

O.A.No. 104 of 2007

Order dated – 11<sup>th</sup> February, 2009:

Heard Learned Counsel appearing for both sides and perused the materials placed on record.

2. As it appears, while the applicant was stationed at Sambalpur he was in occupation of a Railway Qrs.No.G/23/2, Type II. Vide order dated 22-01-2003/corrigendum dated 27.1.2003 he was transferred and posted at Sargipali Station. He requested the authorities to allow him to continue at Sambalpur as also retention of the quarters allotted to him at Sambalpur on the ground of the academic session of his son and daughters as also illness of his parents. However after protracted litigations, ultimately the applicant resumed his duty and his request for retention of quarters was rejected vide order under Annexure-A/6 dated 20<sup>th</sup> March, 2006 as a result of which vide order under Annexure-A/7 dated 1<sup>st</sup> March, 2007 he was asked to vacate quarters failing which, besides appropriate action as provided under the D&A Rules, proceedings under Unauthorized Premises Act shall be initiated against him. That apart, the DPO/SBP was directed to start recovery of damage rent from the applicant, as per extant rules.

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3. Being aggrieved by such order he has approached this Tribunal in the present Original Application seeking to annul the order under Annexure-A/7 dated 1<sup>st</sup> March, 2007 with further direction to allow the applicant to retain the quarters and not to effect recovery of penal rent.

4. Respondents by filing counter have opposed the prayer of the applicant. It has been stated that since the retention of the quarters, in question, was beyond the permissible limit, levy of penal rent is justified. It has further been stated by the Respondents that the applicant was transferred in the year 2003. He remained absent unauthorisedly. In compliance of the direction of this Tribunal dated 19.08.2005 in OA No. 673 of 2005 his representation was considered and rejected vide order dated 26<sup>th</sup> September, 2005 asking the applicant to report at his new place of posting. In spite of all the above, he did not vacate the quarters, on some pleas or the other. As such, it has been prayed by them that there being no injustice caused to the Applicant in the decision making process, the order under Annexure-A/7 needs to be sustained.

5. Neither in the pleadings nor during hearing, Learned Counsel for the Applicant was able to produce any

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rules showing that even on his transfer he has any right to retain the quarters. He also failed to show any rule excluding the railway servant from the decision of charging penal rent for over-stayed of the quarters in case of transfer of an employee from one station to other. Whether one can be permitted to retain the quarters at a particular station even on transfer to another station is purely within the discretion of the authority. It is because there might be other eligible officer waiting for allotment of the said quarters or the officer who would be posted in the place of transferred employee might be willing to take such quarters. Further when rule prescribes for levy of penal rent for the over stay of the quarters, the authorities are bound to follow the same unless overwhelming circumstances shown and proved for exemption of the Rules. Another fact of the matter is that in case one is exempted from paying the penal rent for the over stay period; virtually it would amount to regularizing the irregularity or indiscipline of an employee. In the circumstances, I refrain from interfering in impugned order under Annexure-A/7; especially, as revealed from his prayer, the Applicant seeks retention of quarters without making payment as per rules.

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6. Lastly, it was submitted by Learned Counsel for the Applicant that as his son and daughter are prosecuting their studies at Sambalpur, at least he may be permitted to retain the quarters till the present academic session is over. However, this is not his prayer in the OA. It is seen from the record also it is the specific case of the Respondents that in the meantime so many academic sessions have been over but the applicant has not vacated the quarters. In view of the above, I do not feel it just and proper to pass any such direction. However, the matter is left to the Respondents to decide in case any such application is made by the ~~Respondents~~ Applicant.

7. In the result, this OA stands dismissed by leaving the parties to bear their own costs.

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)