

O.A.No. 30 9/2001.

ORDER DATED 14-01-2002.

Heard Shri P.K. Patnaik, learned Counsel for the Applicant and Shri D.N. Mishra, learned standing Counsel for the Respondents and perused the pleadings.

In this Original Application, the applicant, who is working as Cabin Master at Rayagada has prayed for a direction to the Respondents to regularise the Type-I Qrs.No.9/D in his favour and not to deduct the house rent from the salary of applicant and to refund the amount already deducted. By way of interim relief, the applicant had prayed for a direction to the Respondents not to deduct the house rent from the salary of applicant. In order dated 18.7.2001, by way of interim relief, the order of deduction was stayed till 3.3.2001. This order has continued till date.

The case of the applicant is that he was working as a Token Porter in Rayagada Rly. Station when he was allotted with a Type-I Qrs.No.9/D. He was promoted to the post of Cabin Master and transferred to L adda on 24.11.1997. Applicant continued to occupy the said quarters after getting due permission of the Sr. Divisional Manager, Visakhapatnam upto 22.7.1998. These facts are not disputed. Applicant has stated that due to sickness of his wife, he filed representation after 22.7.1998 to keep the quarters for another period of six months but as no order was passed on his representation, he was under the bonafide impression that his prayer has been allowed. Applicant was retransferred from Ladda to Rayagada Rly. station on 5.7.1999. After joining

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at Rayagada Rly. Station, he applied for regularisation of the quarters which was already in his occupation and which he has not vacated. His representation, one of which is at Annexure-3, was forwarded by the Chief Station Manager, Rayagada with his endorsement. In this endorsement which is at Annexure-3, the Chief Station Manager, has mentioned that this grs. is surplus and allotted to other pool and some more grs. are going to surplus. It was also mentioned that no other staff is waiting or applied for the said grs. and the same may kindly be regularised. The above recommendation of regularisation was presumably in favour of the applicant. This representation was dated 12.7.2000. Another officer has also given an endorsement that there is no objection for regularisation as no other staff has applied for the quarters and some surplus quars. are also available. Applicant's grievance is that even though there was no other staff waiting for getting the said grs. and even though he had applied for regularisation of the quarters in his favour, no orders were passed and ultimately, the Departmental Authorities started deducting an amount of Rs.1120/-p.m. from the salary of the applicant from December, 1999 and has been deducting the same till today i.e. till the filing of the Original Application. In the context of the above, the applicant has come up in this Original Application with the prayers referred to earlier.

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Respondents in their counter have not disputed about the allotment of the quarters ^{to the applicant} /his transfer from Rayagada to Ladda and applicant's retransfer to Rayagada. Their point is that as the applicant had asked for regularisation of the quarters and had not made any application for allotment of the said quarters, the qrs. can not be regularised and that is why his occupation was taken as unauthorised and damage rent has been charged. Respondents have enclosed alongwith their counter, the correspondence with regard to allotment and regularisation of the quarters.

I have gone through these enclosures as also enclosures annexed by the applicant in his O.A. From the annexures it appear that initially the Senior Asst. Engineer, Rayagada in his letter dt.31.3.99 at Annexure-R/4 stated that the applicant's case for allotment of Rly. qrs.will be considered after vacation of the quarters under his occupation. The same Sr.Asst. Engineer, Rayagada in his letter dt.18.9.99 i.e. less than a month after forwarded the application of the petitioner and requested the Chairman Divl. Qr. Committee, who is the Sr. Divisional Engineer (Co-ordination), SE Railway, Waltair to regularise the above period of the occupation of the quarters from 22.7.98 to 5.7.1999. In this letter, it is also mentioned that there is no staff waiting for the qrs. for allotment and the case was recommended by the Station Manager.

