

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 08.10.1999

O.A. No. 261/1997

with

M.A. No. 136/1997

in

O.A. No. 261/1997

Divan Singh son of Ram Singh, Booking Clerk, Northern Railway, Rajkiavas (Jodhpur) : Resident of T-1-A Railway Quarter, Rajkiavas (Jodhpur Division).

... Applicant.

versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Jodhpur.
3. The Divisional Personnel Officer, Northern Railway, Jodhpur.
4. The Divisional Safety Officer, Northern Railway, Jodhpur.

... Respondents.

Mr. S.C. Sharma, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(Per Hon'ble Mr. Gopal Singh)

Applicant, Divan Singh, has filed this application under Section 19 of the Administrative Tribunals Act, 1985,

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praying for setting aside the impugned order dated 9.2.94 at Annexure A/7 by which the penal/damage/outsider rent has been ordered to be charged from the applicant and for a direction to the respondents not to recover penal/damage rent from the applicant and also to refund the amount of Rs. 15,671/- illegally recovered from the applicant as penal/damage rent.

2. Applicant's case is that he was initially appointed on 26.6.64 as Gatekeeper in Class IV. While in service at Merta Road, he was allotted Railway Quarter No. TL-42-B Type-I. The applicant was promoted on 8.12.83 on ad hoc basis as Booking Clerk and transferred to Pirwa. At Pirwa, there being no medical / educational facilities, he kept his family at Merta Road and continued to occupy the said Railway quarter. It is alleged by the applicant that he sought permission for retention of the said Railway quarter vide his letter dated 8.12.83 (Annexure A/1), but the receipt of this letter is denied by the respondents. For continued unauthorised occupation of the Railway quarter in question, the respondents started recovery of rent at the penal/damage rate. The applicant had approached the labour Court in this regard and secured a decree in his favour vide labour Court order dated 30.9.91. It is further alleged by the applicant that despite the order of the labour Court, the respondents have not refunded the amount recovered from the applicant as decreed by the labour Court and have not stopped the recovery of rent at penal/damage rate. The Railway quarter was ultimately vacated by the applicant on 1.9.94. During the period from 8.12.83 to 31.8.94, the applicant remained posted to various stations. It is also alleged by the applicant that the respondents have again started recovering penal/damage rent from him with effect from February, 1994. Feeling aggrieved, the applicant has approached this Tribunal.

3. Notices were issued to the respondents and they have filed the reply. In their reply, it is contended by the respondents that the applicant had never taken permission to retain the Railway quarter in question consequent upon

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his transfer from Merta Road. It has also been averred on behalf of the respondents that for recovery of rent at penal/damage rate, no notice is required to be given to the applicant. Since the applicant has been/continued unauthorised occupation of the said quarter, the respondents were right in recovering the penal/damage rent.

4. The applicant has also prayed for condonation of delay through M.A. No. 136/97 in filing this O.A., which has been contested by the respondents.

5. We have heard the learned counsel for the parties and perused the records of the case.

6. We shall first deal with the M.A. No. 136/97 for condonation of delay in filing this OA before going into the merits of the case.

7. In this M.A., it has been alleged by the applicant that he is being charged penal/damage rent with effect from February, 1994 and this application seeking condonation of delay in filing the O.A., has been filed on 16.7.1997, after about 3½ years. The applicant has tried to justify the delay in filing the O.A. on the ground that he remained posted to various small stations during this period and it was difficult for him to pursue his case. It has also been mentioned that he had submitted a representation to the Divisional Railway Manager, Jodhpur, on 4.11.96 which had remained unrepudiated. It has also been asserted by the applicant that regular/wrong deductions made on account of penal/damage rent amounts to a recurring cause of action every month and as such his claim cannot be rejected on the ground of limitation. In reply, the respondents have stated that the recovery is being effected in terms of respondents' letter dated 9.2.94 and unless that order is set aside, recovery would continue to be made. In the present O.A., the applicant has challenged the order dated 9.2.94 after more than 3½ years and in terms of Section 21 of the Administrative Tribunals Act,

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1985, the applicant should have approached this Tribunal within one year from the date of the said order. As such, the application is not maintainable and deserves to be dismissed.

8. We have given serious thought to the rival arguments. We are firmly of the view that the grievance arose on 9.2.94 when the respondents started recovering penal/damage rent from the salary of the applicant. The arguments advanced by the applicant in not filing the O.A. timely are not convincing and, therefore, the application deserves to be dismissed on this count alone.

9. It is pointed out that the applicant has not approached this Tribunal with clean hands inasmuch as the order dated 30.9.91 of the labour Court was set aside by the District & Sessions Judge, Jodhpur, on 16.1.93 in an appeal filed by the respondent-department. The applicant has not mentioned anything about this order of the District Judge. It is seen from the records that the alleged application dated 8.12.83 of the applicant seeking permission to retain the said Railway quarter, receipt of which has been denied by the respondents, has not at all been perused by the applicant during the period of his unauthorised occupation of the quarter in question and as such it cannot be expected of the respondents to regularise the unauthorised retention on their own. The applicant has also alleged that he has also not been given notice about unauthorised occupation of the said quarter as also for recovery of the penal/damage rent from the salary of the applicant. In this connection, the respondents have contended that no notice is required to be given in this regard in terms of CAT Full Bench order in Ram Poojan vs. Union of India and Anr., (1996) 34 ATC 434 (FB),^{wherein} it has been held as under:-

"From the above it follows that:

- (a) in the event of a railway employee in occupation of a railway accommodation, no specific order cancelling the allotment of accommodation on expiry of the permissible/permited period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of

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the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied;

(b) retention of accommodation beyond the permissible period would be deemed to be unauthorised occupation and there would be automatic cancellation of allotment and penal rent/damages can be levied according to the rates prescribed from time to time in the Railway Board's circular."

The learned counsel for the respondents has also cited a case, S.A. Husain vs. Union of India & Ors., reported in (1996) 34 ATC 592, in which it has been held by the Allahabad Bench of the C.A.T. that it is permissible to recover the amount of the penal rent from the salary for unauthorised occupation and resort only to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was not necessary. In support of their contention, the learned counsel for the respondents has also cited the order of Mumbai Bench of the C.A.T. in Laxminarayan Reghunath vs. Union of India & ors., (1997) 35 ATC 49, wherein it has been held that the damage/penal rent for unauthorised occupation is permissible without taking recourse to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

It is seen from the above discussion that no notice was necessary for recovery of penal/damage rent from the applicant for unauthorised occupation of the Government accommodation.

10. In the circumstances of the case, we do not find any merit in this application and the same deserves to be dismissed.

11. Both the O.A. and the M.A. are accordingly dismissed with no order as to costs.

(GOPAL SINGH)

Adm. Member

(A.K. MISRA)

Judl. Member

cvr.