

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.548/2003

Friday this the 23rd day of December, 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

A. Divakaran,
Senior Commercial Clerk,
Southern Railway Siding,
Chalakkudi, Residing at No:9-D
Railway Quarters, Udagamandalam.
Nilgiris Dist. - 643 001. Applicant

(By Advocate Shri TC Govindaswamy)

Vs.

1. Union of India rep.by the General Manager,
Southern Railway, Head Quarters Office,
Chennai-3.
2. The Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Chennai-3.
3. The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.
5. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat. Respondents


(By Advocate Ms.P.K.Nandini)

The application having been heard on 23.12.05
the Tribunal on the same day delivered the following:

O R D E R (Oral)

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant, while working as Senior Commercial Clerk, Southern Railway, at
Udagamandalam (Ooty), Palghat Division in the scale of Rs.4000-6000/- was subjected



to a vigilance check on 15.9.2002. After two months a transfer order dated 18.11.2002 (A2) has been issued to him directing him to vacate the quarter. Aggrieved by the impugned order(A2) challenging the vacating of quarter, the applicant has filed this O.A. seeking the following main reliefs:

i. Call for the records leading to the issue of Annexure A2 and quash para 2 of the same to the extent it states that the applicant should vacate the Railway Quarters immediately.

ii. Declare that the applicant is entitled to occupy Railway Quarters No.9-D at Udagamandalam of Southern Railway of Palghat Division until he is transferred to Trivandrum Division on permanent basis (if at all) as provided in Annexure A9 and direct the respondents accordingly.

2. When the matter came up before the Bench, learned counsel for the respondents submitted that, as per the instructions of the Railway Board's letters dated 13.4.1989 (Annexure R-1) and Annexure R1(a) dated 27.6.2001, if an employee is subjected to any vigilance enquiry, he should be subjected to inter-divisional transfer.

3. The applicant was granted permission to retain the quarters till the end of the scholastic year (2002-2003) i.e. upto 19.4.2003. The permission granted above was subject to the conditions of payment of rent as per the extant provisions. The applicant was permitted to retain the Railway Quarters upto a maximum period of six months, on educational account, i.e. upto 19.4.2003 only. On expiry of two months, he is liable to pay double the normal rent and if the quarters is not vacated beyond the permitted period, action has to be taken to cancel the allotment and recover damage rent/initmate eviction proceedings. It is also contend that in terms of Annexure A-2 order, the transfer is not permanent to sever the lien. But it does not mean that the transfer is a temporary one. In terms of A-9, the temporary transfers should not exceed four months. Therefore, there is no merit in the O.A. and the same is liable to be dismissed.

4. Shri TC Govindaswamy, learned counsel appeared for the applicant and Ms. Nandini, learned counsel appeared for the respondents. Heard the counsel on both parties. I have given due consideration to the arguments advanced by them and the documents, evidence and material placed on record.

5. On going through Annexure A-2 impugned order in Clause 3, I find that the applicant's lien would be maintained at PGT Division for further avenues. In other words, the tranfer is not permanent to sever the lien. He is placed under the



administrative control of TVC Division. This arrangement would continue till further advice." Counsel for the applicant will argue that, from a reading of the said order it is clear that the applicant has not been transferred on a permanent manner, it was only a temporary transfer. He has also taken my attention to the rule position of the Railway Board's Orders as to the retention of railway quarters to the Railway employees, under the caption of temporary transfer. It is stated as follows:

"During the entire period of 'temporary' transfer an employee may be permitted to retain the quarters at former place of posting on payment of normal rent/flat rate of licence fee/rent. Temporary transfer should not, however, be ordered for a period of more than 4 months unless there are pressing circumstances."

6. The respondents have taken my attention to Annexure R-1, the paragraph 1 of which reads as under:

"As the Railways are aware, in terms of the existing orders, ticket checking staff detected to be indulging in mal-practices are required to be sent on inter-divisional transfer as a matter of policy. It was also clarified under Board's letter of even number dated 19.2.1986 that the ticket checking staff who were transferred out of the division on complaints of corruption and were later exonerated or awarded a penalty of censure, may not be brought back to the parent division, even if they so desire."

7. In the rejoinder filed by the applicant, the applicant has submitted that the decision to grant permission to retain the quarters for further time, has not been communicated to the applicant. In proof of this the respondents had not produced any document before the Bench. The applicant does not know when permission was granted – whether it was before the filing of the O.A. or after filing of the O.A.. If only the respondents had taken the decision in time and had sent the communication to the applicant, the applicant would have vacated the railway quarters in time. There were a number of vacant quarters and only normal rent was being recovered from his salary. All these factors made the applicant legitimately believe that the allotment of the applicant continues to be in force. The facts of the case is that, the extension of time for retention of quarters was granted by the respondents only upto 19.4.2003, and he




had vacated on 3.11.2004. Therefore, the respondents contend that, for the intervening period they are entitled to get the damage rent.

8. Learned counsel for the applicant on the other hand submitted that, had he received a communication regarding the grant of permission to retain the quarters upto 19.4.2003, he would have vacated the quarters in time and probably, the permission was so granted after the filing of this O.A. By an interim order dated 4.7.2003, this Court has stayed the impugned order and the vacation of the quarter has been withheld and therefore the applicant has continued till 2.11.2004. Considering the entire aspects of the case and the arguments advanced by the counsel for the parties, I am of the view that the applicant had continued in the quarters till 2.11.2003 because of the interim order given by this Court. The respondents have not produced any document to show that the permission granted to the applicant has been communicated. Probably which would have resulted in not vacating the quarters by the applicant and there is no rhyme/reason for overstay and the averment in the O.A. that he would have vacated the quarter had the matter has been communicated had some force.

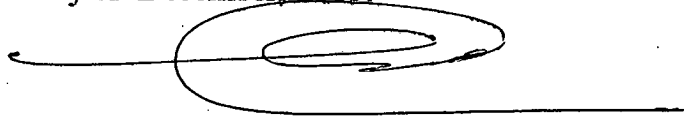
9. In the circumstances and the rule position discussed above, I am of the view that during the excess period that the applicant has occupied the quarter, they are not justified in recovering the damage rent, but however, they are at liberty to recover the penal rent during this period.

10. In the conspectus of facts and circumstances, I grant liberty to the respondents to recover the penal rent and not the damage rent as stated in Annexure A-2 and for that reason, A-2 is set aside and respondents are given liberty to recover the penal rent as per rule.



11. O.A. is allowed to that extent. In the circumstances, no order as to costs.

Dated the 23rd day of December, 2005.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

K.V.SACHIDANANDAN
JUDICIAL MEMBER