

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 234 of 1996.

Wednesday this the 15th October, 1997.

CORAM:

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

M. Padmanabhan Nair,  
Khalasi Helper, Southern Railway,  
S.No.J/ST/1001 Signals &  
Telecommunications, Department,  
Calicut, residing at:

Thenhipalam, Calicut.

.. Applicant

(By Advocate Shri P. Ramakrishnan)

Vs.

1. The Divisional Personnel Officer,  
Southern Railway, Palghat.

2. The Chief Signal Inspector,  
Department of Signal and  
Telecommunication, Southern  
Railway, Calicut.

.. Respondents

(By Advocate Shri P.A. Mohammed)

The application having been heard on 15th October, 1997,  
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant who is a Khalasi Helper in the Southern Railway was issued an order R-I dated 9.8.94 that the allotment of Railway quarters in his favour was cancelled. Pursuant to that, recoveries were made to the tune of Rs.2055/- from the salary of the applicant without any opportunity being given to him to contest the recovery. Thereafter, the applicant vacated the quarters. By order A-3 dated 6.12.95 a further amount of Rs.2028/- was directed to be recovered from the applicant in ten instalments from December 1995 onwards. Applicant challenges A-3 on the ground that the order of recovery was issued without any notice to him and

without giving him an opportunity to represent against recovery.

2. Respondents submit that a large number of instances of subletting of quarters have come to the notice of the respondents. With a view to identify such cases surprise inspections were made in different railway colonies and it was reported that the quarters occupied by the applicant was sublet to an outsider. The cancellation of the allotment and the recovery of damage rent was made in accordance with the instructions in that behalf. However, it was noticed that the damage rent was not calculated at the revised rate which was in force and the difference was ordered to be recovered by the impugned order A-3.

3. We do not find anything in the pleadings of the respondents to indicate the nature of the evidence available to the respondents on the basis of which they arrived at a conclusion that the applicant had sublet his quarters. The finding as seen from R-I was arrived at without any notice to the applicant and without giving him any opportunity to show cause against the cancellation of the quarters. Therefore, the cancellation itself by R-I is arbitrary and opposed to the principles of natural justice. Consequently, the order of recovery A-3 based on R-I also would be illegal. That apart, the impugned order of recovery has been issued without any notice to the applicant and without giving him an opportunity of being heard in the matter. We are, therefore, not able to sustain the impugned order A-3.

4. The reply statement filed on behalf of respondents is very unsatisfactory, to put it very mildly. No details of the allegation that was made against the applicant, if any, or of the inspection that was carried out to detect the subletting

by the applicant are given. It is only stated in A-2 that "the inspection was made by a competent official." When the inspection was carried out and by whom has not been revealed. There is no indication as to who or of what rank these competent officials are. A copy of the report alleged to have been made by the official inspecting the quarters is also not produced. The evidence which would support the charge of the respondents that the applicant had sublet the quarters is not even indicated in the reply statement.

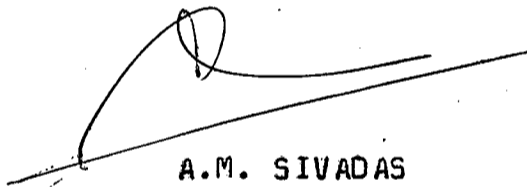
5. Learned counsel for respondents submits that all the details are available in the corresponding files. That is not enough. These details should have been furnished in the reply statement in order to enable the applicant to meet the charge of subletting and to enable the Tribunal to assess the validity of the decision to cancel the allotment of the quarters allotted to the applicant.

6. Learned counsel for respondents submits that in Ram Poojan Vs. Union of India and another (1996)34 ATC 434(FB) Allahabad, a Full Bench of the Tribunal held that no notice was required while cancelling the allotment. However, we find that the facts in that case are totally different. The decision of the Tribunal was that in respect of a railway employee in occupation of a railway accommodation no specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarters on transfer, retirement or otherwise, is necessary before further retention of the accommodation can be considered as unauthorised and penal/damage rent levied. It was also held that the retention of accommodation beyond the permissible period can automatically be considered as unauthorised without any specific order of cancellation of allotment and the penal/damage rent levied accordingly. In this case, there


is no expiry of any permissible/permitted period of retention of quarters which would attract automatic cancellation of allotment and beyond which occupation is to be deemed unauthorised. This is a case where a subsisting allotment of quarters is sought to be cancelled on the ground that the applicant had violated certain conditions of occupation and in such a case it is absolutely essential that the applicant be given notice of the violation he is alleged to have committed and given an opportunity to show cause against the charge that he had violated the rules under which the accommodation had been allotted. The decision referred to above, therefore, has no application in this case.

6. In the result, we quash A-3 and allow the application. The recovery, if any, made in pursuance of A-3, will be refunded to the applicant. No costs.

Dated the 15th October, 1997.



A.M. SIVADAS  
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

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LIST OF ANNEXURES

1. Annexure A2: Order No.J/P.555/CAO/IV dt. 28.12.94  
issued by the 1st respondent.
2. Annexure A3: Notice No.J/P483/MLS/Rent Roll dt.6.12.95  
issued by the 1st respondent.

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