

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 544 OF 2012

Friday, this the 28th day of June, 2013

CORAM:

HON'BLE DR.K.B.S RAJAN, JUDICIAL MEMBER

V.K Sabu Hari
S/o.V.K Kochan
Retired Chief Commercial Clerk
Trivandrum Division
Southern Railway
Trichur
Residing at Vadakksekara House
Gurunagar
Koorkancherry, Trichur

- Applicant

(By Advocate Mr.Martin G Thottan)

Versus

1. Union of India represented by the General Manager
Southern Railway
Park Town P.O
Chennai – 600 003

2. The Senior Divisional Personnel Officer
Southern Railway
Trivandrum Division, Trivandrum – 695 014

- Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 27.6.2013, the Tribunal on 28.06.2013 delivered the following:

ORDER

1. The applicant, a retired Chief Commercial Clerk, was functioning as Commercial Clerk at Thrissur in 2007. In November 2007, he was allotted a Type III



quarters at Thrissur. Hence, rent allowance was not paid after he had occupied the quarters and standard rent was deducted from his salary. In February 2009, the applicant had been transferred to Mulankunnathukavu and it was adjacent to Thrissur, which is said to be less than 8 Kilometers from Thrissur. It is the case of the applicant that on his transfer to Mulankunnathukavu, he had requested the respondents by the following three communications with reference to his continuation in Thrissur in the Railway quarters:-

- a. Letter dated 02.10.2009
- b. Letter dated 01.06.2011
- c. Letter dated 10.08.2011

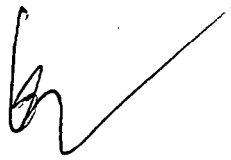
(Annexure A-3, A-4 and A-5 attached to the Rejoinder refer).

2. In the month of July 2011, the applicant had observed that his pay was reduced by a sum of Rs.5632/- and on enquiry he was informed that this is the penal rent charged for his unauthorized occupation of the Railway quarters for the period he was posted at Mulankunnathukavu. The applicant had preferred his representation in August 2011 and also vacated the accommodation by the same month. Later on, he had superannuated from service on 31 October 2011. The respondents have recovered a sum of Rs.1,41,857/- from his DCR Gratuity towards the penal rent charged by them. The applicant has preferred this Original Application challenging the said recovery and claiming the following main reliefs:-

"8.i) Declare that the action of the respondents in recovering a substantial amount from the applicant's salary and retirement benefits, in the pretext of damage rent is illegal.

ii) Direct the respondents to refund the entire amount recovered from the applicant's salary and retirement benefits in the pretext of damage rent, with 12% interest from 30.12.2011.

iii) Award costs of and incidental to this application "

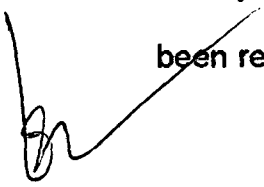


3 Respondents have contested the Original Application. According to them, the representations were not received by them and it is only an after thought.

4 It was at the rejoinder states that as indicated in par 1 above that the applicant had annexed the copies of the representations preferred by him. He has also mentioned that no response was made to the aforesaid representations.

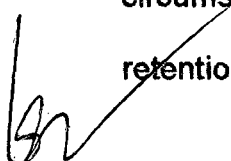
5 Counsel for the applicant submitted that Mulankunnathukavu is a station adjacent to Thrissur Railway Station and it is less than 8 Kilometers therefrom. There is no quarters available at the said station and those who are serving in that Railway Station are normally allotted accommodation only at Thrissur. Since the said place is very near to Thrissur, the applicant chose to continue the education of his children at Thrissur itself and accordingly, requested for retention of accommodation. In fact, his first communication related to change of accommodation at Thrissur itself as the house he was occupying was in a dilapidated condition. No house rent allowance has been paid to the applicant during his tenure at Mulankunnathukavu and in addition standard rent was continued to be deducted. There was absolutely no communication from the respondents either asking for vacation of accommodation or any advance notice relating to charging of penal rent. The applicant was under the bonafide impression that impliedly the respondents have allowed the applicant to continue in the said Railway quarters.

6 Counsel for the respondents submitted that as per the Rules in the event of transfers after the permissible period of retention, if the accommodation is not vacated, the individual becomes unauthorized to hold the accommodation by courting the liability to pay the penal rent. The so called representations did not seem to have been received.



7 Arguments were heard and documents perused.

8 Generally, a transfer within 8 kilometers is considered as a temporary transfer whereby transfer grant etc is not allowed. In such event, the individuals continue in the same accommodation allotted unless there is quarters attached to certain posts. In the instant case the applicant being only a Commercial Clerk and there being no specific accommodation allotted to him at Mulankunnathukavu, the Department could have easily considered his case giving permission to hold on with the accommodation at Thrissur. As a matter of fact, even that may not be warranted, in the instant case since the transfer cannot be construed to be a permanent transfer. As regards the representations, there has been endorsement of the local authorities in each of the representation and the representations were forwarded to the Senior DPO/TVC for consideration. There seems to be no attempt by the respondents to verify the records to ascertain whether these have been registered in the office of the Senior DPO, Trivandrum Central. Without due verification the respondents have stated that the representations were not received. Their contention therefore cannot be accepted. The applicant is otherwise eligible for accommodation. There is no accommodation available at Mulankunnathukavu. He being sufficiently senior to get accommodation, had he applied even afresh on joining at Mulankunnathukavu, he would have been afforded the accommodation only at Thrissur. All along, HRA has not been paid to him and the rent due has been duly recovered. There has been neither any show cause notice nor any direction to vacate the accommodation nor has the procedure if any, for eviction under the relevant Act been followed. Under these circumstances, the stand taken by the respondents that the applicant is not entitled to retention of the accommodation, cannot be justified or accepted.



9 In view of the above, the Original Application succeeds. The respondents are directed to release the with held DCRG for adjustment against the penal rent and they are also directed to refund the amount deducted from his salary before his retirement also. This order shall be complied within two months from the date of receipt of a copy of this order. No costs.



(DR.K.B.S.RAJAN)
JUDICIAL MEMBER

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