

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 495/2003

WEDNESDAY THIS THE 8th DAY OF FEBRUARY, 2006

C O R A M

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

P. John Rose S/o K. Palayan
Carriage and Wagon Technician
Grade-I, Office of the Chief Depot Officer
Southern Railway, Trivandrum Central
Residing at Railway Quarters 65-A, Type-II
Southern Railway, Trivandrum ..Applicant

By Advocate Mr. Thomas Mathew

Vs

- 1 Union of India represented by the
General Manager, Southern Railway
Head Quarters Office, Chennai-3
- 2 The Divisional Railway Manager
Southern Railway, Trivandrum-14
- 3 The Senior Divisional Personnel Officer
Southern Railway, Trivandrum-14
- 4 The Estate Officer
Southern Railway, Divisional Officer
Trivandrum-14
- 5 The Chief Personnel Officer
Southern Railway, Headquarters
Office, Chennai-3

Respondents

By Advocate Mr. P. Haridas.

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this OA challenges the memorandum dated 30.1.2003 issued by the Senior Divisional Personnel Officer, Southern Railway, Trivandrum cancelling the allotment of Railway quarters originally allotted to him on the ground that the quarter has been sublet unauthorisedly at the time of inspection by a Committee constituted for

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detection of unauthorised occupation of railway quarters. Consequent to the above order, damage rent was also recovered from the salary of the applicant vide Annexure A2.

2 According to the averments of the applicant he was working as a Carriage and Wagon Technician Grade-I in the office of the Chief Depot Officer, Southern Railway, Trivandrum Central and he was being utilised as Amenity Staff in Kerala Express and he was required to be away from Trivandrum for many days. He was in lawful occupation of Railway quarters 65-A, Type-II at Trivandrum Central from 21.5.1988 onwards. All of a sudden he was served with a memorandum dated 30.1.2003 Annexure A-1 by the third respondent in which it is stated that a Committee constituted for detecting the cases of subletting/unauthorised occupation of Railway Quarters has submitted their report on 18.12.2002 and based on the report of the said committee the Divisional Railway Manager had decided that the allotment of the Railway Quarters originally allotted to the applicant and some others are cancelled w.e.f. 13.12.2002 and the applicant must vacate the quarters within 15 days and that the continued occupation of the quarters from the date of detection of subletting will be treated as unauthorised and damage rate of rent will be recovered from the applicant. Immediately on receipt of Annexure A1 the applicant submitted a representation dated 5.2.2003 stating that he had not sublet the quarters to anybody at any time and the action initiated against him is totally unwarranted and unjustified. However, when the salary for the month of February, 2003 he was shocked to notice that a sum of Rs. 4730/- has been recovered from his salary as penal rent. The applicant submitted a further representation denying the allegation and requesting for refund of the penal rent. But the respondents continued the recovery on account of penal rent thereby causing him approach this Tribunal. He has averred that

he has not sublet the quarters to anybody. No opportunity has been given to the applicant nor a copy of the report said to have been submitted by the Committee made available to him. The action of the respondents therefore is totally opposed to the basic principles of natural justice. The applicant prays for the following reliefs:

- (a) call for the records leading to the issue of Annexure A1 and quash the same to the extent it relates to the applicant.
- (b) declare that the applicant is in lawful occupation of Railway Quarters N:o. 65-A(type-II) at Trivandrum Central and the cancellation of the allotment of quarters as per Annexure A1 order with retrospective effect from 13.12.2002 and taking away a sum of Rs. 4730/- every month from applicant's salary by way of penal rent with effect from Februray, 2003 is arbitrary, illegal and in violation of the principles of natural justice and direct the respondents to repay the total amount recovered from the salary of the applicant by way of Penal rent with interest at 12%
- © any other reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the cases
- (d) award cost to the original application.

