

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A.919 of 1996

Present : Hon'ble Mr.D.Purkayastha, Judicial Member.

RAJ CHARAN MUKHERJEE S/o
Late P.K.Mukherjee, working
as Head Trains Examiner
under Sr.Divisional Mechanical
Engineer, S.E.Railway, Adra,
at present residing at
Railway Quarter No.MRU/L/86/8
P.G.Anara RS, Dist.Purulia.

... Applicant
Vs.

1. Union of India through the General Manager, S.E.Railway, Garden Reach, Calcutta.
2. General Manager, S.E.Railway, Garden Reach, Calcutta.
3. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta.
4. Divisional Railway Manager, S.E.Railway, Adra, Purulia.
5. Divisional Personnel Officer, S.E.Railway, Adra, Purulia.
6. Sr.Divisional Mechanical Engineer, S.E. Railway, Adra, Purulia.

... Respondents

For the applicant : Mr.Samir Ghosh, counsel.

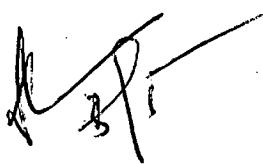
For the respondents: Mrs.B.Ray, counsel.

Heard on : 5.5.1998

Order on : 5.5.1998

ORDER

The applicant who is holding the post of Head TXR under Sr.Divisional Mechanical Engineer, S.E.Railway, Adra, has approached this Tribunal for quashing the impugned order dated 19.4.1995 (annexure 'A' to the application) and the appellate order dated 25/27.9.1995 (annexure 'B' to the application), on the ground that both the orders are arbitrary, illegal and violative of the principles of natural justice.



2. It is alleged that the applicant while serving at Anara, was allotted a railway quarter there being no.L-748 (Type-A), ~~and~~ in the year 1990, he was transferred to Bokaro Steel City, on promotion as Head Trains Examiner, and he joined there on 10.10.1990. However, the railway quarter at Anara was retained by the applicant from 10.10.1990 till the date of his re-transfer to Anara from Bokaro Steel City on 9.8.1994. Thereafter, the applicant was allotted a different railway quarter being no.MEU/L/86/B at Anara, according to his entitlement and status, and he took occupation of the said quarters on 11.11.1994. But the earlier ^{1nd} quarter was not vacated by him despite the fact that another quarter was allotted to him on 11.11.1994. The applicant, however, vacated the earlier quarter on 18.4.1995.

3. According to the applicant, on his transfer from Anara to Bokaro Steel City in the year 1990, he applied for retention of the quarters being no.L-748 (Type-A), to the authorities on the ground of education of his children who were in Bengali Medium, but the application has not been disposed of by the authorities and in anticipation of approval of retention of the quarters, he did not vacate the same and normal rent was deducted from his salary, as per rules. But suddenly the respondents issued the impugned order dated 19.4.1995 (annexure 'A' to the application), for charging damage rent from the applicant for unauthorised occupation of the quarters after his transfer from Anara to Bokaro Steel City and also for retention of the earlier quarter from 11.11.1994 to 18.4.1995. Feeling aggrieved by the order for charging damage rent dated 19.4.1995, the applicant preferred an appeal to the Sr.Divisional Mechanical Engineer, S.E.Railway, Adra, on 18.7.1996 again, as his earlier representation to the authorities which was forwarded by the Secretary of the Union was disposed of vide annexure 'B' to the application. However, the representation dated 18.7.1996 has not been disposed of.

The grievance of the applicant is that as the appellate authority has not considered his case he had to file the instant application before this Tribunal to get appropriate relief as prayed for.

4. The case has been resisted by the respondents by filing a reply where they have denied the claim of the applicant stating inter alia that the applicant was transferred from Anara to Bokaro w.e.f. 10.10.1990 but he did not vacate the quarters allotted to him at Anara on such transfer. Thereby he shall be deemed to be an unauthorised occupant of the quarters from the date of his transfer to Bokaro Steel City. According to the 1d.counsel for the respondents the period from 9.8.1994 to 10.11.1994 on the re-transfer of the applicant from Bokaro to Anara, has been regularised by the department ~~in respect of the earlier quarter allotted to him for the purpose of charging rent~~ but he was subsequently given a quarter as per his status on 11.11.1994 but the applicant did not vacate the earlier quarter and retained ~~in the~~ ^{both the} quarters till 18.4.1995 and for that period he was charged damage rent. In view of the aforesaid circumstances, the respondents state, the applicant is not entitled to get any relief in this case.

