

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.121/97

Dated the 8th day of August, 1997.

CORAM:

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

R.Ravi,
Electrical Fitter/Grade II,
Southern Railway,
Coonoor.

..Applicant

(By Advocate Mr.T.C.G.Swamy)

vs.

1. Union of India through
The General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.
Madras-3.
2. The Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat.
3. The Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.
4. The Permanent Way Inspector,
(Section Engineer/Permanent Way),
Southern Railway,
Coonoor Railway Station,
Coonoor.
5. The Additional Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat.
6. Sri Sasidharan,
Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.

..Respondents

(By Advocate Mrs.Sumathi Dandapani (R1-5)

The Application having been heard on 28.7.1997, the Tribunal
on 8.8.97 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This application is directed against the memorandum dated 5.9.96 issued by the third respondent whereby the period of the applicant's occupation of Railway Quarter No.ONR-30 from 1.5.1994 to 11.10.95 was treated as unauthorised and it was proposed to recover damage rent for that period and to take up DAR for imposition of major penalty for unauthorised occupation of the quarter and against the order dated 9.12.96 of the 5th respondent rejecting his representation against the order of the third respondent as also the action taken by the respondents to recover from the pay and allowances of the applicant Rs.532/- per month towards damage rent. The facts of the case in brief can be stated thus.

2. The applicant is Electrical Fitter Grade II in the scale of Rs.1200-1800 in Southern Railway, Palghat Division. The applicant was allotted the quarter No.95-A at Coonoor. Owing to heavy rains and land slides the quarter was damaged and became unfit for human occupation. Under these circumstances, the 4th respondent who was the custodian of the various railway quarters at Coonoor permitted the applicant to occupy the Railway quarter No.ONR-30 belonging to the medical pool which was remaining unoccupied since 4.4.93 consequent on the closure of the health unit at Coonoor. The Inspector of Works, Coonoor had in his letter dated 26.4.94 addressed to the Sr.Divisional Personnel Officer, Palghat stated that the quarter No.ONR-30, Type V under medical pool was lying vacant since 4.4.93 consequent on the closure of the health unit at Coonoor, that it was found difficult to protect

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the quarter against theft of electrical fittings and parts of the building like the doors and windows etc. by antisocial elements as the quarter was remaining unoccupied, that permission might be granted for allotting the quarter to Class III staff on their demand and willingness to remit the higher rent and informing that Shri R.Ravi(the applicant), had expressed his willingness to occupy the quarter and to pay the higher licence fee. Approval was sought for allotment of the quarter to the applicant. The 4th respondent put the applicant in possession of the quarter No.ONR-30, Type V since the quarter in which he was earlier residing (95-A) was damaged. Higher rent of the quarter was being deducted from the pay and allowances of the applicant. The third respondent vide his letter dated 1.8.94 directed the IOW, Coonoor to advise the applicant to vacate the quarters and to allot to him any vacant quarters of eligible type from the Electrical pool (Annexure A-3). However, the 4th respondent did not call up on the applicant to vacate the quarter No.ONR-30, nor did he allot to him any quarter of the eligible type. The 4th respondent by his letter dated 11.8.94(Annexure-A4) informed the 5th respondent that with a view to prevent loss of revenue as also theft of the electrical fittings and parts of the building, in the absence of eligible occupier and as the quarter allotted to the applicant was not in a fit condition for human occupation, in public interest, the applicant was permitted to occupy the quarter No.ONR-30 and that the applicant might be permitted to occupy the same. Thereafter the 4th respondent by order dated 10.10.95(Annexure-A5) allotted the quarter No.ONR/26-B to

the applicant , directing him to vacate the quarter No.ONR-30 forthwith and to occupy quarter No.26-B. In obedience to the above order, the applicant on the very same date, i.e., 10.10.95 vacated the quarter No.ONR-30 and occupied the quarter No.ONR-26-B. However, the 5th respondent in his letter dated 26.10.95(Annexure-A6) addressed to the 4th respondent stated that it was understood that the applicant was still unauthorisedly occupying the quarter No.ONR-30, Type V which belonged to the medical pool and directed the 4th respondent to advise the applicant to vacate the quarter forthwith as the occupation was unauthorised and to apply for an eligible type of quarter. Referring to this letter, the 4th respondent sent a letter dated 10.11.95 to the third respondent explaining that it was in accordance with the instructions contained in the D.R.M., Palghat's letter that vacant quarters under medical pool might be allotted to subordinate staff on request for the purpose of avoiding loss of revenue and as the quarter No.95-A was damaged, that the quarters was allotted to the applicant and requesting that the occupation of the applicant of the quarters may be regularised and that no damage rent may be recovered from the applicant(Annexure-A7). It was also indicated in that letter that there was no theft of fittings from the quarter No.ONR-30 because the applicant was in occupation thereof and the quarter having been vacated by the applicant, was locked and handed over to the Pharmacist of the health unit. In the meanwhile, the applicant received a copy of the letter of the 5th respondent dated 21.11.95(Annexure-A8) which reads as follows:

