

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No.232 OF 2007

Monday this the 23rd day of July, 2007

CORAM :

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER**

K. Sivadas  
Shunter, Southern Railway  
Palghat Division, Erode  
Residing at III D, Railway Colony  
Erode : **Applicant**

(By Advocate Mr. Martin G Thottan )

Versus

1. Union of India represented by the General Manager  
Southern Railway, Chennai
2. The Additional Divisional Railway Manager  
Southern Railway, Palghat
3. The Senior Divisional Personnel Officer  
Southern Railway, Palghat : **Respondents**

(By Advocate Mr. Sunil Jose, ACGSC)

The application having been heard on 23.07.2007, the  
Tribunal on the same day delivered the following :

**ORDER**

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER**

The applicant challenges Annexure A-10 order dated 17.10.2005 whereby the respondents, holding the applicant as unauthorised occupant of Quarter No. 176-B, Type II, held the applicant liable to pay damage rent for the period of retention of accommodation beyond the authorised period. According to the respondents, the period of unauthorised occupation was from 18.10.2002 to 15.09.2005 and the extent of damage rent comes to a sum of Rs.1,45,981/-.

2. Briefly stated, the applicant while working as Shunter at Shoranur was allotted Railway quarter No.176-B, Type II. According to the applicant, the said quarter is in interior area, far away from the Railway Station. The applicant was transferred to Erode where he joined on 18.10.2002. The applicant had school going children and as such, he had not vacated the accommodation immediately. By June, 2003 the applicant has made a request for retention of his accommodation for a period of two years. He did not apply for any accommodation at the new duty station nor did he claim any house rent allowance when he was in the new duty station. According to the applicant, he was sanguinely hoping that his retention for accommodation would be favourably considered, more so when large number of Type II accommodation were vacant at Shoranur as there were no takers. Further, provision exists for such allotment of accommodation at one station on request made by the eligible employees serving in nearby station. Respondents in their inter departmental communication dated 03.02.2005 addressed to the Crew Controller, Shoranur advised him to furnish various information with a view to consider the request of the applicant. While Annexure A-7 letter dated 05.02.2005, the Crew Controller, Shoranur furnished the same which reflects that as many as seven Type II accommodation were vacant while the number of requisitions was only five. The reason for keeping the seven Type II accommodation vacant has also been given as " far away from crew booking center ". The CRC/SRR has

also stated " the request of the employee for regularisation is reasonable and can be admitted if necessary favourable orders passed accordingly." Thereafter, it was only by order dated 22.09.2005 (Annexure A-8) that the applicant was communicated about the revised damage rent for the accommodation held by the applicant from 18.10.2002 to 30.06.2004 and from 01.07.2004 to 15.09.2005. No recovery was actually effected and in the meantime the applicant filed Annexure A-9 representation dated 17.10.2005 wherein he had narrated sequences of his events, his requests etc. for his retention. It was on the said date of 17.10.2005 that Annexure A-10, the impugned order herein was also passed. The applicant thereafter on 11.09.2006 filed his representation against the charging of damage rent and requested the authorities to waive the same. Since no reply was forthcoming to his representation dated 11.09.2006, the applicant has filed this O.A in April, 2007 seeking the following reliefs:-

- (a) *To call for the records leading to Annexure A-10 and quash the same.*
- (b) *Direct the respondents not to recover any amount as damage rent from the applicant for the alleged unauthorised occupation of railway quarter at Shoranur.*
- (c) *Award costs of and incidental to this application.*
- (d) *Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

3. Respondents have contested the O.A. They have in their reply stated that the request of the applicant for retention of quarters at Shoranur was considered and disposed of vide Annexure A-10 order dated 17.10.2005. It has also been stated that the applicant had requested vide Annexure A-1 representation dated 10.06.2003 for retention of quarters at previous station (Shoranur) for a period of two years i.e., till March, 2005. The request of the applicant was examined in detail in the light of provisions that if no one comes forward from the staff Headquarters at the Station, the vacant quarter may be allotted to the nearby station staff on request. Accordingly the applicant was asked to produce certificate from the School authorities and the Quarters vacancy position at Shoranur was called for vide Annexure A-6. However, on examination, it was found that Erode Station where the applicant was transferred is not a nearby station and hence he cannot be allotted the quarters at Shoranur under the above provision. Further it was found that the applicant was transferred to Erode on 18.10.2002 but he had applied for retention only on 10.06.2003, thereby being on unauthorised occupation of quarters from 18.10.2002 to 10.06.2003. Hence the request of the applicant for retention of quarters at Shoranur was not agreed to and it was intimated to him vide Annexure A-10.

