

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.54 OF 2003

FRIDAY THIS THE 19TH DAY OF SEPTEMBER, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

K.M.Dasappan,
S/o K.Madhavan,
working as Loco Inspector/Diesel,
Southern Railway,
Ernakulam Junction
residing at Kaipurathu,
Meenadom PO
Kottayam District.Applicant

(By Advocate Mr. M.P.Varkey)

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1. Union of India represented by the
General Manager,
Southern Railway,
Chennai.3.
2. The Divisional Railway Manager,
Southern Railway,
Trivandrum.14.
3. The Senior Divisional Personnel
Officer, Southern Railway,
Trivandrum.14.
4. Divisional Mechanical Engineer
Diesel, Southern Railway
Ernakulam Junction,
Kochi.16.Respondents

(By Advocate Mr. P.Haridas)

The application having been heard on 19.9.2003, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant Loco Inspector at Ernakulam Junction
was allotted the quarter No.108/A/II/ERS by order dated
12.7.01 (A.1). His wife being employed at Kottayam he was

living with his sister and brother-in-law in the quarter and was always available even out of office hours in the quarter and he was provided with a telephone 85178 to be 'on call'. While so he came to know that on 22.10.02 a group of people visited the quarter and obtained the signature of his sister in a paper. Coming to know that there was allegation of sub-letting of the quarter the applicant on the next day submitted Annexure.A2 representation stating that he had not sub let the quarter, that his sister and brother-in-law were staying along with him and that if their stay be found to be irregular he was prepared to send them away from the quarter. He did not get any response to this letter. While so he was served with Annexure.A3 order dated 5.11.02 of the Senior Divisional Personnel Officer (third respondent) stating that he was found to have sub let the quarter and calling upon him to vacate the quarter within fifteen days and making it clear that if the quarter was not vacated within fifteen days penal rent would be recovered from him as if he has sublet the quarter and disciplinary proceedings also would follow. On receipt of Annexure.A3, within fifteen days as called upon, the applicant vacated the quarter on 30.11.02 as is evident from Annexure.A5 dated 30.11.02. Finding that despite the fact that the applicant had vacated the quarter within the time stipulated in Annexure.A3 order a sum of Rs. 3772/- was recovered from his pay as arrears of penal rent as is evident from pay slip A6, the applicant has filed this application seeking to set aside Annexures.A3 and A6. It is alleged in the application that the applicant has not sub let the quarter, that his

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sister and brother-in-law were living along with him, not as sublessees that he had offered to send away his sister and brother-in-law if their stay was considered to be irregular by Annexure.A2 letter, that he had complied with the demand within two weeks as is demanded through Annexure.A3 and that the impugned order Annexure.A3 as also Annexure A.6 visiting the applicant with adverse civil consequences without observing the principles of natural justice are liable to be struck down as vitiated.

2. Respondents seek to justify the impugned action on the ground that a committee constituted by the Divisional Railway Manager pursuant to several complaints of subletting and misuse of quarter having detected unauthorised occupants in the quarter the action taken under Annexure. A3 is perfectly in order. They also seek to justify the recovery made in Annexure.A6 on the ground that the quarter was not vacated within fifteen days from the date of issue of Annexure.A3.

3. I have carefully gone through the materials on record and have heard Shri M.P.Varkey, learned counsel of the applicant and Shri A. Ranjit, Advocate appearing for the respondents. Learned counsel of the applicant submitted that the applicant is not pressing the prayer for restoration of the quarter to him and that he would be satisfied if the other reliefs are granted.

4. It is not disputed that before issuing Annexure.A3

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concluding that the applicant had sublet the quarter, the applicant has not been given any notice or opportunity to substantiate that he has not been guilty of subletting of quarter warranting cancellation of allotment, recovery of penal rent or initiation of disciplinary proceedings. No clear allegation as to whom the applicant sublet the quarter was even made in Annexure.A3. Audi alteram partem is the basic requirement before passing any order which visits its recipient with any adverse civil consequences. Hence Annexure A3 is bad for violation of principles of natural justice. Further as the applicant had already vacated the quarter as on 30.11.02 as is evidenced by Annexure.A5 and which is not disputed by the respondents the recovery of penal rent/damage rent from the applicant as is seen from Annexure.A.6 was irrational, unwarranted and wholly unjustified. The contention of the respondents that since the applicant vacated the quarter only on 30.11.02 although the order Annexure.A3 was issued on 5.11.03 the direction to vacate the quarter within fifteen days having not complied with, recovery made in Annexure.A6 is in order is untenable because the applicant received the Annexure.A3 only on 15.11.02 as is seen from the endorsement in Annexure.A3 and which is not disputed by the respondents. Further on the basis of Annexure A3 which is vitiated for violation of natural justice no action could have been taken. Secondly even after complying with the direction contained in Annexure.A3 recovery of damage rent cannot be considered to

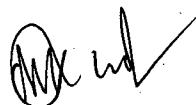


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be done bonafide in public interest. This illegal order has driven the applicant, a low paid employee to this litigation. Under these circumstances, I am satisfied that the application deserves to be allowed with costs.

5. In the result the application is allowed, the impugned order Annexure.A3 and recovery made in Annexure.A6 are quashed and the respondents are directed to pay to the applicant the amount of money recovered from his pay as is seen from Annexure.A6 towards damage rent/penal rent and also to pay him costs of Rs. 1000/- (Rupees one thousand) within two months from the date of receipt of a copy of this order.

Dated this the 19th day of September, 2003



A.V. HARIDASAN
VICE CHAIRMAN

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