

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.403 of 1997

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

Niranjan Saha, retired as ex-Machine
Shop Chargeman, Locoshed Yetalsar,
Gujrat Sourashtra, residing at 18/2B
Dalimtala Lane, Calcutta-700 006

... Applicant

VS

1. Union of India, through the
General Manager, Western Railway,
Church Gate, Bombay

2. The Divisional Railway Manager,
Western Railway, Bhavanagarpara, Gujrat

... Respondents

For the Applicant : Dr. S. Sinha, counsel

For the Respondents: Mr. P.C. Saha, counsel

Heard on 24.7.1998

: : Date of order : 24.7.1998


O R D E R

The applicant, Niranjan Saha, now retired ex-Machine Shop Chargeman in the Locoshed of Jetalsar under Western Railway, Gujarat has filed application before this Tribunal being aggrieved by and dissatisfied with the order dated 10.3.97 issued by DRM (E), Bhavnagar Para asking the applicant to remit Rs.19.502/- as penal rent determined by the authority for unauthorised occupation of the quarter for the period from 29.8.93 to 28.2.94. According to the applicant, while he was working as Chargeman at Yunagarh Workshop, the Workshop at Yunagarh was closed on 15.6.93 and thereafter he was declared surplus staff. Thereafter he was transferred in public interest to Jetalsar on 28.6.93 by a letter dated 7.4.93. The applicant joined there at Jetalsar on 28.6.93 and he made a representation to the DRM(E) on 25.8.93 for permitting him to retain the quarter No.100/B - Type II at Yunagarh stating the grounds therein. According to the applicant, the respondents thereafter passed the

order on 5/6.4.95 which is at Annexure/A2 to the reply stating that the retention of quarter in favour of Mr. Niranjana Saha, Machinshop chageman under LF-JLR has been granted treating him as surplus staff. In the meantime, the applicant sought for voluntary retirement by an application dated 19.12.95 which has been accepted by the authority with effect from 12.2.96. ^{Before that} ~~Thereafter~~ he vacated the quarter on 26.2.95 which is evident from the letter at Annexure/R6 to the reply. It is alleged that the respondents without any intimation to the applicant passed the impugned order dated 10.3.97 asking him to remit the said amount of Rs.19,502/- as damaged rent with effect from 29.8.93 to 28.2.94. It is also alleged by the applicant that the impugned letter dated 10.3.97 is violative of principle of natural justice and is illegal and arbitrary and liable to be quashed.

2. The respondents filed a reply in which they have stated that in PNM item No.6/95 (Annexure/R1) decision was taken to permit the applicant for retention of the quarter, but subsequently the said decision was modified vide decision dated 2.6.95 (Annexure/R3). According to the decision, the rent was assessed.


3. Dr. Sinha, learned advocate for the applicant submits that the applicant is not any way responsible for occupation of the quarter since he was allowed to retain the quarter by the competent authority on the basis of his prayer dated 29.8.93 (Annexure/B to the application) and on the basis of the decision taken by the Authority which would be evident from Annexure/R1 to the reply and accordingly he continued to occupy the quarter after his transfer from Yugnagarh to Jetalsore. The respondents to his surprise and prejudice suddenly asked the applicant to remit the penal rent of Rs.19,502/- by a letter dated 10.3.97 (Annexure 'C') for occupation of the quarter unauthorisedly for the period upto the date of retirement. So, order dated 10.3.97 (Annexure 'C') is wrong, illegal and violative of principles of



natural justice.

4. Mr. Saha, learned advocate on behalf of the respondents submits that the applicant has no authority to retain the quarter beyond the permissible limit of six months as per rules. So, the impugned order dated 10.3.97 is a tentative order and no recovery was proposed to be made in that letter and the respondents did not given any effect to the letter dated 10.3.97 till date and thereby the application is a premature one and is liable to be dismissed. Moreover, decision in PNM No.6/95 (Annexure/R2) was not communicated to the applicant.

