

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.132/96

Tuesday, this the 5th day of March, 1996.

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

N Krishnan,
Karumalloor,
Manakkappadi,
(via) Aluva.

- Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India through
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O., Madras-3.

2. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14.

3. The Railway Board,
Rail Bhavan,
New Delhi
through its Chairman.

- Respondents

By Advocate Mr George Joseph

The application having been heard on 5.3.96 the Tribunal
on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant seeks to quash Al, which states that applicant was
in unauthorised occupation of official residential accommodation from
2.5.88, and orders recovery of Rs.30,228.00. Though Al is seemingly in

the nature of a show cause notice, it is in effect a final order, as it has been acted upon and recovery effected taking advantage of the unequal bargaining capacity, the respondent-Railways enjoys.

2. In view of the urgency of the matter, namely, retirement of applicant and withholding of a large sum from his retiral benefits, we directed the matter to be posted for disposal on this day, and directed respondents to file their reply statement before 1.3.96. Before 1.3.96 no reply statement was filed and the averments stand uncontroverted.

3. Quite apart from that, the amount recovered is the amount said to be due from 2.5.88. Recovery was ordered only on 7.8.95. Though physically recovery was made from 15.3.95 that was without an order, leave alone notice or a predecisional hearing. It is only an illegal deprivation. The period of limitation will not run back to that date. A monetary claim arising in point of time three years prior to the claim cannot be enforced. Though this contention is not raised by applicant, since it is law declared by the Supreme Court under Article 141, we follow the same. (see M/s D Cawasji and Co; etc. Vs State of Mysore and another, AIR 1975 SC 813)

4. We quash the demand for the period prior to 7.8.92. The amount withheld for the period, till 7.8.92 will be paid to applicant within 15 days from today. If it is not so paid, it will carry interest at 18% from the day after 15 days of today till the date of payment, which any rate shall not be beyond six months of today. Even for the alleged liability for the period from 7.8.92 applicant cannot be made liable without an adjudication. Al does not refer to any notice or predecisional hearing. One gets the ..

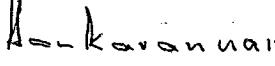
impression that the decision came like a bolt from the blue. If respondent-Railways desire to proceed in respect of the alleged claim after 7.8.92, they may do so, but only in accordance with requirements of natural justice, within four months from today, failing which that demand under Al also will stand quashed, with the liability to repay that amount within 15 days of the expiry of the four months from today with 18% interest thereon. In no event shall payment be delayed beyond six months from the date mentioned hereinbefore.

5. Original Application is allowed with costs which we fix at Rs.1000.00(Rupees one thousand).

Dated, the 5th March, 1996.


PV VENKATA KRISHNAN

ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

trs/63

LIST OF ANNEXURE

1. Annexure A1: A true copy of the letter No.V/P 483
of 07.8.95 issued by the second respondent.