

Dated 18th August, 2004

Shri Upendra Naik, Cabin Lever Man, (CLM in short) working under Station Manager, South Eastern Railway, Cuttack has filed this O.A. being aggrieved by the action of the Respondents in deducting damage rent from his salary, without assigning any reason. He has, therefore, prayed for declaring the action of the Respondents imposing the damage rent and deducting the same from his monthly salary as illegal and arbitrary and that the same is not sustainable in the eye of law.

2. The case of the applicant is that he is in possession of Quarters No.RS/10/C Type 1 in Cuttack which was allotted to him by the Respondents in his favour. However, without any notice, he received a charge Memo dt.16.12.02 from Res.No.4 (which was received on 05.01.03). It has been alleged in the charge sheet that he had committed gross mis-conduct by subletting the quarters in question which was allotted to him for his occupation. It has also been alleged that he had sublet the quarters to an outsider viz., Kartik Kumar Sahoo which was found out during a surprise check by the Joint Enquiry Committee during the period from 17.10.02 to 18.10.02. The applicant submitted his representation on 15.01.03 to Res.No.4 denying the charges and stating therein that he had been living in that quarters only with his family members. He further submitted that the Enquiry Committee visited his residence in his absence and it is a fact that his cousin brother, Shri Kartik Kumar

Q

8

Sahoo, was staying with him and that he had come to Cuttack for treatment, but there was no question of subletting the quarters to him. His grievance is that immediately after serving the charge sheet, the Respondents started deducting Rs.2,387 from his salary, showing it as payment for damage rent, over and above deducting monthly rent of Rs.53. The applicant, therefore, represented to Res.No.4 against this arbitrary deduction of damage rent without any rhyme or reason. Having failed to receive justice from the hands of the Respondents, he has filed this O.A. seeking relief as stated above.

3. The Respondents have opposed the O.A. by filing a detailed counter. Their plea is that the Committee comprising of three officials headed by Area Manager, Cuttack, had carried out surprise check of the quarters and found several instances of mis-use of official quarters which included quarters allotted to the applicant. They have, therefore, initiated action under Estt.Serial No.62/95. They have further submitted that para 6 of the same Estt. Serial, provides that staff found violating the above instructions, after proper warning are liable to payment of penal/market rent pending finalisation of eviction proceedings, and that Departmental action is also required to be taken against the Railway servants. As the applicant was found to have been mis-using his quarters in terms of the Estt.Serial Number referred to above, the Respondents had no other option but to take those actions as deemed fit and proper under the law.

52

4. I have heard the Learned Counsel for both the parties and have also perused the records placed before me.

5. The grievance of the applicant is that it is not a case of subletting and that Shri K.K.Sahoo who was found to have ^{been} staying in his quarters at the time when the Joint Enquiry Committee visited his quarters, was his cousin, who had come to receive medical treatment at Cuttack and therefore, he should not be subjected to payment of damage rent.

6. I have perused Para-6 of the Establishment Serial No.62 of 1995, which lays down actions to be taken in case of a sublettee of the Railway Quarters. I quote:-

" Para 6 For subletting the railway quarters to outsiders, the following action shall be taken:

- i) Where a railway employee has sublet the quarter fully to an outsider, he should be taken up, and eviction proceedings should be started against the sublettee to get the quarter vacated expeditiously.
- ii) Where a Railway employee has sublet a portion of the accommodation to an outsider, for a consideration, the same should be got vacated and allotted to another railway employee ; and
- iii) Where a part of the accommodation is shared by the allottee with another railway employee, with due permission of the competent authority, no action need be taken.

Further, the staff found violation of the above instructions, after proper warning, should be charged penal/market rent as the case may be-pending finalisation of the DAR or eviction proceedings, Departmental action is also required to be taken against Railway servants in such cases. "

(Ref.No.E(G) 79 RN 2-117 dt.9.4.90
E (D&A) 86 RG 6-34 dt.10.04.86)

7. The position of the Rule is that if a Railway servant is found to have subletted his quarters to an outsider for a consideration, the same should be got vacated and allotted to another railway employee; but before that it has to be proved that the quarters has actually been subletted to an outsider. In this case, the enquiry report is silent on this point and it has merely recorded the name of one Kartik Kumar Sahoo, whom they found available in the quarters allotted to the applicant at the time of their inspection. It has not been clarified as to whether any statement was taken from Mr. Sahoo to establish his relationship with the applicant in presence of any independent witness before recommending the case for action to be initiated under Para 6 (i) or (ii) of the Establishment Serial referred to above. In that instruction, a detailed procedure has been laid down like: the staff violating the instructions of proper use of the Government quarters, should be given proper warning; and that they may be charged penal/market rent pending finalisation of the DAR or eviction proceedings. Admittedly, the procedure as laid down under para 6 of Estt. Manual 64 /95 has not been followed by the Respondents in this case. In fact, as observed above, the enquiry has been conducted mechanically and the Committee had done nothing to establish the identity of the so person named as K.K. Sahoo, alleged to be the un-authorised person/outsider found living in the quarters allotted to the applicant and if he was living for a

consideration, what was that consideration. Cancellation of quarters allotted to a Railway servant being a serious matter involving heavy liability on the part of the Railway servant, the Respondents should have followed the minimum requirements of law in order to establish the truthfulness of the case and then fix responsibility on the applicant. As the applicant in this case was denied opportunity to have his say in his defence it is to be held that the principles of natural justice have been violated by the Respondents and therefore any action they propose to take on this ground is ab initio null and void.


8. Having regard to what has been discussed above, the Respondents are directed not to effect any recovery of damage rent from the salary of the applicant in respect of the quarters allotted to him before complying with the Rules as enshrined under para 6 of Estt. Manual 62 of 1995 dated 17.04.95.

9. With the observations and directions this O.A. is disposed of. No costs.

Copy of order dt 18/8/09
issued to the counsel
for both side.

my
S. P. Ray

Sanjay
S. O.
SAN/


(B. N. SOM)
VICE-CHAIRMAN