

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 264/2004

Monday, this the 27th day of March, 2006.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

**P Ramachandran Nair,
Mate, O/o the Executive Engineer/Construction,
Southern Railway,
Ernakulam.**

Applicant

By Advocate Mr TC Govindaswamy

v.

1. **Union of India represented by the
General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.**
2. **The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum.**
3. **The Estate Officer,
Southern Railway,
Trivandrum Division, Trivandrum.**
4. **The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum.**
5. **The Executive Engineer/Construction,
Ernakulam.**
6. **The Deputy Chief Engineer,
Construction,
Southern Railway, Ernakulam.**

Respondents

By Advocate Mr P Haridas

**The application having been heard on 22.3.2006, the Tribunal on 27.3.2006
delivered the following:**



O R D E R

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

In this case, the applicant seeks certain reliefs from the action taken by the respondents pursuant to his alleged act of unauthorised occupation of Railway quarters.

2. The applicant is presently working as an ad hoc Mate under the Deputy Chief Engineer/Construction, Ernakulam (R-6). The facts of the case as collected from the records reveal that as a result of an accident on 30.4.98, he lost use of both legs. After the treatment, he rejoined duties on 9.4.2001. Despite his representation dated 9.4.2001 (A-2) for the allotment of Type-II quarters, he was allotted only a Type-I quarter vide memorandum (A-3) dated 30.4.2001. In view of the special needs of the applicant during the post operative life as well as of his family size with two grown up children, he made representations for allotment of Type-II quarters. Apparently he had not been staying in the allotted Type-I quarters and was staying in a private accommodation. When the latter was flooded due to heavy rains, making it impossible to continue staying therein, the applicant says that his neighbours and friends took him to a Type-II railway quarters No.144-C which was lying vacant at that time and helped him to occupy the same. This occupation started from 14.6.2001. Though not specifically admitted, the said quarters must have been forcibly got opened, making it an unauthorised occupation. He made a series of representations dated 26.6.2001, 7.7.2001, 5.1.2002, 3.5.2002 (A-6 to A-9). According to him, despite the nil response from the respondents, the applicant believed that the allotment will be regularised in his favour. The first-ever response came on 29.5.2002 (A-10) which is impugned. It was a notice from respondent-4, calling upon the applicant to vacate the unauthorized occupation, failing which DAR action would be initiated and informing him that due damages would be recovered from the salary from the date of unauthorized occupation and eviction proceedings would be taken under the Public Premises



(Eviction of Unauthorized Occupants) Act, 1971 (the Act, for short). Through another representation dated 23.6.2002, he sought regularisation of occupation of quarters No.144-C (A-11). In reply, he was served a show cause notice under the Act in Form-A vide A-12 proceedings dated 27.8.2002 by the Estate Officer (R-3). In that, he was asked to attend an enquiry at Divisional office, Trivandrum on a specified date. The applicant did not attend this enquiry. Instead, he made A-13 representation dated 10.9.2002 to respondent-3 followed by other dated 22.10.2002(A-14) and 24.10.2002(A-15). He received A-6 proceedings under sub section 5 of the Act (Form-B) dated 3.12.2002 calling upon him to vacate the said premises within 30 days of the date of publication of the order. This order has not been challenged. He made a further representation dated 20.12.2002 (A-18) before the General Manager, Southern Railway (R-1) making a plea for intervention against the A-16 order and regularising the occupation. Vide impugned order A-19 dated 4.1.2003, he was allotted a Type-II quarters out of turn but his request for regularisation of unauthorized occupation was not agreed to and recovery of damage rent at differential rates during the period from 22.6.2001 till the date of vacation of the previous occupied quarters was ordered. The HRA paid to him during the above period was also to be recovered from his salary. He made A-21 representation dated 13.1.2003 to the respondent-2 with a request not to recover damage rent. The recovery was started vide A-22. The applicant filed O.A.53/2003 challenging the A-10 of the present O.A. The O.A.53/2003 was disposed of vide A-23 order dated 25.9.2003 with a direction to the General Manager to consider the representation sympathetically and pass an appropriate order, staying till then, the intended recovery. In compliance of the above directions, his representation was disposed of by R-1 vide the impugned A-24 order dated 4.3.2004. He has come before the Tribunal challenging the three impugned orders, A-10, A-19 and A-24.

