

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.Nos. 260/00 320 & 321 of 2015
Cuttack, this the 20th day of May, 2016

CORAM
HON'BLE MR. R.C. MISRA, MEMBER (A)

In O.A. No. 260/00320 of 2015

Dasarathi Sahoo,
Aged about 64 years,
S/o Late Batakrushna Sahoo,
retired Head Clerk,
O/O. Deputy Chief Engineer/Con.
E.Co. Rly./BBS,
Resident of Vill.-Barimul,
P.O.-Bari Thengarh,
Via- Dhanmandal,
Dist-Jajpur, Odisha.

...Applicant

By the Advocate(s): M/s.N.R. Routray
Smt. J. Pradhan,
S.K. Mohanty,
T.K.Choudhury

VERSUS

Union of India Represented through its

1. General Manager,
East Coast Railway,
E.Co.R Sadan,
Chandrasekharpur,
Bhubaneswar,
Dist-Khurda.
2. Chief Personnel Officer
East Coast Railway,
E.co.R Sadan,
Chandrasekharpur,
Bhubaneswar,
Dist-Khurda.
3. Chief Administrative Officer/Con.,
E.Co.Railway,
Rail Vihar
Chandrasekharpur,
Bhubaneswar,
Dist-Khurda.
4. Senior Personal Officer/Con./Co-ordn./
East Coast Railway,

R. Sahoo

Rail Vihar
Chandrasekharpur,
Bhubaneswar,
Dist-Khurda.

5. Secretary,
Railway Board,
Rail Bhawan,
New Delhi-110001

... Respondents

By the Advocate(s)- Mr.) S.K. Ojha

In O.A. No. 260/00321 of 2015

Bana Bihari Das,
Aged about 73 years,
S/o. Late Binod Bihari Das,
Retired OS Grade-I,
O/O. Deputy Chief Engineer/Con./HQ
East Coast Railway/BBS,
Permanent resident of At/P.O.-Lakshannath,
P.S-Jaleswar,
Dist-Balesore,
Odisha.

...Applicant

By the Advocate(s): M/s.N.R. Routray,
Smt. J. Pradhan,
S.K. Mohanty,
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Rail Vihar Chandrasekharpur,
Bhubaneswar,
Dist-Khurda.



28
4. Senior Personal Officer/Con./Co-ordn./

East Coast Railway,
Rail Vihar
Chandrasekharpur,
Bhubaneswar,
Dist-Khurda.

5. Secretary,
Railway Board,
Rail Bhawan,
New Delhi-110001

... Respondents

By the (Advocate(s): Mr. S.K. Ojha

ORDER (ORAL)

R.C. MISRA, MEMBER (A)

The facts involved in OA 320/15 and OA 321/15 are similar, and the issues for adjudication are identical. Therefore, both OA's are disposed of by a common order. For the purpose of convenience, and brevity, the facts of the OA No. 321/15 are taken up below for discussion.

2. The applicant in OA 321/15 is 73 years of age, and is a retired Railway Employee, who at the time of superannuation was holding the post of OS Grade-I in the Office of Dy. Chief Engineer, Construction, East Coast Railways Headquarters at Bhubaneswar. He has approached the Tribunal seeking a relief that respondents be directed to refund the amount of Rs. 1,64,685/- which was recovered from DCRG as penal rent for retention of quarters at Cuttack, to the applicant along with 12% interest from the date of recovery to the date of actual refund.

3. The background of the case is that consequent upon the shifting of CAO (c)'s office from Garden Reach to Bhubaneswar in July, 1993, the Officers and staff of the Construction Wing working at Cuttack, Khurda Road and Vishakhapatnam were in gradual stages transferred to Bhubaneswar. Residential accommodation not being readily available at Bhubaneswar, these staff and officers continued to occupy their residential quarters in their earlier

