

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 486/2003

FRIDAY THIS THE 31st DAY OF MARCH, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

**P. Hamsa
Pointsman/I/ERS
Railway Quarters No. 141-C
Ernakulam South.**

Applicant

By Advocate Mr. C. S. Ramanathan

Vs.

- 1 The Assistant Operating Manager (Southern Railway
Divisional Railway Office, Thycaud, Trivandrum).
- 2 The Senior Divisional Railway Manager
South Railway) Trivandrum.
3. The Senior Divisional Personnel Officer
Divisional Railway Officer (Southern Railway)
Trivandrum-14
- 4 The Divisional Operating Manager,
Divisional Railway Office (Southern Railway)
Trivandrum.
- 5 The Union of India represented by
Secretary, Department of Railway,
New Delhi.

Respondents

By Advocate Mr. Sunil Jose,

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This O.A. has been filed to quash Annexure A3 order imposing a
penalty of stoppage of increment for a period of six months on the applicant

and to direct the respondents to dispose of the appeal petition. It has also been prayed that the applicant is entitled to Type-II quarters and therefore further recoveries made pursuant to Annexure A-3 order may be stopped.

2 The applicant was working as a Pointsman Grade-I at ERS at a pay of Rs. 4030/- in the pay scale of Rs. 3050-4900/- He was occupying Quarters No. 47-C at ERS. The above Quarters was in a bad state and had become dangerous to live in. On 19.7.2001 a portion of the RCC roof of the above Quarters fell on the applicant's wife and her right little finger had to be amputated. It is submitted that in these circumstances the applicant was allowed to occupy Quarter No. 141-C at ERS and many other similarly placed Railway employees were also allowed to occupy safer quarters as the quarters occupied by them had become dangerous to live in. While so, the respondents initiated proceedings dated 9.11.2001 against the applicant for unauthorisedly occupying Quarter No. 141-C Type-II at ERS. The applicant gave a reply to the authorities and thereafter Annexure A-3 order imposing a penalty of withholding of increments and recovering penal rent to the tune of Rs. 4730/- per month has been issued. It is submitted that the recovery of 85% of the salary payable to the applicant is highly excessive and unjust. He has further submitted that Annexure A-5 appeal has not been disposed of so far. Further Annexure A-6 order is issued allotting Quarter No. 47-C to the applicant stating that the repair work has been completed and is available for occupation. The applicant has refused to occupy Quarter NO. 47-C for the reason that the applicant is entitled to Type-II Quarters and many juniors to him have been allotted Type-II Quarters overlooking his claim such as Shri O.K. Raghavan, and Shri E.A. Prasad who were also occupying Type-II Quarters unauthorisedly and proceedings were initiated against them as in

the case of the applicant but no penal rent or penalty was imposed on them.

3. The respondents have filed reply statement. It is submitted that when Annexure A-3 order which the applicant has prayed for quashing does not mention any recovery of damages on account of unauthorised occupation. Annexure A-5 appeal is still pending and it is seen from the prayers of the applicant that he has not challenged the order of recovery of damage rent for his unauthorised occupation of railway quarters. Since he has sought to quash only Annexure A-3 order, it is hit by Section 21 of the Administrative Tribunals Act as it has not been filed within time. As regards the averment of the applicant against the penalty imposed the respondents have submitted that whatever may be the compelling reasons and the domestic constraints no railway employee can occupy a quarter without an order of allotment and his action amounts to trespassing. The statement that he was allowed to occupy the Quarter NO. 141-C is denied and no such permission order could be given in accordance with the rules. No damage rent has been imposed by Annexure A-3 order and only penalty of stoppage of one increment for six months (non-recurring) has been awarded. The damage rent has been calculated on the basis of plinth area of the Quarter NO. 141-C and the amount to be recovered for the period from 24.10.2001 to 10.3.2003 is Rs. 62,863/- and this amount will be recovered in 100 instalments commencing from the salary of the period ending 11.3.2003. Damage rent has also been recovered from the salary of Shri E.A. Prasad and O.K. Raghavan and these two employees have vacated the quarters and they have not challenged the recoveries. The fact that other employees have also unauthorisedly occupied the quarters cannot make the applicant entitled to Quarter No. 141-C. Therefore the

grounds urged are untenable and the OA is liable to be dismissed.

4 The applicant has filed a rejoinder contesting the statement of the respondents that his prayers are not inter-related. He reiterated that he was permitted to occupy the present quarters by the officers even though no written order was issued. Even when Type-II quarters are vacant from 1998 onwards, the applicant was not allotted a quarter and now the respondents issued orders dated 14.12.2005 allotting a type-II quarter to him. He also denied the statement of the respondents that penal rent has been collected from other persons mentioned in the OA. In fact their occupation was regularised by allotting the quarters to them. He also denied that the respondents have taken action against him under Public Premises (Eviction of Unauthorised Occupants) Act

5 We have heard the learned counsel on both sides and perused the records. The fact that the applicant was staying in a Type-I Quarter No. 47-C and that the above quarter was in a bad state of repairs and had collapsed on 19.7.2001 injuring the applicant's wife is not disputed. The fact that the applicant was eligible for allotment of a Type-II Quarter is also not disputed. But none of these factors would justify the action of the applicant in unauthorisedly occupying a quarter on the ground that it was lying vacant and that he was eligible for allotment of the same. We are therefore in full agreement with the contention of the respondents that no employee can occupy a quarter without allotment order in his name or even without a permission letter if it was a case of emergency as made out by the applicant. The applicant has also not produced any proof in support of his submission that he was permitted by officers of the railway administration to occupy the said Type-II quarters. The respondents cannot be faulted for taking action under the Railway (Discipline and Appeal)

Rules and imposing a penalty of stoppage of increment for six months which is only a minor penalty. The applicant has contended that the punishment is highly excessive and irrational for which in any case he has submitted an appeal which is still pending and the Appellate authority can look into this contention of the applicant while deciding the appeal.

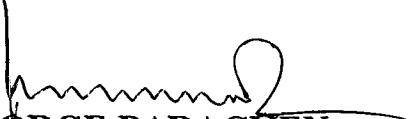
6 The applicant has challenged Annexure A-3 order also on the ground that it orders recovery of damage rent from him for unauthorised occupation. This statement is totally incorrect as Annexure A-3 has been issued under the Disciplinary and Appeal Rules and not under the Public Premises (Eviction of Unauthorised Occupants) Act. The applicant seeks to connect the recovery orders issued in Annexure A-4 to the disciplinary proceedings and penalty advice in Annexure A-3 which are two separate issues covered by proceedings under two different statutes. As regards imposition of damage rent under Public Premises (Eviction of Unauthorised Occupants) Act, this Tribunal is not the authority to decide this matter, and if the applicant is aggrieved by any such proceedings on this issue the remedy lies elsewhere. Hence this prayer of the applicant for setting aside the recovery on the ground that it is a consequence of the penalty advice in Annexure A-3 is misplaced and cannot be granted.

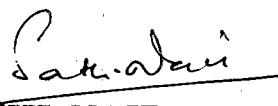
7 As regards the next prayer of the applicant for allotment of a type-II quarter, it has been submitted by him that the respondents have now by Annexure A-8 proceedings dated 14.12.2005, allotted a type-II quarter to him and hence no further directions are required in the matter.

8 In the result, the OA is disposed of with the direction to the 4th respondent to dispose of Annexure A-4 appeal filed by the applicant within

a period of two months from the date of receipt of this order. No costs.

Dated 31.3.2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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