"Sri R.Ravi, ELF/HS II/ONR may be asked to vacate the Qurs.No.ONR/30 Type V immediately. Otherwise

damage rate of rent will be recovered from him without any notice and DAR action will be taken against the employee. Please notify the employee."

In response to the letter, the applicant sent a letter to the third respondent through the Electrical Foreman, Mettupalayam informing that as the quarter No.ONR/26-B was allotted to him on 11.10.95, he had vacated the quarter No.ONR-30 on the same day and requesting him not to recover any damage rent from him. Thereafter the applicant received a notice in Form A issued by the Estate Officer stating that the applicant was in unauthorised occupation of the public premises namely the quarter No.ONR-30 and directing him to show cause why an order of eviction should not be passed. He was required to show cause on or before 25.1.96. On receipt of this notice the applicant sent a reply to the Estate Officer on 17.1.96 stating that he was not in unauthorised occupation of the quarter, that he had already vacated the quarter on 11.10.95 and that there was no need to pass an order of eviction. However, without any notice or order, the respondents started deducting a sum of Rs.532/- from January 96 onwards. The applicant sent letters dated 13.3.96 and 1.5.96 requesting not to recover any amount from his pay and allowances as he had not been guilty of unauthorised occupation of the quarter. The Junior Engineer(IOW) on behalf of the PWI informed the Senior Divisional Engineer, Palghat by his letter dated 15.6.96 that it was on account of the damage caused to the quarter in which the applicant was residing on account of the natural calamity that he was accommodated as an immediate

alternative measure in quarter No.ONR-30 during the year 1994. However, the applicant received the impugned order dated 5.9.96 (Annexure-A13) of the third respondent informing him that his occupation of the Railway quarter No.ONR-30 from 1.5.94 to 11.10.95 was unauthorised and that it was proposed to recover damage rate of rent for that period and to take up with the applicant under DAR for imposition of major penalty for unauthorised occupation. On receipt of Annexure-A13 the applicant submitted appeals dated 10.9.96, 16.9.96, 17.9.96 and 20.9.96 to various authorities (Annexure-A14(a) to A14(e)). The Divisional Engineer(Electrical),Palghat in his letter dated 24.9.96 (Annexure-A15) while forwarding the appeal submitted by the applicant to the Divisional Railway Manager,Palghat elaborately discussed the circumstances under which the applicant was put in possession of the quarter No.ONR-30 by the 4th respondent and opining that the occupation of quarter No.ONR-30 by the applicant from 1.5.94 to 11.10.95 could not be termed as unauthorised. However, in reply to the appeals addressed to the Divisional Railway Manager, the applicant received the order dated 9.12.96(Annexure-A16) turning down his appeal and stating that the impugned order at Annexure-A13 was in order. Aggrieved by Annexure-A13 and Annexure-A16 orders and by the action of the respondents in deducting a sum of Rs.532/- from the pay of the applicant, the applicant has filed this application under Section 19 of the Administrative Tribunals Act for the following reliefs:-

"(a) Declare that the deduction of Rs.532/- from the applicant's salary in the name of damages for occupation of Quarters No.ONR/30 from January 1996 is arbitrary and illegal.

(b) Direct the respondents to refund the amount of damages illegally deducted from the applicant's salary since January 1996.

- (c) Call for the records leading to the issue of Annexure A13 and 16 and quash the same.
- (d) Award costs of and incidental to this Original Application.
- (e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

It has been alleged in the application that the third respondent who has been impleaded in his personal capacity as the 5th respondent, for ulterior reasons without any application of mind to the facts and circumstances brought out in various representations made by him and in the letters of the 4th respondent who was the custodian of the quarters in question as also by the Divisional Electrical Engineer, unjustifiably held the occupation of the applicant of the quarter No. ONR-30 from 1.5.94 to 11.10.95 as unauthorised and ordered recovery of damage rent without even issuing a notice to the applicant to show cause why damage rent should not be recovered from him. It has also been alleged that the term 'damage rent' is a misnomer as according to the rules what is recoverable will be only damages or licence fee.

