

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH



Common order
in
O.A.Nos. 760/03, 961/03 & 294/04

....WEDNESDAY.....this the 22nd day of March, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

OA 760/03:

R.Karunakaran,
S/o Parameswaran,
Staff Car Driver,
Divisional Railway Manager's Office,
Trivandrum residing at Railway
Quarter No.19-D, Thiruvananthapuram Applicant

(By Advocate Mr. M.P.Varkey)

V.

- 1 Union of India, represented by
General Manager,
Southern Railway,
Chennai.3.
- 2 Divisional Railway Manager,
Southern Railway,
Trivandrum.14.
- 3 Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum.14. Respondents

(By Advocate Mrs. Sumati Dandapani)

O.A.961/03

A.S.Ajayan, S/o Surendran,
Gate Keeper (Tfc), Southern Railway,
Ernakulam Junction,
residing at Railway Quarters No.Ty-I/30-C
Ernakulam Town,Kochi.18. Applicant

(By Advocate Mr. M.P.Varkey)

V.

- 1 Union of India, represented by General Manager, Southern Railway, Chennai.3.
- 2 Divisional Railway Manager, Southern Railway, Trivandrum.14.
- 3 Senior Divisional Personnel Officer, Southern Railway, Trivandrum.14.Respondents

(By Advocate Mr. Sunil Jose)

OA 294/04:

K.Gopinathan, S/o A.Kandan,
 Senior Clerk, Commercial Branch
 Southern Railway,
 Trivandrum. Residing at Jisha Bhavanam,
 Irumpanangad PO
 Ezhukone, Kollam.Applicant

(By Advocate Mr. M.P.Varkey)

V.

- 1 Union of India, represented by General Manager, Southern Railway, Chennai.3.
- 2 Divisional Railway Manager, Southern Railway., Trivandrum.14.
- 3 Senior Divisional Commercial Manager, Southern Railway, Trivandrum.14.
- 4 Divisional Commercial Manager, Southern Railway
 Trivandrum.14.
- 5 Senior Divisional Personnel Officer, Southern Railway, Trivandrum.14.Respondents

(By Advocate Mr.P. Haridas (rep by Ms. Deepa G. Pal)

These applications having been heard jointly on 8.3.06 , the Tribunal on 22.3.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

These O.As are identical in all respects and, therefore, they are disposed of by this common order.

2 The applicants in OA 760/03 and 294/04 are aggrieved by the same Memorandum No.V/P.555/Quarter dated 30.1.2003. It says that the DR/TVC has set up a committee to detect cases of sub letting/unauthorized occupation of Railway quarters at Trivandrum.

The Committee found the Railway Quarters allotted to 13 employees listed in the said Memorandum sub-letted. Two of them are the applicants in the aforesaid OAs. The committee submitted its report on 18.12.2002 and on the basis of the said report the DRM cancelled the allotment of the employees with effect from 18.12.02 itself and granted 15 days time to them to vacate the quarters. On non-vacation, they were informed that they will be treated as unauthorized occupants and damage rent will be charged in addition to initiation of eviction proceedings as well as departmental enquiry proceedings. The alleged sub-lettees also had their share of consequences. If they are Railway servants, they will also be subjected to the disciplinary proceedings and the House Rent Allowance payable to them will be stopped and the HRA received from 18.12.2002 should be refunded. The only difference in the case of OA 961/03 is that the quarter in question is in Ernakulam

and the date of cancellation is from 21.10.2002.

3 All the applicants have their own reasons for not having found in their respective quarters at the fateful time of inspection by the Committee and justifications for the presence of the alleged sub-tees in the quarter. They made representations against the cancellation order denying any sub-letting alleged by the respondents. The main complaint of the applicants is that they have been denied their basic right of hearing before the impugned action of cancellation of the quarters was taken. They are also aggrieved by the order of recovery of damages from them from the date of cancellation of the respective quarters in their name and the initiation of disciplinary proceedings on the very same grounds.

4 The respondents have filed their reply justifying their action of cancellation of the allotments in the names of the employees concerned, imposing damage rent on them from the date of cancellation and also initiation of eviction as well as disciplinary proceedings against them. They are silent on the ground taken by the Applicants that the impugned order has been passed without any show cause notice thereby violating the principles of natural justice. They have stated that it was not necessary to even give the names of the alleged sub-tees.

5 We have heard Shri M.P.Varkey, counsel appearing for the applicants and Smt.Sumati Dandapani, Shri Sunil Jose and Ms. Deep G. Pal for Mr. P.Haridas, counsels appearing for the

respondents. We have also perused the pleadings on record.

