

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
OA No.755/1993  
New Delhi, this 18<sup>th</sup> day of March, 1996

28

Hon'ble Shri B.K. Singh, Member(A)

Shri Kewal Krishna Vijn  
A-71, Hil Housing Group Society  
Plot No.17-S.13,Rohini, N.Delhi-85 .. Applicant  
By Shri G.D. Bhandari, Advocate

Versus

Union of India, through  
1. The General Manager  
N.F. Railway, Maligaon, Guwahati  
2. The Dvl. Railway Manager  
NF Rly, Alipurduar Jun.  
3. The Dvl. Railway Manager  
N.F. Railway, Katihar .. Respondents  
By Shri H.K. Gangwani, Advocate

ORDER

Hon'ble Shri B.K. Singh

This OA is directed against the order dated 25.3.92 (Annexure A-24). The applicant was appointed as an Apprentice Fireman 'A' and he rose upto the level of Sr. Fuel Inspector(SFI) in the grade of Rs.2375-3500 at the time of superannuation. He retired on 30.9.91. This OA has been preferred seeking the following reliefs:

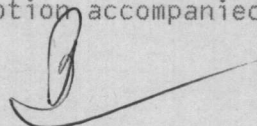
(a) to quash the orders dated 12.3.92 and 20/25.3.92; whereby an amount of Rs.19,787/- has been deducted in addition to penal/damage rent already deducted from his salary;

(b) To release his post-retirement passes; and

(c) To refund the entire amount deducted alongwith interest

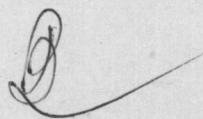
2. On notice, the respondents filed their reply contesting the application and grant of reliefs prayed for. Heard the learned counsel for the parties and perused the records of the case.

3. The crux of the whole issue is whether the various orders issued by the respondents at Annexure II to IV should be treated as a promotion accompanied by transfer and posting



on a permanent basis or should be treated as a temporary/ad hoc promotion not accompanied by permanent transfer and posting. The learned counsel for the applicant argued that A-3 order dated 20.2.84, which was in modification of order dated 29.10.83, shows that the applicant was promoted as SFI in the scale of Rs.840-1040 as an ad hoc measure for 60 days. In continuation of the same order, another order dated 15.3.84 was issued extending the promotion for a further period of 60 days. A-3 order indicates that the Chief Operating Supdt., NER Railway modified the order No.E/283/III/59(N) Pt. I dated 29.10.83 extending the ad hoc promotion and shifting him from Katihar to Alipurduar Junction. This promotion was accompanied by transfer order. Learned counsel for the respondents stated that the promotion of the applicant was ad hoc but the transfer order was permanent and this is confirmed by Annexure 4 order dated 15.3.84 issued by the DRM(P)/KIR. If the transfer would have been temporary, the applicant would not have been entitled to transfer grant. Memo dated 17.9.85 (Annexure 2 to the reply) shows that the applicant was granted transfer TA and that he joined at APDJ on 13.9.84. Since he had drawn transfer TA it is presumed that he knew that the order of transfer from Katihar to APDJ was on a permanent basis. This is also confirmed by Annexure A-7 order No.60 dated 21.9.84 filed by the applicant himself enclosed with the OA at page 26, extracts of which are reproduced below:

"In terms of COPS(P)/MLG's Office order No.E/283/III/59(M)Pt.1 dt. 20.2.84 Shri K.K. Vijn FI/NJP in scale Rs.700-900/- on transfer to this Division from KRI Division is posted at APDJ on promotion as Sr. FI in scale Rs.840-1040 on ad hoc basis for 60 days w.e.f. 13.9.84 i.e. from the date he reports for duty to this division".



4. This order coupled with the transfer grant drawn by the applicant confirms that he was fully aware that he had been transferred to DRM(M) APDJ on permanent basis, otherwise he would not have been sanctioned transfer TA and he would not have drawn it. Transfer TA is admissible only when one is transferred one station to the other not temporarily but on a permanent basis.

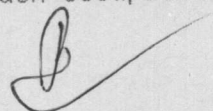
5. The applicant was declared as unauthorised occupant of the railway quarter No.635E, Type II, Katihar by letter dated 13.8.87, issued by the DME/APDJ, (Annexure 1 to the reply). It is mentioned therein that in spite of DO letter No.M-255/R/Qr/P.I(1000) dated 2.6.87 and notice dated 14.8.85, the applicant has remained in unauthorised occupation of the railway quarter, and he was asked to vacate the same within 15 days of receipt of that letter failing which necessary DAR proceedings would be initiated against him.