3. The second respondent has on behalf of the respondents 1 to 5 filed a reply statement in which it is inter alia contended that as the applicant himself has admitted in his letter (Annexure A2) that he has occupied the quarter in question without it being formally allotted to him, his occupation is unauthorised and that the damage rent of Rs.73,735/- being due, the action of the respondents in recovering this amount in monthly instalments of Rs.532/- is perfectly in order. It is also contended that as the applicant has been served with Annexure-A10 notice, his case that he was not given a notice

before starting the recovery is untenable and that in view of the finding of the Bangalore Bench of the Tribunal in O.A.16/94, no notice is necessary to be given before recovery of damage rent for unauthorised occupants of the Railway quarters. They have also placed reliance on the Railway Board letter No.F(X)I-86/11/9 dated 1.4.89 for recovery of the damage rent.

4. The 6th respondent has filed a separate reply statement in which he has denied the allegation that he has acted with ulterior motives and has stated that whatever orders he had issued were issued by him in good faith in his official capacity as the Divisional Personnel Officer.

5. Shri Govidaswamy, learned counsel of the applicant after referring to the various annexures placed on record, argued that the action of the respondents especially of the third respondent in characterising the applicant's occupation of the quarter No.ONR-30 as unauthorised and in recovering damage rent from him without any notice, was not only violation of the principles of natural justice but also arbitrary, capricious and without application of mind to the facts brought out in the applicant's representations, in the letters of the 4th respondent as also the letter written by the third respondent himself to the 4th respondent on 21.11.95(Annexure A8). The notice served in Form-A under the provisions of Section 4(1) and (2) of the Public Premises Eviction of Unauthorised Occupants Act,1971 on 10.1.96(Annexure-A10) to the applicant while he had already vacated the quarter on 10.10.95 and after the 4th respondent had reported this to the 3rd respondent in his letter dated 10.11.95(Annexure

A7) displays the callous nature in which action has been taken against the applicant by the third respondent, argued the counsel. The impugned orders (Annexures-A13 and A16) have been issued approaching the issue with a closed mind refusing to open eyes to the facts clearly narrated in the representations and therefore they are liable to be struck down, argued Shri Swamy. Sri Swamy further argued that the applicant having been unnecessarily harassed, the application deserves to be allowed with exemplary costs.

6. Smt. Dandapani, learned counsel of the respondents on the other hand argued that the applicant having been admitted that he was in possession of the quarter No. ONR-30 from 1.5.94 to 11.10.95 without any valid order of allotment, cannot seriously contend that his occupation was not unauthorised and therefore, the action of the respondents in recovering damage rate of rent from his pay and allowances, cannot be found fault with. She further argued that the case of the applicant that the recovery was effected without notice is baseless because by letter dated 21.11.95(Annexure-A8), it was made clear by the third respondent that damage rent would be recovered from the pay and allowances of the applicant and a notice had been issued to the applicant on 10.1.96(Annexure A10) wherein it was very clearly held that his occupation of the premises from 1.4.94 onwards was unauthorised.

7. It is true that no order of allotment in respect of quarter No. ONR-30 was issued by the competent authority allotting the quarter in the applicant's name. It is an

undisputed fact that quarter No.ONR-30 belongs to a higher type than what the applicant is entitled to get and that it belongs to the medical pool, while the applicant is from the engineering wing. Normally if a person is in occupation of a railway quarter which has not been allotted to him by a competent authority, his occupation can only be considered as unauthorised. The quarter which was allotted to the applicant was quarter No.95-A of the eligible type. The quarter which the applicant occupied from 1.5.94 to 11.10.95, as stated earlier was in the medical pool and of Type V. Apparently it would appear that the occupation of the applicant of the higher type without there being an allotment by the competent authority was unauthorised. But in the facts and circumstances of the case, can it be said that the applicant was in unauthorised occupation of the quarters ? The answer, according to me, is undoubtedly in the negative in view of what is contained in the letter of the 4th respondent dated 11.8.94(Annexure A4) addressed to the third respondent in which the 4th respondent, the custodian of the quarters in question had in unambiguous terms stated that he had considering the fact that there was no eligible officers to occupy the quarter in question, with a view to prevent theft of parts of the building and electrical fittings as also to avoid loss of revenue, permitted the applicant to occupy the quarter in the interest of administration with a specific understanding that he should vacate the quarter whenever the same is required for occupation of an eligible officer and on payment of higher rent. After this letter was written by