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Annexure-5 is another letter from the Assistant Engineer, Rayagada addressed to the Chairman, Divl. Qrs. Committee giving further details about this case. In para -3 of this letter, it has been mentioned that as retention from 22.7.98 to July, 1999 has not been approved by the Competent Authority, retention beyond 22.7.98 could not be regularised and damage rent is being recovered from him. Learned counsel for the applicant has stated that damage rent was being recovered from December, 1999, which was stayed by this Tribunal in order dt. 18.7.2001. Apparently, the proposal for regularisation of the qrs. either from 22.7.98 to July, 1999 or from 5.7.1999 was not considered by the Divl. Qrs. Committee instead the D. R. M. in his letter dt. 31.1.2001 (Annexure-6) issued a clarification quoting the relevant instructions on the matter. These instructions inter alia provided that when an employee of the railway in occupation of Rly. qrs, has been transferred from one station to another and had retained his qrs. in his old station and if he is transferred his new station back to old station, he should not be brought back to his old station unless he has vacated the quarters. After receipt of this circular, the instruction was noted by the station Qrs. Committee. The Chairman, Optg. Sub-qrs. Committee and Sr. DOM/SER, Waltair in his letter dt. 14.3.2000 addressed to the applicant indicated that the question of regularisation

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of the quarters ~~on his transfer back~~ to Rayagada should be referred to the Sub quarter Committee Chairman of Rayagada to consider if the quarters are surplus. This is the letter which has been enclosed by the applicant at Annexure-1 to his Original Application.

From the above recital of the pleadings, it appears that while the applicant was continuing at Ladda authorised retention of the quarters was over by 22.7.1998. No order was passed on his representation seeking retention of quarters for another six months. He came back to Rayagada on re-transfer on 5.7.1999. It is also the admitted position that he did not make an application for allotment of quarters but sought for regularisation forgetting the same quarters which was in ^{his} occupation. As the applicant had been in occupation of the Rly. quarters naturally he sought for regularisation and did not apply for allotment of quarters more so when he was in occupation of a qrs. In view of this, the fact that he did not apply for allotment of a quarters and only applied for regularisation should not be allowed to operate against him. It also appears from the various endorsements that the quarters were surplus and there was no other staff awaiting to be allotted of quarters ^{and} who had applied for the quarters. In view of this, there is no reason why the quarters, which was then and now is in occupation of the applicant should not be allowed in his favour from 5.7.99 the date he joined back at Rayagada. It is no doubt

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true that instruction provides that unless an officer vacates his quarters in his old station he should not be allowed to come back to his new station on re-transfer but the respondents ~~having allowed physically~~ the applicant to come back ~~cannot~~ quote that circular in order to deprive the petitioner of regularisation of the quarters. In view of this, I direct that the relevant authorities should consider the allotment/regularisation of the Type-I Qrs.No.9/D to the applicant from 5.7.1999. This should be done within a period of 60 days from the date of receipt of a copy of this order and final decision on this should be sent to the applicant within a period of 15 days thereafter. Interim order of stay shall be in force till then.

As regards the period from 22.7.98 to 5.7.99 during this period, the applicant was working at Ladda and was in occupation of the quarters in question at Rayagada. It is also admitted that after expiry of the first period of authorised occupation, the applicant applied for further retention of the quarters for another six months but no order was passed. So the question for consideration is rent at what rate should be paid by the applicant from 22.7.1998 to 5.7.99. From Annexure-R/5 I find that the Sr.Asst. Manager did write to the Chairman Divl.Qr.Committee for regularisation the above period of retention of applicant but from the pleadings, I do not find that any order has been passed on this specifically

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rejecting the proposal. In view of this, this part of the prayer is disposed of with a direction to the Chairman, Divl. Quarter Committee, who appears to be the Sr. Divl. Engineer, (Co-ordination) waltair to consider the question of regularisation of this period strictly in accordance with rules, within a period of 60 days from the date of receipt of a copy of this order.

AS regards the prayer of applicant for refunding the amount already deducted, this will abide by the decision of the competent authority with regard to the period between 22.7.1998 to 5.7.1999.

with the above observations and directions, the Original Application is disposed of. NO costs.

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(SOMNATH SOM)
VICE-CHAIRMAN 02

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Free copies of final
order dt. 14.1.02 issued
to counsel for both sides.

16/1/02
S.O(T)

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