3. He seeks the following reliefs:

- Quashing of the impugned orders A-10, A-19 and A-24
- A declaration that the total non-feasance of the respondents to consider



regularisation as arbitrary, discriminatory and unconstitutional.

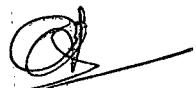
- A direction to regularise the occupation for the period from 22.6.2001 to 6.1.2003 and not to recover any damage rent from the salary.

4. He rests his case on the following grounds:

1. None of his representations were promptly acted upon.
2. A-19 amounts to a virtual conceding of the existence of special circumstances in his case and recovery of more than Rs.1 lakh runs contrary to such conceding.
3. The orders passed under A-14 shows lack of application of mind.

5. The respondents oppose the application. According to them, this application is hit by constructive resjudicata, by the earlier O.A 53/2003 covering the prayer in part, as it was observed by this Tribunal in that O.A "the occupation of the quarters by the applicant without it being allotted to him may amount to unauthorized occupation". The other points made by the respondents are as follows:

1. No enabling rules/instructions have been quoted for facilitating regularisation of unauthorized occupation and exoneration from payment of the damages. In fact there are no rules.
2. Allotment of accommodation is being done based upon the priority in the respective pools. A type-II quarters was not available in the Construction Pool to which the applicant belongs. Even the allotment of Type-I accommodation was made on 30.4.2001 on an out of turn basis, reckoning his special conditions. The applicant did not occupy, he broke open the lock of Type-II quarters which amount to trespass, notwithstanding the existence of his compelling circumstances. Such trespass naturally culminated in the levy of damage rents. His plea for regularisation came only after issue of A-10 orders dated 29.5.2002 was issued.
3. The present allotment was made of Type-II quarters which fell vacant on 21.11.2002 by an order dated 3.1.2003.
4. The law has been laid by the Hon'ble Apex Court in Union of India v. Rasila Ram & ors. [2002 SCC (L&S) 1016] that the Tribunals are not empowered to challenge the proceedings under the Act.



5. In any case, any relaxation would be against the orders of the Hon'ble High Court of Delhi in CWP No.5057 of 1999 and the Railway Board's letter dated 16.5.2002.

6. I have carefully considered the contentions of the learned counsel for both parties and documents produced by them. The learned counsel for the applicant brought to my notice two cases. 2005 SCC (L&S) 117 and 2003(2) ATJ (FB) CAT, Patna.

7. The first question to be decided is whether the applicant was in unauthorized occupation of the Type-II quarters No.i44-C. This point need not perhaps require further examination, in view of the virtual adjudication of the same issue in O.A.53/2003. The undisputed facts would show that the applicant did not get any allotment letter, he forcibly opened the said quarters which was in a locked and unallotted condition with the help of some others. The fact that he made representations would not mitigate the seriousness of the act of trespass and unauthorized occupation. Hence I find that he was in unauthorized occupation of the Type-II quarters concerned.

8. The question of applicability of two pronouncements made by the Hon'ble Apex Court on this question is to be considered now first, the learned counsel for the applicant had referred to 2005 SCC (L&S) 117. In this case, the quantum of penal rent demanded was in question. It was found by the Hon'ble Apex Court that the calculation of the said penal rent was based on a circular which was not applicable to in that case. Having found so, the Hon'ble Apex Court authorised the deduction. As regards this case, what is under question is the ordering of the penal rent per se and not the quantum as such. Nowhere has the applicant questioned the quantum as being against any rules/instructions. In a way, this ruling should actually fortify the action of the respondents in demanding the penal rent. As regards the ruling of the Hon'ble Apex Court in Union of India v. Rasila Ram and others [2002 SCC(L&S) 1016] what was ruled was, as pointed out by the respondents that the Tribunals are not empowered to examine the proceedings under the Act. The available records show only two documents A-



12 notice and A-16 notice for vacating the quarters issued under the provisions of the said Act. The said Act empowers the authorities concerned to realise damages etc. Neither of the two impugned orders A-10 or A-19 seems to have been passed under the provisions of the said Act. Hence, the above mentioned ruling does not appear to cover this case. While passing, it must be said that neither the R-1 nor R-2 documents produced by the respondents can be said to cover the present case.