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places. The Construction Organization of South Eastern Railway permitted the present applicants along with others to occupy the residential quarters at Cuttack. The Chief Administrative Officer, East Coast Railway, Bhubaneswar (Respondent No. 3) requested the CPO, South Eastern Railway, Garden Reach to move the Railway Board for their approval for retention of the quarters by applicant and others on payment of normal rent. This request being made in the year 2000 was further followed up by another letter in 2002. The Railway Board called for complete details of the proposal by a letter issued in 2003 from the Respondent No.1, the General Manager, East Coast Railways. In response to the same, the East Coast Railways furnished the required details. After that, there were several internal correspondences on the subject, and various clarifications were furnished to the Railway Board. Finally, General Manager, East Coast Railways(Respondent No. 1) wrote to Respondent No. 5 i.e. Secretary, of the Railway Board on 30.01.2012, making a reference to earlier correspondence, and requesting that necessary post-facto approval for retention of the railway quarters beyond permissible period may be accorded. Railway Board by a letter dated 05.03.2012 called for para-wise comments on the representation of the staff which were sent vide letter dated 09.05.2012. Suffice to say that there was protracted correspondence between the Railway Board and authorities of East Coast Railways on the subject. No decision was communicated regarding ex-post facto approval of the Railway Board by the Railway Board, in spite of supply of all information and clarification by authorities of Construction Wing of the East Coast Railway. As the matter stood thus, the applicant having reached the age of superannuation, retired on 30.11.2011. He was paid his pensionary benefits, but from this DCRG, an amount of Rs. 1,64,685/- was withheld, without assigning any reason. When the applicant inquired about the reasons for



withholding this amount, he was informed that this was due to the alleged unauthorized retention of Railway quarters from 18.09.1993 to the date of vacation. The applicant made a representation to Respondent No. 4 and 5 praying for release of this amount. His case was that the retention of quarters was not unauthorized, and there was no proceeding initiated against him, nor was he served with a notice of eviction. Therefore, the applicant approached the Tribunal by filing OA No. 689 of 2014, which was disposed of by an order dated 16.09.2014 directing the Respondent No.1 to consider the representation and communicate a decision by a reasoned and speaking order. The Respondent No. 1 complied with this direction^Q and disposed of the representation by a speaking order dated 18.11.2014. It was communicated in this speaking order that the Railway Board by letter dated 10.09.2014 has informed that the post facto sanction for permission of retention of quarters as proposed by the E.Co. Railways was under active consideration in consultation with Associate Finance, and decision will be advised as soon as the same is considered by the Full Board. The applicant was informed by Respondent No.1 that his request for refund of DCRG amount of Rs. 1,64, 495/- will be considered as soon as the decision of the Railway Board is received. After receipt of this letter dated 18.11.2014, no further communication has been received by the applicant, and his grievance is still unredressed.

4. In the counter-affidavit submitted by the respondents, there is ^{no} denial of the facts of the case. It is submitted that even though it is a fact that steps have been taken to obtain post facto approval from the Railway Board for retention of quarters beyond the permissible period, but this does not confer any right upon the applicant to claim refund of damage rent which is withheld from DCRG. Granting of Post facto approval by the Railway Board is *Rew*

a matter of their discretion. The applicant is liable to pay damage rent for unauthorized occupation of quarters, unless the Railway Board gives a favourable consideration to the proposal of the East Coast railway, and accords post-facto approval.

The thrust of the rejoinder filed by the applicant is that withholding of DCRG towards damage rent is wholly illegal, since no notice of eviction was served on the applicant, and no proceeding under the Public Premises (Eviction of Unauthorized Occupants)Act was started. No departmental proceeding was initiated. Without taking recourse to procedure as established under the law, no recovery from the rightful retirement claims of the applicant could be made.

5. I have heard Ld. Counsel for both sides, and perused the records. I have also gone through the written statements of arguments filed by the Ld. Counsels. The Ld. Counsel for applicant in his written notes has emphatically submitted that the retention of quarters at Cuttack was permitted by Construction authorities. Since the year 2000, the East Coast Railways has been trying to obtain ex-post facto approval of the Railway Board. The respondents have not issued any valid orders to recover the amount from DCRG. Having permitted the retention, and sought the ex-post facto approval of the Railway Board, they cannot ~~call~~ call the retention to the unauthorized.

5. The Ld. Counsel for Respondents Railways has reiterated that the authorities have allowed the staff working in Construction Organization to retain the quarters up to 31.03.2002. However, applicant retired on 30.11.2001 by taking voluntary retirement. But he continued to occupy the quarters in an unauthorized manner till 23.09.2003, for which he was to pay the damage rent. Another plea taken by the Railway Counsel is that the DCRG amount was withheld on account of 'damage rent', and not penal rent.

