

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.189/2003

Monday, this the 19th day of January, 2004.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.S.Ajayakumar,
Station Master Gr.II,
Southern Railway,
Quilon. - Applicant

By Advocate Mr TC Govindaswamy

Vs.

1. Union of India represented by
the General Manager,
Southern Railway,
Headqurters Office,
Pak Town.P.O.,
Madras-3.
2. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
4. The Secretary,
Housing Committee &
Assistant Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14. - Respondents

By Advocate Mr P.Haridas

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HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant is aggrieved by A-9 order dated
17.2.2003 whereby the General Manager, Southern Railway,

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Chennai has rejected the applicant's representation dated 1.12.2002 and upheld the decision of the Trivandrum Division in ordering the recovery of damage rent for the alleged unauthorised occupation of Railway quarters at Quilon.

2. The short facts of the case are : The applicant who was working as Station Master Grade-III at Quilon Railway Station was promoted and posted as Station Master in-Charge of Mayyanad Railway Station in April 1998. He was initially permitted to retain the quarters allotted to him at Quilon for a period of 2 months upto 19.6.98 on normal rent by A-1 Memo dated 20.7.98. In the said A-1 Memo, it was stated that on expiry of the permitted period of retention the allotment of quarters at the old station would be deemed to have been terminated automatically and continued retention would be treated as unauthorised occupation entailing damages, eviction etc. By A-2 letter dated 17.6.98, the applicant requested the 3rd respondent for permission for further retention of the Railway quarters at Quilon on the ground that he was not provided with any Railway quarters at Mayyanad and that he was not able to shift his family from Quilon on account of the medical treatment of his wife. By A-3 communication, the applicant was permitted to retain the quarters for a further period upto to 19.12.98 at double the normal rent. Although the applicant belonged to the essential category, no quarters were allotted at Mayyanad. The two Type-II quarters were at Mayyanad were under occupation of an Electrical Signal Maintainer with headquarters at Quilon and a Keyman with headquarters ^{at} Paravur. On 25.1.99, the applicant addressed a

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representation to the 2nd respondent (A-4) highlighting the above facts and pointing out that he was entitled to quarters at Mayyanad. Accordingly the applicant sought permission for continued occupation of quarters at Quilon till he was provided with quarters at Mayyanad. There was no response to the said letter. The applicant there upon made a further representation (A-5) dated 4.3.2000 to the 2nd respondent. It was also stated in the said letter that he stood first in the registration for transfer on request to Quilon and that since the demand for quarters at Quilon was very low, permission be granted to him to occupy the Quilon quarters on regular allotment to avoid penal rent. There was no reply to the applicant's representation but there was a recovery of an amount of Rs.1,518/- from the applicants salary for the wage period ending 10.10.2000. The applicant made A-6 representation requesting suspension of recovery from his salary and also to regularize the allotment of quarters at Quilon which was already under his occupation. In A-6 also the applicant had pointed out that the quarters at Mayyanad were under occupation of officials with headquarters at places other than Mayyanad. He also pointed out instances where Railway staff including Station Masters were provided with quarters at stations other than their official headquarters. A-6 too went unresponded to and the recovery of Rs.1,518/continued month after month without any notice and without orders in that regard. Under these circumstances the applicant filed O.A.201/2001 praying for a declaration that recovery of damage rent from the applicant was unsustainable. The Tribunal by interim order dated 1.2.2001 directed the

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respondents not to recover any damages/damage rent from the applicant's salary on account of occupation of the Railway quarters subject to the outcome of the O.A. During the pendency of the O.A., the applicant was transferred back to Quilon. The O.A. 201/2001 was disposed of by order dated 14.11.2002(A-7) permitting the applicant to submit a representation to the 1st respondent and directing the first respondent to consider the same and pass appropriate orders thereon. The interim order dated 1.2.2001 was directed to be kept in force vide A-7 order. The applicant ~~had~~ made a representation A-8 dated 1.12.2001 addressed to the 1st respondent as permitted by the Tribunal. Meanwhile, on 16.9.2002, the applicant vacated the quarters in question. The impugned A-9 order dated 17.2.2003 has been issued in purported compliance with the directions of this Tribunal as per A-7 order. Being aggrieved, the applicant has filed this O.A. seeking this Tribunal's order quashing impugned A-9 and directing the respondents to refund the damage/damage rent recovered from the applicant's salary since October, 2000 on account of occupation of Railway quarters at Quilon.

