

(95)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.
OA.No.473 of 1993

New Delhi, dated this 22nd day of July, 1994.

Shri C.J. ROY, Hon. Member(J)

Shri S.P. Pasan,
Chief Inspector of Works (Gr.I),
under Chief Administrative Officer(Constrn.)
Northern Railway,
Kashmeri Gate, Delhi.Applicant

By Advocate; Shri B.S. Mainee.

versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Chief Administrative Officer(Constrn.)
Northern Railway,
Kashmeri Gate, Delhi.
3. The Dy.Chief Engineer (Constrn.)
Northern Railway, Jammu Tawi.Respondents

By Advocate: Shri K.K. Patel.

O R D E R
(By Hon.Member(J) Shri C.J. ROY)

This OA has been filed by Shri S.P. Pasan under Section 19 of the Administrative Tribunal's Act, 1985 against the order of the respondents dated 11/1992 seeking to recover Rs.21,105/- from his salary/dues and also for illegally withholding the construction allowance admissible to him under the rules while posted at Bajalta, which is situated in the project area of Jammu Udampur.

2. The facts of the case are that the applicant was appointed as a Work Mistry in the Northern Railway on 3.2.1958 and was subsequently promoted to different grades. While, he was working as an Inspector of Works at Jammu Tawi in 1983 under Respondent No.3 he was given the responsibility to look after the entire work in connection with the land acquisition, earth work bridges, tunnels etc. falling within

the territory of 4 kms. in the Engineering Department. The Headquarter of the applicant was at Jammu Tawi and the area placed under his charge was nearly 14 kms. away from Jammu Tawi and the applicant had to reach his territory everyday by some railway vehicle. The headquarter was suddenly changed to Bajalta vide order dated 5.1.88 in the middle of the school/college session against the instructions of the Railway Board, thus causing hardship to the applicant and to the school/college going children. The applicant requested the respondent No.3 to permit him to retain the railway quarter at Jammu Tawi, as Bajalta was situated in a jungle which was a most difficult terrain uninhabited and no source of conveyance and other amenities were available for his children and also for the welfare of the family. The respondent No.3 agreed to the request orally and allowed him to retain the quarter at Jammu. The applicant was not allotted any accommodation at Bajalta though the respondents had passed an order dated 5.4.1988 to allot a railway accommodation at Bajalta(Annexure A-2). The applicant states that his other colleagues who were also at Jammu Tawi and looking after the area beyond his allotted area, continued to remain at Jammu Tawi and their Headquarter was not shifted, whereas his Headquarter alone was shifted from Jammu Tawi to Bajalta, thus causing discrimination to him. The applicant, inspite of his request was asked to vacate the quarter at Jammu Tawi, which was being retained by his family, on payment of normal rent. An audit objection was raised in the meantime for retention of the quarter at Jammu Tawi, though the area under the control of the applicant remained the same and only the Headquarter was changed. Later on, the objection was dropped at the advise of the respondents. The

applicant vacated his quarter at Jammu Tawi on 14.5.90 and shifted his family to Bajalta and occupied two Type-I quarters which he was using as office-cum-store.

3. The applicant claimed for construction allowance which is admissible to the staff working in the projects. According to the instructions laid down by the Railway Board, the said project/construction allowance is paid at the rate of Rs.300/- per month to all the staff who had their office located in the project area provided they reside within the project area. The allowance is given primarily to compensate the staff for lack of amenities such as housing, schools, markets and hospitals and also because no H.R.A. is being given to those working in such areas. The applicant was denied the allowance on the ground that he was living in Bajalta even though, his family stayed back at Jammu Tawi.

4. In the meantime, the applicant was transferred from Jammu Tawi - Udaipur Project to Delhi. In the L.P.C. sent by the respondent No.3, it has been stated that the penal rent of Rs.746/- p.m. from 6.1.88 to 14.5.1990 amounting to Rs.21,105/- be recovered from the applicant (Annexure A-5). The applicant submitted a representation to waive the above recovery (Annexure A-6, 7 and 8).

5. The applicant has therefore prayed for the following reliefs:-

(a) To direct the respondents to regularise the retention of the quarter at Jammu Tawi from January 1988 to 14.5.1990 when the applicant vacated the railway accommodation at Jammu Tawi.

(b) To direct the respondents to pay construction/project allowance to the applicant at the rate of Rs.300/- p.m. from 14.1.88 to 14.5.90 which comes to Rs.8400/-.

(c) To direct the respondents to pay transfer/packing allowance to the applicant which amounts to Rs.2400/-.

6. In the reply, the respondents have stated that the applicant was in occupation of the Type-III quarter at Jammu Tawi while his headquarter was shifted to Bajalta vide order dated 5.1.88. Further the applicant was simultaneously occupying a unit of Type-I quarter for his residential purpose which was not disclosed to the administration. The applicant did not vacate the Type-II quarter at Jammu Tawi inspite of informing him several time and he continued to occupy one quarter at Jammu and another Type-I quarter at Bajalta. At the request of the applicant himself vide letter dated 23.1.90, the penal rent was recovered by them.