32

7. Another argument placed by the Ld. Counsel for respondents is that permission to retain the quarters is a managerial function of the Department and the Tribunal should not interfere in such matters, and that no relief can be given to applicant by way of judicial review. The Ld. Railway Counsel has relied on the decision of the Hon'ble Apex Court in **Transport and Dock Workers Union and Others Vs. Mumbai Port Trust & Another (2011) SCC(L & S) 566**, the relevant part of which reads as under.

"In our opinion judges must maintain judicial self-restraint while exercising the powers of Judicial review of administrative and legislative decision. In our opinion, adjudication must be done with the system of historically validated restraints and conscious minimization of the judges' preferences. The court must not embarrass the administrative authorities and must realize that the administrative authorizes have expertise in the field of administration while the court does not..."

8. I have carefully considered the facts of the case, and the arguments placed by Ld. Counsels for both sides. It is first of all important to capture the background of the entire case. The genesis of the issue can be understood from the letter dated 04.06.2002 sent by the Dy. CPO/Con./Bhubaneswar to the CPO, South Eastern Railway, Garden Reach placed at A/2 of this OA. This letter states that consequent upon shifting of CAO/Con's office from Garden Reach to Bhubaneswar in July, 1993, a lot of infrastructure problems were faced to house the staff on transfer. The staff who were housed at their old station preferred to continue there, and were not compelled to shift their families to Chandrasekharpur at Bhubaneswar on account of poor civil, educational, health and transport facilities. This clearly indicates that it was a conscious decision of the management to allow the retention of quarters at Cuttack, on consideration of genuine difficulties faced in the new

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headquarters. In the letter dated 24/28.04.2008, written by Chief Personnel Officer to Secretary, Railway Board the various grounds of allowing retention have been amply clarified. With clear justifications, the Railway Board has been moved to grant ex-post facto approval of retention of Railway quarters in the previous place of posting beyond permissible period without penal rent. This has the approval of Respondent No. 1, General Manager, East Coast Railway who has written to Adviser/1 R, Railway Board on 18.09.2012 in which he has after referring to previous letters of request, requested that post facto approval of the Board for the retention of Railway Quarters beyond permissible period by the Staff of the construction Organization may be communicated at the earliest. On a careful reading of this letter, it becomes clear that the respondent No. 1 has described it as "a genuine staff grievance". A significant mention is made that "DCRG of number of railway employees has been held up on this account and that "an early decision will help to resolve this long pending item."

9. Therefore, the submission of the Ld. Counsel for Railways that in purely managerial matters the Tribunal should not interfere is rendered ineffective in this case. The General Manager, East Coast Railway (Respondent No. 1) has already taken a managerial decision, and is only imploring the Railway Board to accord export facto approval, finally telling them that it is a genuine staff grievance, and needs to be resolved. He has even mentioned that retired employees are suffering because of non-release of their DCRG dues. For some reason the Railway Board has not responded so far, causing financial distress to the applicant and others, and possibly embarrassment to the management of the E.Co. Railways who have been continuously pleading with the Board to approve the pending proposal and draw curtains on this long standing issue.



34

10. Therefore, most certainly this is not a question whether the Tribunal by Judicial review would interfere in a 'managerial 'issue. The real question is whether, and for how long, the authorities of the Railway Board will sit over the matter, casting a cloud of uncertainty over the cases of employees who are retired and old, and are holding on to a legitimate expectation of being paid their DCRG dues. Redressal of grievances of employees, and particularly those of retired personnel is an area which should not be ignored. In this regard, the Hon'ble Apex Court in the matter of S.S. Rathore Vs. State of Madhya Pradesh 1990(L &S) 50 has observed as follows.

"Redressal of grievances in the hands of departmental authorities takes an unduly long time. That is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be governmental business of substance."

11. It appears from the record that Respondent No. 5 having received the proposal for ex-post facto sanction on a matter of genuine staff grievance, all the necessary clarifications, and also repeated reminders has shown no urgency in communicating the decision/approval. It is further to be mentioned that the issue has its genesis in the situation in 1993 when the Construction Organization was transferred to Bhubaneswar.