3. A reply statement has been filed by the respondents stating that the applicant failed to vacate the quarters as prescribed under the rules, that he was permitted to retain the quarters for a limited period on account of his wife's illness, that the continued occupation of the quarters at Quilon beyond the permitted period amounted to unauthorised occupation, that the quarters at Mayyanad were not earmarked for the Station Master and were occupied by the Railway staff

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who belonged to a different seniority pool for purposes of allotment of quarters and that when permission to retain the quarters was granted to the applicant, he was categorically notified that occupation of quarters beyond the permitted period would be treated as unauthorised occupation and action would be taken accordingly. The allotment of quarters outside the headquarters to some other staff would not entitle the applicant to retain the quarters at Quilon beyond the permitted period, according to the respondents. Railway quarters are generally allotted on the basis of vacancy and not on the basis of demand from the staff. It was incorrect to say that there was no demand for quarters at Quilon as large number of employees in the particular pool had registered their names for allotment and were waiting for their turn to come. The amount of recovery on damage/damage rent was determined in accordance with the Railway Board's instructions particularly those contained in R-2 and R-3. No special notice was necessary for effecting the recovery of damage rent. The respondents would rely on the Full Bench decision of C.A.T. Allahabad Bench in Ram Poojan Vs Union of India and another {1996 (34) ATC 434(FB) which was followed by this Bench of the Tribunal in O.A.1028/98. In any case, the applicant had been duly informed of the consequence of continued occupation beyond the permitted period. The O.A. was liable to be dismissed, it is urged.

4. The applicant has filed a rejoinder questioning the contentions in the reply statement and further stating that

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the respondents by their inaction in spite of various representations submitted by the applicant made the applicant believe that the quarters in question was being permitted to be retained by the applicant.

5. We have heard Shri TC Govindaswamy, learned counsel for the applicant and Shri P. Haridas, learned counsel for the respondents.

6. According to Shri Govindaswamy, the applicant on his transfer to Mayyanad, had requested for allotment of quarters at Mayyanad since he belonged to the essential category of employees with liability to be on 24 hours duty at the headquarters. But the 2 quarters which were available at Mayyanad were allowed to be occupied by persons having not headquarters at Mayyanad. Since the normal licence fee was being paid by those allottees, the applicant also ought to have been allowed to continue the quarters at Quilon on payment of normal licence fee or if that was not possible, the applicant ought to have been given quarters at Mayyanad. According to the learned counsel for the applicant, retention of the quarters at Quilon was not deliberate. The applicant had a genuine reason, first his wife's illness and secondly, the absence of a place of stay in Mayyanad which was hardly 4 or 5 miles from Quilon. It was duly appreciating the genuineness of the applicant's case that the Tribunal in O.A.121/2001 dated 14.11.2002 gave the applicant liberty to submit a representation to the first respondent himself through proper channel. The respondents were directed not to

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effect recovery or damage/damage rent as per the interim order dated 1.2.2001, the learned counsel would point out. Since continued occupation of the quarters at Quilon was neither fraudulent nor with a view to derive any undue advantage, the respondents ought to have appreciated that the applicant had eventually been retransferred to Quilon should also have been considered and the occupation of the quarters beyond the period apparently permitted by the respondents ought to have been regularised, Shri Govindaswamy would submit. He would invite our attention particularly to the decision of the Supreme Court in SC Bose Vs Comptroller and Auditor General of India and others etc. reported in 1995 SCC L&S, 1114 wherein the Apex Court had, on similar facts and circumstances, held that the Department was not justified in recovering penal rent and damages for occupying the accommodation from the Departmental Pool.

7. Shri Haridas, learned counsel for the respondents would contend that the applicant could not demand allotment of quarters as a matter of right. There was no residential quarters earmarked for Station Master at Mayyanad. The quarters available at Mayyanad were earmarked for Telecommunication Wing. Mayyanad was a place beyond 8 kilometers from Quilon and not 5 kilometers as alleged by the applicant. That being so, the applicant ought to have made his own arrangements for stay at Mayyanad where private residences could be found out without difficulty. The applicant's initial representation for retention of quarters

was favourably considered and reasonable time was allowed. The ratio of the Supreme Court's decision in the case cited by the applicant was not relevant to the facts of the present case as that was a case of continued occupation of Government accommodation in the departmental pool when the employee was actually entitled to allotment of accommodation in the general pool.

8. We have considered the facts of the case. We find that the applicant's request for retention of quarters allotted to him at Quilon on his transfer to Mayyanad where he joined on 20.4.98 was on account of his wife's illness, the educational compulsions concerning his children and the nonavailability of accommodation at Mayyanad. It is not disputed that the applicant belongs to the essential category of Railway employees. As a Station Master, he was obliged to be on essential duty at Mayyanad, his new headquarters even at odd hours, unlike other non-essential staff. It is also apparent from applicant's A-5 representation that the applicant's case stood at priority No.1 for request transfer back to Quilon. Though vacancy of a residential accommodation at Quilon did not confer any right on the applicant, it is a fact that quarters at Mayyanad was not made available to the applicant. Respondents may have their own reasons for allotting such quarters to others not headquartered at Mayyanad. It is also perhaps correct arguably that the applicant has no right for any allotment of quarters at Mayyanad. However, it was necessary for the administration to look into the special facts and circumstances of each case and

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take appropriate action to mitigate the genuine hardship to the staff. It was also necessary to see whether there was any fraudulent or questionable intention on the part of the applicant when he asked for retention of the quarters.