4. The applicant has filed rejoinder wherein he has reiterated his contentions raised in the O.A.

5. Counsel for applicant argued that when provision exists for retention of accommodation as admitted by the respondents in their reply, the applicant was hopeful of his request being favourably considered. His hope increased with the issue of Annexure A-6 order from the Divisional Office to the Office of the Crew Controller asking for various details. These details also were in favour of the applicant in as much as there were no takers for the accommodation and already seven quarters of the same type were vacant. Vacation of quarters held by the applicant would not have served any purpose of being allotted to somebody else in the queue, but only would swell an already swelled stage of many accommodations kept vacant. Counsel for applicant submits that no recovery has been effected and hence he could file his representation as on 11.09.2006 for consideration by the Department and since no reply was received, he filed this O.A in April, 2007, which is in time. Counsel for applicant relies upon the decision by this Tribunal dated 09.08.2006 in O.A.389/05 especially with reference to Para 15 which is as under :-

*" 15. In other words, at no station there was a situation that the applicant was allotted an accommodation but the same was refused by him and he had retained the earlier accommodation despite such allotment by the Railways. According to the applicant, he has sent many representations to Respondent No.3 (as averred in para 4 (e) but the same has been stoutly denied by the respondents who have stated that the applicant is put to strict proof. If the applicant proves his sincere effort in regard to either allotment of accommodation at the new*

*duty station or in regard to his retention of accommodation at the old duty station, non consideration of the same and omission to communicate timely reply to such representations would result in the respondents being contributory to the retention by the applicant of the accommodation for such a period declared by the respondents as unauthorized."*

6. Counsel for respondents submits that Annexures A-4 and A-8 orders were sufficient to make the applicant understand that he was not in authorised occupation of the accommodation. Further the order was passed on 17.10.2005 and as such if at all any representation could have been made by the applicant, it should have been immediately thereafter whereas the applicant had at his own leisure hours filed his representation and thus the question of limitation stares on the face of the case.

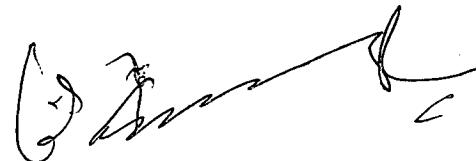
7. Arguments were heard and documents perused. The applicant had no doubt applied for retention on 10.06.2003 for a period of two years. There is no immediate response to the same as the respondents were considering the case of the applicant, it was as late as 03.02.2005 when the Divisional Office called for certain details from the Crew Controller's office, vide Annexure A-6. While this is so, in the reply it has been stated that on 'examination' it was found that Erode not being a nearby station to Shoranur, the applicant is not entitled to retention of accommodation. Divisional Office, which controls both Erode and Shoranur Stations fully well knows that Erode is far away

from Shoranur and it need not require any 'examination' to arrive at the conclusion that Erode is not a nearby station. Thus, reply seems to be an afterthought only. Evidently, in February, 2005 the matter was under consideration by the Divisional Office and vide Annexure A-7 the details furnished clearly shows that the accommodation held by the applicant was not at the cost of anybody in the waiting list. Retention, by the applicant of the said accommodation whereby he had to forgo house rent allowance and also to pay rent for the accommodation only served the purpose of the Railways in as much as atleast one house which otherwise would have kept vacant alongwith seven, occupied by the applicant. Again as stated in Para 15 of order dated 09.08.2006 in O.A.389/05 extracted above, non consideration of the request of the applicant and omission to communicate timely reply to such representations would result in the respondents being contributory to the retention by the applicant of the accommodation for such a period declared by the respondents as unauthorised. Strictly speaking Para 1(d) of Annexure R-1 order dated 30.11.2000 specifies that " for all occupations beyond the permitted period, immediate action should be taken to cancel the allotment, declare the occupation as unauthorised and initiate eviction proceeding charging damage rent for over stay ". Evidently no cancellation order had been passed in this case. Hence it has to be held that the case being under consideration till 17.10.2005, it cannot be held that the applicant was unauthorised occupation of the

accommodation till that date. If a period of two months is available for retention of accommodation in the old duty station, in the case of the applicant, the same shifts from 18.12.2002 (two months after his joining the new duty station) to 17.12.2005 (two months after rejection order has been communicated to the applicant). The applicant has however, surrendered accommodation on 26.04.2006. As such, under no circumstances, can he avoid his liability of payment of damage rent for the period beyond 17.12.2005.

8. **The O.A. is therefore, partly allowed.** It is held that the respondents cannot charge damage rent for the accommodation retained by the applicant till 17.12.2005. However, the applicant is liable to pay damage rent for the period from 17.12.2005 to 26.04.2006. Suitable action be taken accordingly. No costs.

Dated, the 23rd July, 2007.



**K.B.S.RAJAN  
JUDICIAL MEMBER**

vs