the fourth respondent on 10.10.95, the applicant was allotted quarter No.ONR-26B and he was directed to vacate quarter No.ONR-30 forthwith by the 4th respondent vide his letter dated 10.10.95. The applicant on the very same date vacated quarter No.ONR-30 and moved into quarter No.ONR-26B. After the applicant had vacated the quarter, on 26.10.95, the third respondent issued a letter to the 4th respondent(Annexure A6) stating that the occupation of medical pool Type V quarter No.ONR-30 by the applicant had not been agreed to and that he should be asked to vacate the quarters forthwith and to apply for an eligible type of the quarter. In reply to this letter, the 4th respondent sent the letter dated 10.11.95(Annexure A7) to the third respondent informing him that the applicant had already vacated the quarter No.ONR-30 on 10.10.95, that the quarter was occupied by the applicant for sometime as the 4th respondent had put in possession of the quarter as he was willing to pay the higher rent and as the quarter remained unoccupied and that such permission was granted in accordance with the instructions of the D.R.M.,Palghat that whenever quarters fall vacant and remain vacant for more than two months, to compensate the revenue loss, quarters may be allotted to other railway staff on request. The 4th respondent had made it clear that the occupation of the quarter by the applicant for some period being with his permission and in the circumstances explained, no damage rent may be levied from the applicant. Long after this letter was sent, on 21.11.95, the third respondent issued the Annexure-A8

letter which reads thus:

"Sri R.Ravi, ELF/HS II/ONR may be asked to vacate the Qrs No.ONR/30 Type V immediately. Otherwise damage rate of rent will be recovered from him without any notice and DAR action will be taken against the employee. Please notify the employee. "

In reply to this letter, the applicant on 27.11.95(Annexure A9) clearly stated that he occupied the quarter with the permission of the 4th respondent and that he had already vacated the quarter on 10.10.95. He requested that under these circumstances, no damage rent may be levied from him. It was after all these that the notice dated 10.1.96 (Annexure-A10) under sub-section (1) and (2) of Section 4 of Public Premises (Eviction of Unauthorised Occupants) Act,1971 was issued by the third respondent to the applicant for his eviction from quarter No.ONR-30. It is evident from Annexure-A10 that this notice was issued with no application of mind at all as the quarter had already been vacated by the applicant on 10.10.95 and the fact reported to the third respondent by the applicant and the 4th respondent, there was no necessity to issue a notice for the applicant's eviction. The third respondent has not either cared to look into the facts brought out in the letters by the 4th respondent and the applicant or the relevant papers were not brought to his notice by his subordinate staff. In any case the notice was unnecessary and issued without application of mind to the real facts. The recovery of the alleged damage rent from the pay and allowances of the applicant at a monthly rate of Rs.532/- was made without considering the fact that the applicant's

occupation was under permission from the 4th respondent who was the custodian of the quarters in administrative interest and that the higher rate of rent applicable to the quarter in question had already been collected from the applicant's pay and allowances at the appropriate time. When recovery was made from the pay and allowances of the applicant at the rate of Rs.532/- per month from January 1996 onwards, the applicant had sent two representations, one on 13.3.96 and the other on 1.5.96 to the third respondent requesting for stoppage of the recovery of the damage rent. He had also sent representations to the Divisional Railway Manager, Palghat, the third respondent and to the Additional Divisional Railway Manager, repeatedly. Copies of these representations are at Annexures A14 series. While so, he was served with the impugned order dated 5.9.96(Annexure-A13) wherein he was informed that it was proposed to treat the occupation of the quarter No.ONR-30 from 1.5.94 to 11.10.95 as unauthorised and to take up DAR proceedings against the applicant for imposition of major penalty. In response to the applicant's representation for waiving of the penal rent being recovered from his pay and allowances addressed to the Divisional Railway Manager, the applicant got the impugned order dated 9.12.96(Annexure-A16) informing him that the decision taken in Annexure-A13 was in order. In his representation addressed to all these authorities, the applicant had very clearly indicated the circumstances under which he came to occupy the quarter No.ONR-30 and explained that his occupation was not unauthorised. While forwarding the appeal submitted by the applicant to the

