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O. A. No 265/2005.

Order dated: 14-08-2006.

Briefly stated the case of the Applicant is that while he was continuing as Junior Engineer-I, in the Office of the Deputy Chief Electrical Engineer (Construction) in the year 1995 he was allotted Railway quarters No. C-I/F in the Railway Colony at Chandrasekharpur. On 11-07-1997 the Applicant was promoted to the post of Section Electrical Engineer (Construction) and posted to Anugul. On his transfer, on 30-07-1997 he submitted a representation to the Deputy Chief Electrical Engineer (Construction)/Respondent No.3 seeking permission to retain the quarters allotted to him at Railway Colony, Chandrasekharpur, Bhubaneswar. No reply having been received on his representation dated 30-07-1997, through another representation dated 14-12-1997 he reiterated his grievance. For the occupation of the quarters, normal rent was being deducted from his salary. Finally, on 03-04-2001 he vacated the quarters in question. Vide order dated 01-05-2003, when Respondent No.3 asked to recover a sum of Rs. 1,54,133/- from the Applicant towards house rent for

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unauthorized occupation of the quarters, Applicant by submitting representation dated 03-06-2003 requested exemption from paying such amount as damage rent. Without considering his representation the Respondent no.3 again sent reminder on 29-10-2004 insisting recovery of the dues from the Applicant. In spite of representations to Respondent Nos.3, 4 and 5 when recovery was started @ Rs.2000/- P.M. from the pay of the Applicant commencing from December, 2004, he has approached this Tribunal in the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

- “(a) To pass appropriate orders quashing the order of recovery dated 01-05-2003 towards House rent from the salary of the Applicant;
- (b) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this Original Application with costs”.

2. Respondents in their counter filed on 17<sup>th</sup> July, 2006 have opposed the prayer of the Applicant on the following grounds:-

- (i) Although the Applicant on transfer joined at Anugul on 23-07-1997 he made his representation after lapse of five months (i.e.

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on 14-12-1997 seeking permission to retain the quarters at his previous place of posting without specifying the periods and without enclosing any documents in support of the illness of his wife as required under the Rules;

- (ii) As per the normal rules when the headquarters of an employee is changed due to transfer, in such cases permission is generally granted, if prayed for, for retention of quarters at the previous place of posting of the employee concerned for a period of two months. On payment of special license fee (i.e. doubled the flat rate of license fee/rent) one can retain the quarters for another period of six months. Beyond that if somebody retains the quarters, he/she is liable to pay the penal/market rent.
- (iii) Applicant was relieved from Bhubaneswar to join at Anugul on 11-02-1997. As such he was to retain the quarters for two months i.e. from 11-07-1997 to 11-09-1997. Beyond that from 12-09-2001 till vacation of quarters/03-04-2001, since retention of quarters unauthorized one, as per the Rules and as per the audit objection, he was charged with damage rent.
- (iv) Action has also been taken against 23 other officers who had unauthorisedly occupied the quarters beyond the permissible limit.
- (v) The authorities are not empowered to cause injury to the rules in the matter of retention of the Govt. quarters beyond the permissible limits in deviation to the Rules;

By stating so, the Respondents have prayed that there being no infraction of rules or discrimination in the matter of imposition of damage rent, any interference would

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cause pecuniary loss to the exchequer and, therefore, this Original Application should be dismissed in limine. Applicant has also filed a rejoinder which has been taken note of.

3. Heard Mr. B.S. Tripathy, Learned Counsel appearing for the Applicant and Ms. S.L. Patnaik, Learned Counsel for the Railways and perused the materials placed on record.