6. After going through the various annexures enclosed with the OA and also the reply and rejoinder, it is clear that the applicant after drawing transfer TA and after joining APDJ was fully aware that he was on permanent transfer and as such it was not 'temporary'. The contention of the learned counsel for the respondents appears correct that he was promoted on ad hoc basis which later on was regularised and he was transferred permanently to APDJ. On such transfer, a person is entitled to retain the quarter for 2 months only and after that he becomes an unauthorised occupant unless permission is granted by the competent authority to retain the quarter at the previous station. No such permission has been granted and therefore it should be presumed that the applicant was not on temporary transfer but it was a

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permanent one. Records also do not show that any such permission to retain it beyond 2 months was granted to him. The Annexure A-7 order dated 21.9.84 makes it abundantly clear that he was transferred from Katihar to APDJ and posted there on promotion as SFI on ad hoc basis for a period of 60 days with effect from 13.9.84. There is no mention at all of the word 'temporary transfer' in that order. The promotion was on ad hoc basis but this was also subsequently regularised as would be evidence from the facts that he got the scale of Rs.2375-3500 and retired in that scale from APDJ itself. Thus after availing of the transfer grant and after joining APDJ, he was entitled to retain the quarter for only 2 months and not beyond that as per instructions of the Railway Board.

7. The rule on the subject of retention of railway quarter is that an employee on permanent transfer from one station to another can retain the quarter at the previous station only for a period of 2 months on payment of normal rent or single flat rate of licence fee/rent. It is only on his request on educational or sickness account, the period of retention may be extended for six months on payment of special licence fee or double the flat rate of rent. Further extension beyond the aforesaid period may be granted on educational ground to cover the current academic session on payment of special licence fee. In such matters, orders of competent authority are necessary. Firstly, there was no request from the applicant for retention of quarter on educational or sickness ground of self or wife. Various requests made by him were only for stopping the deduction of damage rent from pay. The competent authority has to grant permission to retain quarter beyond 2 months and no such permission has been granted to the applicant and as such occupation of the quarter has



become unauthorised, cancellation or no cancellation. There is a special provision for the employees transferred to NF railway but it does not include Katihar Division and therefore that special provision also will not be applicable in the case of the applicant.

8. The transfer of the applicant was on a permanent basis for the reason that he had drawn transfer grant. Since in case of temporary transfer, the said facility is not admissible and therefore the applicant was not entitled to retain the quarter at the previous station beyond two months. There is no averment to the effect anywhere that he was transferred on temporary basis. The annexures also show that he was given ad hoc promotion, which was extended from time to time and ultimately this promotion was regularised subsequently while posted at APDJ.

9. The learned counsel for the applicant relied on the judgement of this Tribunal in OA 2344/91 decided on 29.11.95. The facts and circumstances of that OA are totally distinguishable from the facts of this case and therefore the ratio of that judgement can not be applied to the instant case since he was already in unauthorised occupation right from 1984. Since the applicant did not retire from Katihar he could not have retained the quarter and it is only in respect of the particular quarter located in a station from which a person retires, that on request the quarter can be retained for 4 months as already explained in para 6 above. Railway Board's instructions contained in E(G)81-Qr.1-51 dated 24.4.82, 4.6.83, 17.1.85 and E(G)-90-Qr.3-6 dated 31.12.90 clearly lay down that for unauthorised retention of railway accommodation, the competent authority should not grant 'no claim certificate' unless quarter is vacated; DCRG

or special contribution to PR as the case may be should be withheld in full for non-vacation of the railway quarter not only after superannuation but in case of cessation of service, voluntary retirement, death etc. The amount is withdrawn and kept in cash and is to be released after deducting normal/market rent/damage rent etc. The instructions further envisage that one set of retiral passes should be disallowed for every month of unauthorised retention of the railway quarter. All these instructions have been incorporated in the Railway Servants (Pension) Rules, 1993, wherein Rule 16, sub-section 8 clearly lays down that the railway will draw DCRG and keep it in cash and it will be released only after the railway servant vacates the quarter. These rules have been issued under proviso to Article 309 and are statutory rules and the respondents have an obligation to follow these rules.

10. It is in the light of these rules that damage rent has been assessed against the applicant for unauthorised occupation beyond 2 months and the respondents have deducted the same from his pay after his permanent transfer to APDJ. The applicant had not made any request for retention of the quarter beyond two months after transfer from Katihar to APDJ. His requests were only for stoppage of deduction of damage rent. Thus it is difficult to find fault with the orders issued by the respondents.

11. The various orders issued by the respondents declaring the applicant as unauthorised occupant would be treated as notice and the requests made by the applicant to stop deducting damage rent would be treated as reply. The fact remains that the instructions issued by the Railway Board are statutory in nature and the applicant knew that he was not

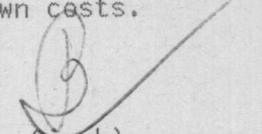


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34

entitled to retain the quarter beyond 2 months on his permanent transfer and he had been intimated categorically that he was an unauthorised occupant from the date he was transferred to APDJ. In spite of that he did not vacate the quarter at Katihar.

12. In the light of the Railway Board instructions and the rules contained in the Railway Servants (Pension) Rules, 1993, this Tribunal can not grant the reliefs prayed for by the applicant. The application fails and is dismissed leaving the parties to bear their own costs.

  
(B.K. Singh)  
Member (A)

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