Divisional Railway Manager, the Sr.Divisional Engineer, Palghat had observed that the occupation of quarter No.ONR-30 by the applicant from 1.5.94 to 11.10.95 could not be treated as unauthorised for the reason that the applicant was allowed to occupy the quarter No.ONR-30 by the PWI as the quarter No.95-A in which the applicant was residing got damaged due to natural calamity, land slides etc. that the PWI permitted the applicant to occupy the quarter in administrative interest to prevent the loss to the railways on account of theft of electrical fittings and loss of revenue and that such permission was granted by the IOW/PWI is in tune with the instructions received from the Divisional Railway Manager to allot any type of quarter falling vacant for more than two months to staff irrespective of their eligibility if they were willing to pay the higher rent. The Junior Engineer who inspected the quarter No.95-A had again submitted a report to Sr.Divisional Engineer on 15.6.96(Annexure-A12) certifying that on inspection of the quarter No.95-A and on enquiry he came to know that the applicant was accommodated in quarter No.ONR-30 as the quarter No.95-A was badly damaged due to natural calamity and as the employee had to be shifted to an alternate accommodation. The respondents in their reply have taken a contention that the applicant had in his letter dated 11.5.94(Annexure A2) stated that he had again shifted to quarter No.95-A during January 1994 and had occupied the quarter thereafter with effect from 1.5.94 onwards and that this would prove that the applicant had occupied the quarter on 1.5.94 without being authorised by the 4th respondent.

This has been explained by the applicant in his letter addressed to the third respondent and the Divisional Railway Manager. He had stated that after he was accommodated in quarter No.ONR-30 he had not returned to quarter No.95-A as it had not been repaired and that he vacated quarter No.ONR-30 on 10.10.95 and moved into quarter No.ONR-26B which was allotted to him on the very same date. A reading of Annexure A3(letter dated 1.8.94) of the third respondent addressed to the 4th respondent, wherein the 4th respondent was directed to advise the applicant to vacate the quarter No.ONR-30 and to allot an eligible quarter to him shows that the explanation of the applicant is true to fact. It is also seen that the 4th respondent allotted an eligible quarter to the applicant only on 10.10.95 by Annexure-A5 order. All these matters have not been taken into account either before the recovery of damage rent from the pay and allowances of the applicant was commenced or at least while issuing the impugned order at Annexures A13 and A16 rejecting the applicant's legitimate request not to recover any damage rent from his pay and allowances as he had not been in unauthorised occupation of the quarter at all. In his memo dated 21.11.95(Annexure A8) , the third respondent had directed the PWI to advise the applicant to vacate the quarter No.ONR-30, Type V immediately. He had also stated in that letter that "otherwise damage rate of rent will be recovered from him without any notice and DAR action will be taken against the employee". A reading of Annexure A8 would show that the 3rd respondent deemed that the quarter in question had not been vacated by the

applicant on the date of issue of the letter and decided that unless it was vacated immediately, damage rent would be recovered from the applicant's pay and allowances and DAR action would be taken against him. In fact, admittedly, before that date on 10.10.95 itself the applicant had vacated the quarter. Therefore there was no justification at all for recovering damage rent from the applicant or to take up DAR action against him. The impugned orders at Annexures A13 and A16 and the action taken by the respondents in recovering damage rent from the pay and allowances of the applicant from January 1996 onwards, are therefore arbitrary, capricious, callous, without application of mind and opposed to all canons of justice. In this case a low paid employee has been subjected to undue harassment and he had been driven to the Court to seek justice unnecessarily on account of the indifferent, if not, malicious action on the part of some of the respondents.

8. In the light of what is stated above, the application is allowed. The impugned orders at Annexures A13 and A 16 are set aside. It is declared that the deduction of Rs.532/-p.m from the salary of the applicant in the name of damage for occupation of quarter No.ONR-30 from January 1996 is illegal and the respondents are directed not to make any recovery on the ground that the applicant was unauthorisedly in occupation of quarter No.ONR-30 from 1.5.94 to 11.10.95, to refund the amount

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already recovered from the pay and allowances of the applicant and to pay him a sum of Rs.1000/- as costs of this application, within a period of two months from the date of receipt of a copy of this order.

Dated the 8th August, 1997.



A.V. HARIDASAN
VICE CHAIRMAN

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