5. I have considered the submissions of the 1d.counsel for both the parties. Mrs.B.Ray, 1d.counsel appearing on behalf of the respondents, submits that the applicant has no ~~right~~ to retain the quarters after his due transfer to Bokaro Steel City ~~on or before~~ 10.10.1990 and he unauthorisedly occupied the said quarters upto 8.8.1994 and thus the authorities have rightly determined the rent for the said quarters, as per rules. Mrs.Ray further submits that since the applicant did not vacate the quarters even after allotment of the new quarters on his re-transfer to Anara and vacated ^{6th April} only on 18.4.1995, the authorities have rightly determined the damage rent for the earlier quarters for such unauthorised occupation from 11.11.1994 to 18.4.1994. Thereby the application should be dismissed.

6. On the contrary, Mr.Samir Ghosh, appearing on behalf of the respondents, submits that the applicant applied for retention at Anara of the quarters ~~on~~ his transfer to Bokaro Steel City, but the

authorities did not dispose of the same either rejecting or accepting his prayer. He was, therefore, under the impression that he was allowed to retain the quarters and normal rent was being deducted from his salary. He further submits that the impugned order at annexure 'B' passed by the authority is devoid of reason as the respondents have not disclosed the reason as to why his application made by the applicant has not been accepted. Thereby the impugned order is liable to be quashed.

7. It is found from the record that as per rules, the applicant is entitled to retain the quarters upto two months on transfer. Thereafter, he is bound to vacate the quarters on transfer. If he does not vacate the quarters, he shall be deemed to be an unauthorised occupant on the expiry of two months from the date of transfer unless a fresh order is issued by the authority for the purpose of retention of the quarters. In the application the applicant has specifically stated that he applied for retention of the quarters at Anara in 1990 on his transfer to Bokaro Steel City, but that application has not been disposed of. Regarding the said averment made by the applicant in his application, the respondents have remained silent in their reply. When the specific averment has not been denied by the respondents, it can be stated that the applicant applied for retention of the quarters on educational ground. It is settled law that no notice is required for the purpose of cancellation of allotment of the quarters if the authorities find that the employee is in unauthorised occupation beyond the prescribed time limit for occupation of quarters. Hence, the applicant also cannot take shelter of law stating that he was granted benefit for retention of the quarters on the presumption that he was granted the same on the application made by him. The admitted fact is that no order for retention of the quarters at Anara has been issued by the authorities in favour of the applicant on his transfer from Anara to Bokaro. It is also found that the applicant retained the old as well as the new

quarters even after his transfer from Bokaro Steel City to Anara. He vacated the old quarters on 18.4.1995. I have gone through the impugned orders at annexure 'A' and 'B' of the application and it is found that the applicant has been in unauthorised occupation of the quarter no.L-74B (Type-A) from 10.10.1990, but actually he can be deemed to have been under unauthorised occupation after expiry of the period of two months from the date of his transfer from Anara to Bokaro Steel City. Therefore, the applicant can be deemed to have been under unauthorised occupation after 10.12.1990. It is also disputed whether the applicant occupied the new quarters on its allotment on his transfer back to Anara in November, 1994. It has been stated in the reply of the respondents that the applicant occupied the new quarters as per allotment. But when I perused the impugned order I do not find a speaking order regarding the disputed facts as stated above. It is also found that the appellate authority did not also pass an independent speaking order on the representation made by the applicant through the union, disclosing the reasons for non-consideration of his appeal. So the impugned orders at annexure 'A' and 'B' of the application are found to be cryptic and devoid of reason.

8. In view of the aforesaid circumstances, I set aside the impugned order dated 25/27.9.1995 at annexure 'B' of the application with a direction upon the respondents to dispose of the appeal dated 18.7.1996 filed by the applicant, with a speaking order, considering all facts and circumstances involved in the case. Accordingly, I send back the case to the appellate authority the Sr.DME, S.E.Railway, Adra, for fresh consideration of the appeal on the points raised by the 1d.counsel for both the parties. The above exercise be completed by the authority within a period of two months from the date of communication of this order.

9. The application stands disposed of. No order is passed as to costs.


(D. Purkayastha)
Judicial Member