

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.M.A.213 of 1999
O.A.1471/1997

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

SUNIL RANJAN GHOSH

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. M.A. Vidyadharan, counsel

For the respondents : Mr. R.K. De, counsel

Heard on : 22.12.99

Order on : 22.12.99

O R D E R

In this original application, the applicant who retired as Driver from Asansol Division under the Eastern Railway, has challenged the impugned order dated 6th March, 1997 issued by the respondent-authorities withholding his entire amount of DCRG to the tune of Rs.69,564/- towards penal or damage rent for occupation of railway quarter for the period from 9.1.67 to 28.2.91 vide Annexure 'B' to the application.

2. Subsequently, by filing an amendment application bearing No.M.A.213/99 the applicant has sought to amend the relief paragraph by inserting an ~~additional~~ relief challenging the recovery of Rs.9,245/- from his Dearness relief admissible on his pension and for reimbursement of the aforesaid amount alongwith interest at the rate of 18% p.a.

3. Today both the M.A. and the O.A. are taken up for hearing.

4. The short question for decision in this matter is that whether the respondents were justified to pass such order of recovery of penal rent or damage rent to the extent of Rs.78,809/- from the DCRG of the applicant vide order dated 6th March, 1997.

(Annexure 'B' to the app.) without giving ^{him} reasonable opportunity of being heard to the applicant. According to the applicant, he retired from service as Driver under the respondents w.e.f. 1st March, 1991 on attaining the age of superannuation. Thereafter, the respondents issued pension payment order in favour of the applicant on 20.2.91. Before that, the applicant had filed one writ petition before the Hon'ble High Court, Calcutta which was later transferred to this Tribunal and renumbered as T.A.437/1997 by which the applicant challenged the matters regarding ^{his} promotion. The said T.A. was disposed of on 6th May, 1988 by this Tribunal and the judgment was later upheld by the Hon'ble Supreme Court by dismissing the SLP No.8588 of 1989. Consequent upon the said judgment of the Hon'ble Supreme Court, the pensionary benefits of the applicant including basic pension, graded relief, commuted pension and residual pension were revised by the concerned authorities. As a result, the pension payment order dated 20.2.91 issued in favour of the applicant, was subsequently modified. It is alleged by the applicant that no claim whatsoever has been made from the side of the respondents before issuance of the said pension payment order on 20.2.91. But immediately after the judgment passed by the Hon'ble Supreme Court in SLP 8588 of 1989 in favour of the applicant, the respondents issued the impugned order dated 6th March, 1997(Annexure 'B') stating inter alia that the applicant is liable to pay the penal rent for the period from 9.1.67 to 31.3.89 amounting to Rs.29,474.00 and damage rent for the period from 01.04.89 to 28.02.91 amounting to Rs.49,335.00 (total comes to Rs.78,809/-) for unauthorised occupation of the railway quarter and the same would be recovered from his settlement dues. The applicant made several representation to the authorities stating his grievances therein but the respondents did not consider his case properly. Therefore, he has come before this Tribunal for getting appropriate relief.

5. Respondents filed written reply denying the claim of the applicant stating inter alia that the applicant entered into a vacant railway quarter bearing No.50/CD at Loco Colony, Asansol as soon as the regular allottee of the said quarter, Shri Gopinath, Ex-Driver under Loco Foreman, Asansol vacated the same on his transfer to Burdwan. The vacant quarter was occupied by the applicant without any allotment order in his favour and the applicant did not inform the concerned authority regarding such unauthorised ^{was} occupation and ~~meritily~~ drawing the house rent allowances. But when the authorities came to know about such unauthorised occupation of railway quarter, his house rent allowance was stopped. Thereafter, he was transferred from Steam Traction to Diesel Traction but he moved the Hon'ble High Court, Calcutta by filing a writ petition which was subsequently transferred to this Tribunal and renumbered as T.A.437 of 1997. It is stated by the respondents that the applicant continued to enjoy the unauthorised occupation of the said railway quarter because of the subsisting court case. The court case continued till very late when the SLP No.8588 of 1989 was decided. Meanwhile the applicant was superannuated w.e.f. 1.3.91. After the SLP was dismissed and the judgment in T.A.No.437/1987 dated 6.5.1988 became final, the applicant's case came up for final adjustments. At that point of time it was observed that the total dues on account of unauthorised occupation of the railway quarter No.50/CD amounted to Rs.78,809/- as against the DCRG entitlement of Rs.60,564/- which was withheld due to subsisting and pending court cases. The applicant was however issued a revised pension payment order increasing his pension from Rs.1240.00 to Rs.2071.00 p.m. w.e.f. 1.3.1991 vide revised P.P.O. dated 13.1.97. The applicant ^{C.A.W.} simultaneously intimated the Government's outstanding dues and was advised that the same would be recovered from him from his settlement dues and

he was advised to deposit the balance of Rs.9245/- vide letter dated 3.4.1997. But as the applicant refused to do so, the balance amount of Rs.9,245/- was recovered from his pension. So, the respondents did not commit any mistake on their part and thereby the application should be dismissed.