9. It was keeping in mind the above circumstances that this Tribunal had, on the earlier occasion, remitted the matter to the highest functionary of the Southern Railway for the purpose of considering the applicant's representation. It was expected that such representation should have been dealt with humanitarian consideration and administrative discretion. If the applicant's representation could not be considered, the administration should have been perfectly in order to ask the applicant to vacate the quarters within a specific time frame. But instead, representation has been turned down with the pain of damages/damage rent visiting upon the applicant. We find that persons stationed at Quilon and Paravur are occupying quarters at Mayyanad, that a person working as Station Master at Cheppad was allotted a quarter at Haripad, and that the vacancy position of quarters at Quilon was not so compelling as to cause urgent eviction of the applicant. While we desist from making any conclusions with regard to the eligibility of the applicant for allotment of quarters or retention of quarters at Quilon, all that we would like to observe is that the applicant's representation has not been considered with proper application of mind. The applicant's disclosure that the quarters at Mayyanad which were stated to be not earmarked for Station Masters were actually constructed for Station Masters in 1990, is worth mentioning. According to the applicant, these quarters were not allotted to the Station

Masters earlier probably on account of the fact that the then incumbents who were having their own houses in nearby places did not opt to stay there.

10. In S.C.Bose and another Vs Comptroller and Auditor General of India and others, the Hon'ble Supreme Court has considered a case where Auditors in the Postal and Telecommunication department who were occupying departmental pool accommodation on their transfer to the Branch Office i.e. Posts and Telecommunication Office at New Delhi continued to occupy the Government accommodation in the Department pool though on account of their transfer they became entitled to allotment of accommodation in general pool. In that case, general pool accommodation was not allotted to them and they continued to occupy accommodation allotted from the departmental pool. It eventually led to demand of penal rent and damages for continued occupation beyond the permitted period. Having regard to the facts, the Apex Court held that since officers were entitled to allotment of accommodation from the general pool and they have to stay in accommodation from the Departmental Pool on account of non-allotment of the accommodation from the General Pool, the department was not justified in recovering penal rent and damages for occupying the accommodation from the Departmental Pool. The facts in the instant case are different. The case before the Hon'ble Supreme Court was the justifiability of levy of penal rent in respect of continued occupation of departmental pool accommodation while the employee was entitled to general pool accommodation in the same place. But in the instant case, applicant who was working in Quilon was transferred to

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Mayyanad while he was in occupation of the quarters at Quilon. It is not as though he was transferred to some other branch in Quilon itself involving a change in the pool of accommodation. However, due to genuine reasons, he wanted to continue retention of the quarters at Quilon. He was not provided with quarters at Mayyanad though the duties and responsibilities would warrant such allotment. The Tribunal had asked the department to consider the factual back ground of the case and take an appropriate decision. Having regard to his special problems, the respondents transferred him back to Quilon at a later date. The Tribunal had asked the department to consider the factual back ground of the case and take an appropriate decision. In our considered view, the respondents were not justified in proceeding to treat the period of continued occupation of the quarters as unauthorised occupation entailing levy of penal/damage rent.

11. In the light of the facts discussed above, the period, during which the applicant is stated to have occupied the accommodation allotted at Quilon in respect of which the damage/damage rent has been and is being recovered as per the impugned order, in our opinion, should appropriately be treated as period of occupancy exigible to twice the monthly/licence fee. The respondents are therefore directed to treat the said period as ~~unauthorised~~ occupancy warranting levy of only twice the normal licence fee for the period beyond what is mentioned in A-3. The impugned order is set aside. Respondents are directed to refund the excess amount, if any,

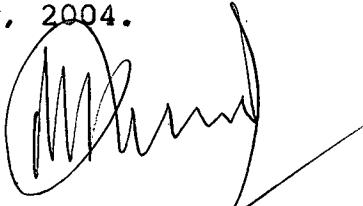
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recovered by way of damages/damage rent, as the case may be, after adjusting the amount of twice the normal licence fee calculated on the above lines. The consequential orders in this regard shall be issued with a copy to the applicant within two months from the date of receipt of copy of this order.

9. The O.A. is disposed of as above. There is no order as to costs.

Dated, the 19th January, 2004.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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