

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA. 1262/ 1997 WITH MA. 341/03

Present : Hon'ble Mr. Justice B.Panigrahi, Vice-Chairman
Hon'ble Mr. N. D. Dayal, Member (A)

Ajit Kumar Bose,
S/o Late Barada Kanta Bose,
R/o C/o Tapan Chaudhuri,
East Hakimpura (Nigam Pally),
P.O. Siliguri, Dist. Darjeeling,
Pin : 734 401

VS

1. Union of India through the
General Manager, N.F.Rly. Maligaon,
Guwahati-11, Assam.
2. The Chief Personnel Officer,
N.F. Rly. Maligaon.
3. The Chief Commercial Manager/Catering.
N.F.Rly. Maligaon, Guwahati-11
4. The Asst. Personnel Officer,
N.F.Rly. New Jalpaiguri.
5. The Chief Inspector of Works,
N.F.Railway, New Jalpaiguri.

For the applicant : Mr. P.Chatterjee, Counsel
Ms. C.Banerjee, Counsel

For the respondents : Ms. U.Sanyal, Counsel

Heard on : 8.12.04 : Order on : 14.1.05

O R D E R

Justice B.Panigrahi, VC:

In this application the applicant has challenged the action of the respondent authorities in deducting penal/damage rent from his DCRG for alleged unauthorised occupation of Railway quarter.

2. The factual matrix leading to the filing of this case is as follows:-

The applicant was appointed as Catering Manager under the N.F.Rly and posted at Amingao/Pandu, Assam in 1957. In 1960 he was transferred to Guwahati wherefrom he was sent for training at Alipore Durbar. He was transferred to New Jalpaiguri and worked for about two years. He was again transferred to Maligaon. In 1975 the applicant was transferred to Katihar and in 1978 he was again transferred to New



Jalpaiguri. At that point of time, he was allotted a railway quarter at New Jalpaiguri. In November, 1978 he was promoted as Catering Inspector and was posted to Guwahati and after serving at various places he ultimately retired from service w.e.f. 31.12.93.

3. The case for the applicant is that while he was posted at New Jalpaiguri in 1978 he was allotted Railway Quarter. When he was transferred to Guwahati on promotion in November, 1978 he made a representation to allow him to retain his quarter at New Jalpaiguri in the interest of education of his children and also on the ground that he was not allotted any other quarter at his new place of posting. According to the applicant, the respondent authorities permitted him to retain the quarter at New Jalpaiguri on payment of normal rent and accordingly he has retained the said quarter till 26.10.93 i.e. two months prior to his retirement. However, after his retirement in January, 1994 while he was returning back from Guwahati to NJP he lost all his papers in the train he was travelling and he accordingly filed an FIR before the GRP. Since after his retirement his DCRG was not paid he made several representations and eventually the authorities decided to recover an amount of Rs. 46,938/- towards penal rent for retention of the quarter at New Jalpaiguri for the period from July, 1979 to October, 1993 (i.e. from after 8 months of his transfer) treating the 'said period to be on unauthorised occupation. The applicant claims that while he had been permitted by the authorities to retain the quarter at New Jalpaiguri and when he was not provided with any other quarter subsequently at his places of posting, the respondents cannot deduct penal rent/damage rent from his DCRG. He has also complained that since there was no disciplinary proceeding pending against him the authorities also cannot withhold his DCRG. He has, therefore, prayed for direction to the respondents to quash the letter dt. 23.7.97 whereby and whereunder such penal rent was directed to be deducted from his DCRG and relief on pension and to pay him the full amount of DCRG with interest @ 18% p.a. for the delayed payment.

4. The respondents have contested the application by filing a reply in which it is stated that after his transfer from New Jalpaiguri the applicant was not entitled to retain the quarter at the old station for a period beyond 8 months and thereafter the retention is to be treated as unauthorised one. It is categorically denied that any permission was ever granted to the applicant for retention of the quarter at New Jalpaiguri for indefinite period after his transfer to Guwahati and other places. The respondents have contended that the applicant was at liberty to ask for allotment of a quarter at the new place of posting but he did not apply for the same and instead he continued to retain the quarter at New Jalpaiguri unauthorisedly for long 15 years and, therefore, according to the rules he has to pay penal/damage rent for such unauthorised occupation. After the quarter was vacated by the applicant in October 1993, necessary calculation of ~~assessed~~ ^{assessed} damaged/penal rent was ~~calculated~~ and a sum of Rs. 40,110/- was to be recovered from his DCRG. (Initially, however, certain other dues were shown wrongly viz. house building advance, puja advance etc. but subsequently those were omitted.) Since the applicant was entitled to only Rs. 38,610/- as DCRG the balance amount was decided to be recovered from the relief of pension.

5. In the MA the applicant has prayed for certain amendment in the OA and has reiterated that he was liable to pay only normal rent and not penal/damage rent as he had been permitted by the respondent authorities to retain the quarter at New Jalpaiguri.