9. On the question of regularisation of unauthorized occupation, the applicant has not brought to my notice any rules/instructions by which such regularisation can be done or powers thereon are invested on any authority concerned.

10. That leaves us only with the question of the quantum of damages. Vide A-19 impugned order, the damage rent relate to two time periods (a) from 22.6.2001 to 1.5.2002 @ Rs.43/- per sq.metre and (b)from 1.5.2002 till the date of vacation @ Rs.86/- per sq.metre. While the rights of the respondents to collect damages are well conceded, the relative contribution by both parties in the quantification thereof also needs assessment. As contended by the applicant, during the first period, he had made A-6, A-7, A-8, A-9 and A-11 representations with no response from the respondents till 27.8.2002. These five representations span a period of approximately 14 months. During the second spell, again the applicant had made A-13, A14, A-15 A-17, A-18, A-20 and A21 representations. The prolonged silence from the respondents side broken only by the impugned orders may fortify the case of the applicant of non-feasance. It must be said at this juncture, the mere fact of representation need not mean a positive response, but a response within a very reasonable time. The long silence apart from delaying a decision, either, is a determinant component on the quantum of damage rent. In the case 2003(2) ATJ, CAT (FB) Patna, referred to by the learned counsel for the applicant, almost identical questions of unauthorized occupation of Railway quarters and the resulting damage rent were involved. While adjudicating on the quantum, the learned Full Bench observed



as follows:

"As regards the direction to be given to the concerned respondent for considering the reduction in the amount so charged as damage rent, detailed above, the respondent No.1, the General Manager, North Eastern Railway, Gorakhpur, by exercising his prerogative and discretionary powers as to consider slicing the amount of damage rent reasonably accumulating by efflux of time to the tune of Rs.1,27,617/- to be paid by the applicant, a Lower Division Clerk, also keeping in mind certain observations made by the Hon'ble Member (Administrative) while giving dissenting note contained in paragraphs No.4&5. This exercise for consideration of slicing the damage rent for which the applicant is liable to pay, be completed within a period of two months from the date of receipt/production of a copy of this order."

I am of the view that the matter covered by the above case is near-identical to the present case. Conceding all the points against the applicant, like the alleged trespass, unauthorized occupation etc., it is still the long silence for giving a reply/decision one way or the other which has been detrimental to the applicant. The pathos is all the more aggravated while viewing the condition of the applicant who has practically lost both his legs leading to severe immobility. Last of all, the quantum of damages so resulting from the silence of the respondents has placed an unconscionable burden on such a low paid employee as the applicant. This silence becomes the one and only reason for reconsideration of the quantum of damages by the appropriate authorities.

11. The applicant has asked for quashing of A-10, A-19 and A-20 orders. In view of the unauthorized occupation, I am not inclined to pass any such order. In view of the non-production of any document which would show the competence of any authority for regularisation, I am equally unable to accede to the request of the applicant for directing the respondents to regularise the occupation and not to recover any damage. But, in consonance with the orders of the Full Bench of this Tribunal in the O.A mentioned above, I am of the view that the General Manager can still consider reduction of the damage rent recoverable from the applicant on account of i) the long silence of the



respondents in giving a response to the representations and (ii) the special disability of the applicant.

12. Hence, I direct respondent NO.1 shall reconsider the case of the applicant as relating to the damage rent for a possible reduction, keeping in mind the long time taken by the respondents in taking a decision and the human angle involved in this question and fix the same accordingly within a period of two months from the date of receipt of copy of this order. No costs.

Dated, 27th March, 2006.


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

trs