7. As regards payment of construction allowance to the applicant for having been shifted to Bajalta, the respondents state that because the applicant illegally and unauthorisedly retained one quarter at Jammu Tawi and another quarter simultaneously at Bajalta, the above allowance could not be made to him, as this would cause a precedence to other railway employees to make a claim of this sort. It is further pointed out that the applicant himself vide Annexure A-19 letter had stated that he has retained quarter in Jammu Tawi as well as Bejalta.

8. I have heard the learned counsel for both parties and perused the documents on record. I have also perused the written statements filed by the parties.

9. In the written submissions given by the respondents it is brought to my notice that the Annexure-II of the documents filed by them in MP 1628/93 at page-5, the petitioner had been issued notices by the respondents on 24.11.88, 17.1.89, 31.5.89, 7.7.89, 16.8.89 and 6.10.89. The aforesaid notices clearly advise the petitioner to vacate the quarter retained by him at Jammu Tawi. The petitioner did not obey the respondents' order.

10. The respondents' counsel Shri K.K.Patel vehemently opposes to all the reliefs prayed in the application. However, the applicant's counsel is not pressing for regularisation of the quarter. Therefore it is not necessary to consider this issue. With reference to package and transfer allowance, no material is placed before me and thus this claim is also rejected.

11. Now the only relief left relates to penal rent and construction allowance. The other points raised are not germane to the main issue.

12. Both the counsel agree that the case may be disposed of based on the facts with a direction to the respondents. I therefore proposed to dispose of the case based on the facts.

13. It is claimed by the respondents that a quarter was allotted to the applicant at Bajatla. This is not proved because the notice dated 5.4.88 says that newly constructed Type I quarter was allotted to the applicant at Bajatla. Out of the two rooms, one was used as Store room and the other as office. So it can not be said that he had been allotted a

residential accommodation and therefore the applicant was compelled to retain the quarter at Jammu Tawi. It is also evident by letter dated November, 1992 (Annexure I) of R-3 justifying the retention of the quarter by the applicant when an audit objection was taken and he had also stated that the objection need not be pressed. The applicant's headquarter was shifted from Jammu Tawi to Bajatala by the order of R-3. But the applicant did not vacate the quarter at Jammu Tawi as it was the mid-session and his children were studying there and also that the applicant was not allotted any other quarter other than the two rooms at Bajatala as mentioned above. Under such circumstances the applicant continued to occupy the quarter at Jammu Tawi from 6.1.88 to 14.5.90 after which he shifted his family to Bajatala. Even though the respondents had passed orders for recovery of penal rent @ Rs.806/- p.m., amounting to Rs.21,105/- for this period, in the counter they have admitted that this amount is wrong and they themselves have reduced it to Rs.13,247/-.

14. Bajatala is situated in a jungle, the transfer order was made in a middle-session and a demand of Rs.806/- is claimed as damage rent whereas the normal rent is only Rs.50/-. Though the applicant can not insist on payment of only normal rent, it is reasonable that double the assessed rent for the aforesaid period for his retaining the quarter at Jammu Tawi ^{is charged.}

15. Now coming to the main point, i.e. relief (b) above, the applicant claims that it is admissible to him @ Rs.300/- p.m. but the respondents claim that the applicant is not entitled for the same as he was occupying the quarter at

^{my}

Jammu Tawi which he was not entitled to as the construction allowance is generally granted to the subjects to compensate for the lack of amenities.

16. I have seen the rules on the subject as contained in Ministry of Finance (Department of Expenditure) OM No.200011/5/73-E IV(B) dated 17.1.76 (Annexure 4 to the OA), which read as under:

" The allowance will be admissible only to such staff as are employed on the project and reside within the project area or in a nearby locality. The allowance may also be granted to such Central Government staff of other Departments as have their offices located in the project area for the work of the project, provided they reside within the project area or in a nearby locality. As an exception, the allowance may also be granted to an employee residing outside the project area, subject to the following conditions:

- a) He should be residing outside the project area due to the non-availability of the residential accommodation in the area and not because such an arrangement is more convenient to him; and
- b) No facility of free or subsidised transport is available to such an employee for journeys to and from the project"

16. Therefore, from the above, the case of the applicant regarding payment of construction/project allowance is fully covered. The applicant can not be penalised for retaining the quarter at Jammu Tawi, by charging penal rent or denying the payment of construction/project allowance to him, especially when he was working in the construction project. The Railway Board's letter dated 11.11.87 (Annexure 4 to the OA) specifies that the staff in the pay scale of Rs.2000-3300 is entitled for construction/survey allowance @ Rs.300/- p.m. Therefore the stand of the respondents is absolutely unjustified. They have not paid any construction/project

~

allowance when they shifted the applicant's headquarter to Bajatala, where he was carrying out his duties though no accommodation was made available to him. ^{my} ~~Veating ghatu
and dnying Tonstretion alloneavee has no connection,~~ ^{my}

17. In the circumstances, I dispose of this OA with the following direction to the respondents. The respondents are directed to recover double ^{the} rate of penal rent but not damage rent for the period from 6.1.88 to 14.5.90, and pay construction allowance @ Rs.300/- to the applicant for this period. This exercise must be completed by them within a period of 3 months from the date of receipt of this order. No costs.

ws Roy 22/7/94
(C.J. Roy)
Member (J)

/tvg/