6. Ld. counsel, Mr. M.A. Vidyadharan appearing on behalf of the applicant, strenuously wanted to assert before me that the impugned action of the respondents regarding recovery of Rs.78,809/- on account of unauthorised occupation of the railway quarter by the applicant is highly arbitrary and illegal since the respondents did not take any action till 1997 i.e. before dismissal of the said SLP bearing No.8588 of 1989 by the Hon'ble Apex Court. It is submitted that the respondents took vindictive action against the applicant as the said SLP was dismissed by the Hon'ble Apex Court. Mr. Vidyadharan further submits that the respondents cannot recover any amount from ~~the~~ DCRG money of the applicant without obtaining permission from the President of India since he retired from service. He also submits that the respondents did not allot any quarter in his favour during his service period and therefore they cannot claim rent for occupation of the quarter under the rules. It is submitted by the ld. counsel for the applicant, Mr. Vidyadharan that the applicant shared the said quarter with Mr. Gopinath in favour of whom the quarter was allotted and he paid rent for that to Mr. Gopinath. So, the respondents should take action against the said person who allowed the applicant to stay with him in lieu of money. But instead of taking ~~any~~ action against that person, the respondents recovered the penal rent or damage rent from the applicant's ~~settlement~~ dues after his retirement which is arbitrary, illegal and without jurisdiction.

7. Ld. counsel, Mr. R.K. De appearing for the respondents, has drawn my attention to ~~rule~~ 1701, 1702 and 1703 under Chapter

rule is not applicable in this case as the ~~quarter~~ was not allotted by the Directorate of Estates to the applicant. I find sufficient force in the argument of Mr. De on that score. Admittedly the quarter in question was not allotted to the applicant by the Directorate of Estates and therefore Rule 16 of the Railway Services(Pension) Rules, 1993 does not help the applicant in any way.

9. Considering the aforesaid position and circumstances, I find that after retirement of the applicant from railway service, he was granted pension but his DCRG money was withheld by the respondents on the ground of unauthorised occupation of the railway quarter for the period from 9.1.67 to 28.2.91. It is stated by the respondents that they could not take any action against the applicant during his service period and even after his retirement for pendency of court case bearing No.T.A.437/1987 in the Tribunal and thereafter pendency of SLP bearing No.8588 of 1989 in the Hon'ble Supreme Court. But when the said SLP was dismissed and the Hon'ble Supreme Court affirmed the judgment of this Tribunal in T.A.437/87, pension of the applicant was recalculated by the respondents and at that time they raised the claim of penal rent or damage rent against the applicant for his unauthorised occupation of the railway quarter vide letter dated 6.3.97(Annexure 'B' to the app.). From the reply it is found that the HRA payable to the applicant was stopped by the respondents when it has come to the knowledge of the department that the applicant was sharing a railway accommodation which was allotted to Mr. Gopinath who was also a Driver under the respondents. The applicant has stated that he used to pay Rs.40/- p.m. to Mr. Gopinath for allowing him to stay in his quarter. But it is settled law that no railway quarter can be occupied or shared by the railway employee without obtaining permission from the competent authority. In this case, the applicant was sharing the quarter without any permission from

the competent authorities and he paid rent to the said person for that which cannot be said to be proper on his part. Therefore, I am of the view that the respondents should realise rent from the applicant even after his retirement, if it is proved that he occupied the quarter unauthorisedly. I have perused the relevant rules as submitted by the ld. counsels for both sides. Rule 1711 of the Indian Railway Establishment Manual, Vol.II prescribes the rules regarding recovery of rent from the railway employees. Under the said rule, the Railway Administration may, by general or special order, provide for charging a rent in excess of 10 per cent of the emoluments from a railway servant. But at the same time, I find that there is laches on the part of the respondents since they did not take any action at the time when they came to know that the applicant was sharing a railway accommodation with another person without permission of the competent authority. No explanation could be shown by the respondents for their inaction in this matter.

10. However, it remains admitted fact that the applicant occupied the quarter unauthorisedly from 9.1.67 to 28.2.91. On the other hand, it is also a fact that the respondents have violated the principles of natural justice as they did not provide any opportunity of being heard to the applicant before issuing the impugned order dated 6th March, 1997 for recovery of damage rent after his retirement. So, it would be proper on my part to direct the respondents to recover ~~normal~~ normal rent from the applicant for the period of his unauthorised occupation of the quarter in question under the rules. Accordingly, the impugned order dated 6th March, 1997(Annexure 'B' to the app.) and the subsequent impugned letters dated 3.4.97(Annexure B-1) and dated 9.9.97(Annexure B-2) are hereby set aside. Respondents directed to realise normal rent from the applicant for his unauthorised occupation of the railway accommodation for the

period from 9.1.67 to 28.2.91 and to adjust the amount from the DCRG payable to the applicant. After such adjustment if any balance amount remains, that shall be paid to the applicant within 2 months from the date of communication of this order. The application is thus disposed of with the aforesaid observations without passing any order as to costs.

1/2/99
(D. PURKAYASTHA)
MEMBER(J)