12. The Railway Board having not taken an early decision has allowed time to pass, rendering it more difficult for concerned authorities to appreciate the background against which the local authorities allowed the retention of quarters, and requested the Res. No. 5 to communicate ex-post facto approval. Greater delay in disposal of such matters leads to more and more correspondence, and the issues for resolution get tied up ⁱⁿ ~~on~~ the proverbial "red tape". Efficiency of the Govt. organization is directly related to expeditious disposal of pending matters. Whatever be the internal factors, but

it is to be observed that the Railway Board (Respondent No. 5) has refused to respond to the pleas made by Respondent No. 1. Therefore, in compliance of the order of the Tribunal dated 16.09.2014 in OA No. 689/2014, the Respondent No. 1 passed a speaking order dated 18.11.2014, in which he observed as follows.

"Now, Railway Board vide their letter dated 10.09.2014 have communicated that post facto sanction for permission of retention of quarter as proposed by E.Co. Railway is under active consideration in consultation with Associate Finance and decision will be advised as soon as the same is considered by the Full Board.

In the above view of the matter, your request for refund of DCRG of Rs. 1,64,495/- will be considered as soon as the decision of Railway Board is received."

13. The Respondent No. 1 has obviously communicated the factual position to the applicant.

14. There is, however, another dimension to the considered. The Respondent No. 1 has communicated that as per the Audit Para, an amount of Rs. 1,64,495/- has been recovered from DCRG towards damage rent for the period of 18.09.1993 to 30.11.2002. The question is that DCRG is the entitlement of the applicant on retirement. The outstanding dues can be and should be recovered from the applicant. However, is it legally permissible to recover the damage rent as assessed by authorities without giving him a notice in this regard? Even when audit has raised objections, it is violative of principles of natural justice to make recovery without giving notice and hearing the version of the applicant.

15. The permission granted by the authorities of the E.Co. Railway, in anticipation of approval of the Railway Board for the applicant and others to retain their quarters at Cuttack beyond the permissible period is an administrative decision in the context of a situation that was prevailing at the

time of shifting of headquarters to Bhubaneswar. But administrative decisions affect the rights of the concerned employees also. Every such affected employee was given the impression that he is allowed to occupy the Railway quarters with payment of normal rent. After retirement when faced with the reality that a damage rent has been charged and is withheld from DCRG, the retired employee is sure to nourish a grievance against the authorities. Therefore, the applicant is an aggrieved person under the definition of section 19 of the AT Act, and is fully within his right to approach the Tribunal. The grievance specifically relates to release of the retirement dues of the applicant.

16. Moreover in the present case, the local authorities have favourably considered the matter but because of their limited jurisdiction for sanction and approval, are requesting the Railway Board for ex post facto approval. For the employees, their immediate authorities, and the Respondent No.1 GM of E.Co. Railways have recommended and supported their case. The Railway Board for them is some distance away. Therefore, it is quite possible that the applicant has a reasonable expectation of consideration of his case for a favourable decision, and it will be difficult to imagine that anyone else in the applicant's place will not have such an expectation. It has been submitted by Ld. Counsel for respondent-Railways that it is the discretion of the Railway Board to accord ex-post facto approval. But, discretionary power wherever it rests shall not amount to arbitrary exercise of power. Discretion has also to be exercised in the context of an admitted set of facts, with human reasonableness and in the overall welfare of the individual and the organization.



17. To come back to the facts of this case in the latest speaking order dated 18.11.2014 passed by the respondent No. 1 the General Manager refers to a communication dated 10.09.2014 of the Railway Board(respondent No. 5) which indicates that the proposal for ex-post facto approval is under active consideration. As soon as the full Board considers the proposal, the decision will be advised, and then the applicant's request for refund of withheld DCRG amount will be considered. Considering the undue delay already committed, I direct the respondent No. 5 Secretary, Railway Board to consider the matter with utmost dispatch and communicate their decision within a period of 120 days from the date of receipt of this order. Having regard to the fact that the applicant is long back retired, and has reached an advanced age, I also direct that if the Respondent No. 5 does not communicate the decision of the Railway Board within the period as stipulated, Respondent No. 1 without waiting any further shall release the DCRG amount withheld towards damage rent to the applicant. It is also made clear that the period of overstay in the quarters beyond the permissible period of retirement is recoverable towards damage rent and the same shall also be calculated and deducted while releasing ^{the} ~~with~~ ² withheld DCRG amount.

18. These observations and directions shall also apply to the applicant in case of OA No. 320/15. Accordingly, both the O.A. Nos. 320 and 321 of 15 are thus disposed of, with no cost to the parties.

Sd/-
**(R.C.MISRA,
 MEMBER(A))**

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