5. I have carefully considered the submissions of the learned counsel of both the parties and I find that the applicant by a letter dated 25.6.93 on his transferred from Yuganagrh to Jetalsar made a prayer to the authority for retention of the quarter at Yunagarh for his daughter's education and till the end of the session i.e., May, '94. But the result of that letter has not been communicated to the applicant and it appears from the Annexure/R2 filed by the respondents that a decision was taken by authority to permit him to retain the quarter as surplus staff. It is seen that said decision favouring the retention of the quarter by the applicant was taken in the meeting which took place between the administration and the Union, but that has not been communicated to the applicant. It is found that subsequently the said decision was again modified by the authority, as it appears from Annexure/R3 to the reply that was also not communicated to the applicant, thereafter, the applicant by a letter dated 31.5.94 again made a prayer for retention of the quarter at Yunagarh. It is found that by a letter dated 7.8.96 (Annexure R/6) he was permitted to retain the quarter from 29.8.93 to 28.2.94 on payment of double the flat rate or 10% of the pay which is even higher and ~~such~~ the period from 29.2.94 to 25.2.95 was treated as unauthorised occupation and on 20.6.94 a notice (Annexure 'C') was issued upon the applicant for vacation



of the quarter at Yunagarh since he had occupied the quarter unauthorisedly from 28.2.94 and he was advised to vacate the quarter within 15 days from the date of receipt of the notice. Thereafter another notice was issued by a letter dated 12.12.94 at page 17 to the reply by the authority addressed to the applicant stating that in case of failure on his part to vacate the quarter within 15 days from the date of receipt of the letter dated 12.12.94 the disciplinary action will be taken against him. and accordingly, the penal rent has been calculated and the applicant was directed to remit the said amount of penal rent, as mentioned in the letter dated 10.3.97.

6. In view of the aforesaid circumstances it has to be seen by me whether the action taken by the respondents by a letter dated 10.3.97 can be said to be justified on the facts and circumstances of the case. When I perused the minutes of the meeting marked as Annexures/R1 and R2 I find that the decision regarding retention of the quarter in favour of Niranjan Saha was taken by the authority in a meeting dated 5/6.4.95 i.e., after serving notice to the applicant on 20.6.94. But it is the stand of the learned advocate, Mr. Saha that the decision which was taken by the administration in a meeting with the union on 6.4.95 (as per Annexure R/2) has been amended by a subsequent decision on 30.4.96 and 7.8.96 respectively (as per Annexures R-3 and R4). So, according to Mr. Saha that decision dated 6.4.95, Annexure/R2 to the reply was taken by the authority ignoring the period of permissible limit of retention of quarter after transfer prescribed in the rules which state that the authority can allow the Government servant to retain the quarter on transfer upto 24 (two) months from the date of transfer. And it is also stated by Mr. Saha that the decision in meeting with the union does not have any legal status unless it is issued in a form of order or circular. However, I find that the applicant repeatedly made a prayer for permitting the him to retain the quarter, but the

decision on the said prayer had not been communicated to the applicant, and rather it is found that the decision regarding retention of the quarter was taken by the authority as per Annexure/R2. So, I find from the records that after taking decision as per Annexure R2 in a meeting with the union, the respondents did not issue any further notice to the applicant for vacating the quarter, till the date of letter dated 7.8.96 (Annexure/R6). In view of the aforesaid circumstances I find that the authority itself was suffering from indecision ^{requiring} ~~rejecting~~ the retention of the quarter by the applicant. In view of the aforesaid circumstances, I find that the Department was in default in taking decision on the retention of the quarter by the applicant. So, when the Department itself is at fault and thereby I think it would be improper on the part of the Department ^{to ask to pay} ~~to~~ penal rent even after permissible limit of ^{two} ~~two~~ months as stated, ^{expended} Therefore, both the orders dated 20.6.94 (Annexure 'C') and dated 10.3.97 are arbitrary and liable to be quashed.

7. In view of what has been stated above, I set aside the impugned orders dated 26.6.94 and 10.3.97 respectively and direct the respondents to charge the normal rent for the period upto the date of vacation of the quarter. Dr. Sinha submits that normal rent has already been deducted from the admissible amount payable to the applicant. But if no deduction is made, as submitted by Dr. Sinha, then the respondents would be authorized to make deduction of normal rent for the said period. With this observation the application is disposed of awarding no costs.

[Signature]
21/7/98
(D. Purkayastha)

MEMBER (J)