4. Learned Counsel appearing for the Applicant has submitted that as an obedient Govt. Servant, although his wife was not well, he obeyed the order of transfer and joined at Anugul immediately. He lost no time even to apply to his authorities for retention of the quarters. As he was blessed with a child on 05-03-1997, it was practically difficult on his part to take his wife to Anugul; more so in absence of a quarter being allotted in his new place of posting. He has also submitted that at no point of time he was asked to vacate the quarters; nor any reply denying the request of the applicant for retention of the quarters had ever been communicated to him. Therefore, since no reply was communicated to him, with a bona fide intention he retained the quarters and ultimately

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vacated the same on 03-04-2001. It has been submitted that no notice was put to the Applicant before imposing the damage rent on the Applicant. That apart, he has submitted that in not vacating the quarters, in time, being not attributable to the Applicant, the imposition of damage rent is highly illegal and needs to be quashed. Per contra, <sup>✓</sup>learned Senior Counsel appearing for the Respondents while reiterating the stand taken in the counter, has submitted that this is not the only instance where damage rent has been imposed. Similar action has also been taken against other employees. Interference in the present order of recovery would necessarily mean waiving out the damage rent imposed on other employees. As consequence of retention of quarters beyond the permissible limit has been codified in the Rules, no notice was required to put <sup>is</sup> the Applicant before damage rent was assessed to be recovered <sup>✓</sup> from the Applicant. He has further submitted that as the Respondents have acted as per the Rules and there being no infraction of any of the Rules, the arguments advanced by the Learned Counsel for the Applicant have no application to the present case and, therefore, this OA should be dismissed.

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I have examined various submissions made by the parties and found that it is not in dispute that the Estt. Sl. No. 62/95 (Annexure-R/I) is statutory in nature. Sub para 8.1 of the said Estt. Sl. deals with regard to retention of quarters in case of transfer of the Railway employees from one place to other. It interalia provides as under:-

“8.1. Permanent transfer:

- (a) A Railway employee on transfer from one station to another which necessitates change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of 2 months on payment of normal rent or single flat rate of license fee/rent. On request by the employees, on educational or sickness account, the period of retention of railway accommodation may be extended for a further period of 6 months on payment of special license fee, i.e. double the flat rate of license fee/rent. Further extension beyond the aforesaid period maybe granted on educational ground only to cover the current academic session on payment of special license fee.
- (b) Where the request made for retention of railway quarter is on grounds of sickness of self or a dependent member of the family of the railway employee, he will be required to produce the requisite Medical Certificate from the authorized Medical Officer for the purpose.
- (c) In the event of transfer during themed-school/college academic session, the permission to be granted by the competent

authority for retention of railway accommodation in terms of item (a) above will be subject to his production of the necessary Certificates from the concerned school/college authority”.

5. Learned Counsel appearing for the Applicant

did not show any Rule/Circular/Instruction contrary to the above.

It is also evident from the record, the Applicant did not submit his representation with all documents as required under the rules.

From the records, it is evident that the Applicant submitted his request to vacate the quarters on 30-07-1997. I also find that the Applicant is holding a high position carrying certain degree of responsibility. He is supposed to be in touch with the rules/instructions/circulars issued by the Railways from time to time. When it has been codified that in the event of retention of quarters beyond permissible limit, one has to face the consequence, there is no need to give any further opportunity. If the Applicant was intimated in spite of his several requests, he should have vacated the quarters immediately. Had he vacated the quarters, it could have been allotted to another employee. Therefore, I find no irregularity/illegality/irrationality in the impugned order of recovery of damage rent from the Applicant,


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for the unauthorized occupation of the Railway Quarters at Chandrasekharpur, Bhubaneswar.

6. As the last course of request, Learned Counsel appearing for the Applicant has submitted that in case the Tribunal was not inclined to interfere with the impugned order, a chance may be given to the Applicant to represent to the competent authority i.e. General Manager to waive the damage rent imposed on the Applicant. It is made clear that permission for filing appeal/representation by an employee is not necessary. It is always open to the employees to ventilate their grievances before the authorities. However, I make it clear that in case the Applicant makes any appeal/representation in regard to the present cause of action, the authorities competent, may deal with the matter as per rules and without being influenced by the fate of this Original Application.

7. In conclusion, with the observations and directions made above, this OA is disposed of. There shall be no order as to costs.

  
(B.B.MISHRA)  
MEMBER(ADMN.)