6. We have heard the Ld. Counsel for both the parties at length. During the course of hearing, the main thrust of argument of Mr. Chatterjee, Ld. Counsel appearing for the applicant was that when the applicant was permitted by the authorities to retain the quarter at New Jalpaiguri after his transfer to Guwahati/Maligaon, no penal rent could be deducted subsequently from him. He has also contended that during the service career the applicant was transferred frequently and, therefore, in the interest of the education of his children and stability in the family he kept his family at New Jalpaiguri after

(B)

obtaining necessary permission from the authorities and all along normal rent was being deducted from his salary. It is only after his retirement that the respondent authorities have decided that the said occupation by the applicant was unauthorised and accordingly damage/penal rent was sought to be deducted from his DCRG and relief on pension which is not permissible. Mr. Chatterjee has also pointed out that the applicant has all along served in NE region which is considered as hard area and, therefore, he could retain his family at the old station as per Govt. policy decision.

7. Ld. Counsel for the respondents, on the other hand, has pointed out that according to the Railway Rules an employee has to vacate the quarter at the old station after his transfer therefrom. At best he can retain the quarter for a maximum period of 8 months as per rules. Ld. Counsel has categorically denied that any permission was ever granted to the applicant to retain the quarter at New Jalpaiguri after his transfer therefrom. It is, however, not denied that for a long period i.e. from 1978 till 1993 during the service period of the applicant normal rent was deducted for such retention of quarter. However, the ld. counsel has tried to justify such action of the respondents as lack of coordination amongst various departments as the applicant was all along posted outside and there was communication gap to detect his unauthorised retention of quarter at New Jalpaiguri. However, when the matter was detected necessary action was taken and appropriate amount was sought to be deducted by the impugned orders dt. 4.3.96 and 23.9.97. She has drawn our attention to the detailed chart showing the calculation made for arriving at the amount to be deducted from the applicant during the period from July 1979 (8 months after his transfer) to October, 1993 for such unauthorised occupation of quarter by the applicant.

8. It is no doubt true that after transfer from one station to another a Govt. employee has to vacate the quarter at the old station. He can, however, be permitted to retain his quarter at the old station for a limited period of 8 months on payment of necessary

licence fee at admissible rates. In this case the applicant has specifically submitted that he made a representation for retention of the quarter at the old station for the sake of education of his children and necessary permission was granted to him and, therefore, he occupied the said quarter till his retirement and for the entire period only normal licence fee was deducted from him. During this long 15 years the applicant was never asked to vacate the quarter and, therefore, he was under the impression that there was nothing wrong on his part to retain the said quarter at New Jalpaiguri. However, the respondents have categorically denied this averment of the applicant and has submitted there was no occasion to grant such permission nor it is permissible under the rules. However, neither party has produced before us the necessary document to indicate whether such permission was granted and/or denied. While the applicant has contended that he has lost all his documents while returning after his retirement to his native place in train, the respondents have taken the plea that all the old records have been damaged and destroyed due to devastating flood. In such a situation, therefore, we are not in a position to verify the stand of either side on this score.

9. The rules of the Railway are quite clear and it is also held time and again by various Benches of this Tribunal including this Bench as also by the Full Bench of this Tribunal that after retirement or after transfer a Railway employee has to vacate the quarter at the old station failing which he will be liable to pay penal rent and that no separate notice for vacation of the quarter is required to be issued. Therefore, it is improbable that the applicant was accorded permission to retain the quarter at the old station at New Jalpaiguri as claimed. Be that as it may, the facts remains that while the applicant retained the quarter at the old station for long 15 years the respondents also did not take any action during all these years and instead deducted only normal rent from the applicant towards occupation of the said quarter. As already pointed out necessary documents are also not available with either party to arrive at a



definite conclusion. The contention of the applicant that he was serving at the NE region and therefore was eligible to retain the quarter at the old station at New Jalpaiguri is also not tenable because the applicant was initially appointed in Assam itself and was not posted to NE region on transfer from soft zone.

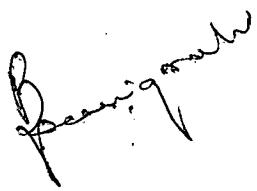
10. In the aforesaid situation, we are of the opinion that in the given circumstances the respondents should deduct only double the normal licence fee during entire period of retention from July, 1979 till the vacation of the quarter from the applicant as against 10% of emoluments as has been done in the calculation sheet annexed to the OA and realise the same from his DCRG. In our opinion this will not prejudice either party.

11. Accordingly, we hereby dispose of the OA by directing the respondents to deduct only double the normal licence fee for the entire period of unauthorised occupation of the quarter at New Jalpaiguri by the applicant and the amount be calculated accordingly and deducted from his DCRG. If any excess amount has already been deducted from his DCRG or relief on pension, the same shall be refunded to the applicant. The entire exercise be completed within 4 months from the date of communication of this order. This order shall not be treated as a precedent. No costs.



(N.D.DAYAL)

MEMBER(A)



(B.PANIGRAHI)

VICE CHAIRMAN