the said quarter, at the rate of Rs.1089.15 per month, which has since been started being deducted from his salary for the month of April, 1991. That

San

11

being too exorbitant, in view of his paltry salary, that too because of his wife's illness and other family liabilities, had made his life a virtual hell, and impossible for him to carry on, with whatever is left with ^{out of} his pay- packet. Added to this, he had been served with a chargesheet dated 28.2.92 (Annexure IV). His representations to the Railway authorities, pointing out his pitiable condition and craving for mercy, have cut no ice, and, therefore, he has come, by way of the present OA, before this Tribunal.

2. In the counter filed on behalf of the respondents, the applicant's case has been opposed, stating that the applicant has occupied the quarter in question unauthorisedly, without any oral permission, whatsoever, by any officer of the Railway authorities, as alleged, and the manner he has shown audacity to get in the quarter, without any authorisation, he deserves no leniency and sympathy, as craved ^{for} by him. It was further added that the applicant had paid scant regard to the notice dated 14.8.91 (Annexure R/1) issued to him for vacating the quarter in question and accordingly the charging of damages at the rate, is in accordance with the provisions of law. Dismissal of the OA has accordingly been urged, by the respondents, vide the counter filed on their behalf.

3. In the rejoinder filed on behalf of the

12

applicant, he has reiterated his prayer for consideration of his case on compassionate grounds, because of his wife's illness, poor financial condition, other family liabilities, etc.

4. We have heard the learned counsel for both the parties and have perused the material on record. The only point urged by the learned counsel for the applicant was that in the absence of any show-cause notice or affording an opportunity to be heard from the respondents directing the applicant to vacate the quarter in question and also subjecting him to disciplinary proceedings, was not in accordance with law. This was vehemently opposed by the learned counsel for the respondents stating that the applicant having chosen to occupy the quarter in question unauthorisedly, no show-cause notice was called for in this case.

5. The applicant has not placed any material on record to show that he was either permitted or authorised by the competent authority to occupy the quarter in question, or he was entitled under any rule or instructions to occupy the same otherwise, particularly a quarter at Ghaziabad while he was posted at Delhi. In the course of oral hearing, the applicant did admit that he was not authorised by anyone to occupy the quarter. He, however, stated that he occupied the same as he was in need of the same for the treatment of his wife and the quarter was lying vacant. On the grounds stated by the applicant, it is not at all possible to uphold his action as a Government servant.

6. In the course of oral hearing, it also came to our notice that as stated by the applicant



that his son was employed in a hotel and he too was living with the applicant in the same quarter. The remuneration earned by the son also cannot thus be ignored while taking a view in the matter. The applicant also stated that he has not drawn the house rent allowance of Rs.250/-per month to which he was entitled to, under the rules. Learned counsel for the applicant also submitted that as per the information received by his client, his priority for allotment of an official quarter at Delhi where he is posted is at Sl.No.9. It is, therefore, likely that he will get an allotment of quarter at Delhi in the very near future.

7. Keeping all the above facts in view and in the peculiar facts and circumstances of this case, we are inclined to take a lenient view in the matter of recovery of penal rent from the applicant for the period he has occupied the quarter in the aforesaid unauthorised manner. Accordingly, the OA is disposed of in terms of the following directions:-

- (1) The applicant shall vacate the Railway quarter occupied by him at Ghaziabad within a period of three months from the date of this order or on allotment of an accommodation at Delhi, whichever is earlier.
- (2) For the period he remains in occupation of the above quarter from the date of occupation till its vacation as in(1) above, he may be charged at the rate of twice the standard rent of the quarter or 20 per cent of his pay, whichever is higher. He shall not also be entitled to draw any house rent allowance for the above period.

14

- (3) The respondents shall be free to proceed with the departmental action initiated against the applicant for unauthorised occupation of the quarter in pursuance of the memorandum dated 28.2.1992 (Annexure -IV to the OA) and pass appropriate orders therein in accordance with the Railway Servants(Discipline & Appeal) Rules.

8. We make it clear that the directions given in this case shall not be treated as precedent.
No costs.

Ceci 29/9/92
(P.C.JAIN)
MEMBER(A)

Devi
(T.S.OBEROI)
MEMBER(J)