3 In the reply statement the respondents have submitted that there were frequent complaints of large scale unauthorised occupation and subletting of quarters and also of commercial activities being undertaken in the residential complex. In order to prevent such illegal activities in accordance with the instructions of the Railway Board, the Divisional Railway Manager constituted Committees to identify and report the cases of subletting and unauthorised occupation. Railway accommodation is provided to the employees only for the bonafide use of their families; and dependents. The Committee conducted surprise check on 18.12.2002 and it was found that the quarter No.65-A Type-II allotted to the applicant was sublet to one Shri P.K. Sreedharan, Section Engineer/Electrical (Train Lighting) Trivandrum. After considering the report of the Committee Annexure A1 memorandum was issued duly conveying the decision of the second respondent to cancel the allotment from the date of detection of

subletting. The applicant was given 15 days time to vacate the quarters following which damage rent will be recovered from the date of cancellation of allotment of quarters besides taking disciplinary action for violation of Conduct Rules. No representation as alleged by the applicant has been received by the respondents. Hence, the recovery was started at the rate of damage rent of Rs. 86/- per square metre per month and the quarters have a plinth area of 55 square metres. The damage rent of RS. 18,920/- has already been recovered for the period from 6.2.2003 to 5.6.2003 and a sum of Rs. 9679/- is yet to be recovered.

4 Rejoinder has been filed by the applicant reiterating that he has not misused the quarters allotted to him since the applicant was assigned duty as a Technician accompanying the KK Express twice in a month, he was away from home and for the protection of his family he was forced to keep a near relative on certain occasions to remain in quarters. He denied that he is not related to Shri P.K. Sreedharan who is named in A-1 and he was not aware of any checking stated to have been conducted by the Committee. The amount of Rs. 18920/- taken away from the salary of the applicant as admitted by the respondents is per se illegal and arbitrary and that the respondents cannot deny that he has submitted two representations on 5.2.2003 and 6.3.2003 as records of the office would confirm the same.

5 We have heard the counsel on both sides. The argument of the learned counsel for the applicant is that the stand of the respondents is totally unjustified and arbitrary and constitutes violation of the principles of natural justice in as much as no opportunity was given to the applicant to explain his case nor was any finding of the Inspection Committee incorporated in the memorandum issued to him so that he could rebut the

charges. The counsel also produced copy of the order in O.A. 54/2003 on a similar case in which the Tribunal held that identical orders issued for cancellation of quarters and recovery of penal rent is vitiated by the violation of principles of natural justice as basic requirement of notice or opportunity to the applicant has not been given.

6 We have gone through the materials on record and the judgment referred to above. From the records and the averments of the respondents in the reply statement it is clear that the applicant has not been given any notice or opportunity to substantiate the charges against him of subletting of quarters. In fact the respondents contended in the reply statement that even if it is true that no notice was issued, it will not fortify the applicant's case and the contention that the applicant is not aware of the report of the committee is untenable. This argument of the respondents is totally against legal tenets of natural justice and no where have they stated that the committee had given any opportunity to the applicant at the time of inspection or questioned him about the illegal occupation they detected at the time of inspection. Merely stating in the order that the quarter was sublet to one Shri P.K. Sreedharan does not amount to a notice to the applicant. In fact Annexure A1 is a final order and not a show cause notice. Fifteen days time given in the order is only for vacation of the quarter and the decision for cancelling the quarters had already been taken w.e.f. a retrospective date. Further the hasty action of the respondents is compounded by recovery from the next month's salary of the applicant towards alleged damage rent. There is no mention also of any disciplinary action for violation of the conduct rules having been initiated against him on the same grounds. Though the intention of the railway administration to detect unauthorised occupation of railway quarters and prevent subletting is laudable, it cannot be done arbitrarily as was done in the present case.

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Though Annexure A1 order which has been impugned in this OA is a composite order against 13 employees, the applicant alone has thought it fit to contest it before the Tribunal. That is not a reason to justify the arbitrary action of the respondents especially when in a similar case this Tribunal had already taken the respondents to task for not following the principles of natural justice.

7 In the result we are of the view that the prayer of the applicant is to be allowed, the impugned order at Annexure A-1 is quashed in respect of the applicant and the respondents are directed to repay the amount recovered from the salary of the applicant by way of penal rent within a period of two months from the date of receipt of this order. The interim order is made absolute.

8 The OA is allowed as above. No costs.

8.2.2006



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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