6 We are aghast at the manner in which the respondents have cancelled the accommodation allotted to the applicants. According to the impugned order, a committee constituted by the DRM visited the respective quarters and found some outsiders there but the applicants were not there. It is quite possible that actually the applicants must have sub-letted the quarters to some unauthorized persons in violation of the allotment rules. But it cannot be presumed for sure that the persons other than the allottee or members of his family found in the quarter will always be a sub-lettee. The reasons for the presence of an outsider in the quarter may be many. The respondents ought to have given sufficient opportunity to the applicants to explain as to why action should not be taken against them for the alleged sub-letting of the quarters against the rules. The DRM has straight-away cancelled the allotments in the name of these applicants from the respective dates the committee has submitted its report. We are of the considered opinion that the action of the respondents cancelling the quarter in the names of the applicants without affording a minimum opportunity of being heard to them is nothing but the height of arbitrariness. It is not that some of them may not be actually guilty of sub- letting their quarters to outsiders. But at the same time all of them cannot be accused of sub-letting unless it is proved against them. The same yardstick of arbitrary cancellation and other penal consequences cannot be

imposed upon both the innocent and guilty. It is, therefore, necessary for the respondents to identify the really guilty employee who in fact had sub-letted accommodation allotted to him. For this purpose, Railways should frame appropriate rules/procedure in consonance of the principles of natural justice by which cases of sub-letting can be detected and the delinquent employees can be punished. This Tribunal had an occasion to deal with such an arbitrary action of the authorities of the Southern Railway in OA 54/03. In that case the applicant was allotted the quarter in Ernakulam and his wife was employed in Kottayam. He was living with his sister and brother-in-law in the quarter. Suddenly a group of people visited his quarter on 22.10.02 and obtained the signature of his sister in a paper. The Sr.DPO straight away cancelled the accommodation giving him 15 days time to vacate the accommodation and threatened that if he does not vacate penal rent will be charged from him. Under threat he had to vacate the accommodation. Even then an amount of Rs. 3772/- was recovered from him as penal rent. This Tribunal observed that before the cancellation of the quarter on the allegation of sub-letting, the applicant was not even given a notice or opportunity to substantiate that he has not been guilty of sub-letting of the quarter warranting cancellation of allotment, recovery of penal rent or initiation of disciplinary proceedings. It is further observed that the audi alteram partem is the basic requirement before passing any order which

visits its recipient with adverse civil consequences. This Tribunal therefore, allowed the OA and quashed and set aside the cancellation order and recovery of penal rent and imposed a cost of Rs. 1000/- to be paid to the applicant in that case.

7. The power in the hands of the authorities have to be used in accordance with rules and in consonance with the principles of natural justice. No man can be condemned without having heard. Even God has given an opportunity to be heard to Adam before he was thrown out from the garden of eden. It is a famous saying that "power corrupts and absolute power corrupts absolutely". In a society where rule of law prevails, such arbitrary exercise of power cannot be allowed. We have, therefore, no option but to condemn the manner in which the concerned officials in the respondent department have dealt with the cases of these applicants. It is understood that the applicant in OA. 961/03 has been inflicted with a minor penalty of warning and the applicant in OA. 294/04 has been awarded a minor penalty of withholding one increment. The applicant in OA 294/04 had to even vacate the accommodation in distress as the respondents have started recovering huge penal rent of Rs..4386/- p.m from him.

8 *In Union of India and another Vs. Sudhir Kumar Jaiswal 1994 (2) SLR 674* the Supreme Court has held as

under:

"..... because after Article 14 has spread its wing in the field of administrative law following what was principally held in *Maneka Gandhi's case*, AIR 1978 SC 591, no stand can be taken by any administrative authority that it can act arbitrarily. Indeed, even before the decision in *Maneka Gandhi*, law was that no administrative authority has absolute discretion to decide a matter within its competence the way it chooses. This has been the accepted position and this court had cited with approval what had been stated in this regard in *United States Vs. Wunderlich*, 1951(342) US 98, the relevant part of which reads as follows:

Law has reached its finest moments, when it has freed men from unlimited discretion of some ruler, some official, some bureaucrat. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other invention".

In Kumon Mandal Vikas Nigam Ltd. Vs. Girija Shankar Pant and others, (2001) 1 SCC 182 the Apex Court held as under:

"Since the decision of this Court in *Kraipak case* (A.K.Kraipak V. Union of India (1969 2 SCC 262) one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice.

The Hon'ble Supreme Court in a recent case of *Canara Bank Vs. V.K.Aswathy*, ATJ 2005(3) SC 627 has observed as under:

"Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

9 We therefore, allow these OAs and quash the impugned

Memorandum No.V/P.555/Quarter dated 30.1.03 in O.As 760/03 & 294/04 and Memorandum dated 5.11.02 in OA 961/03. We also quash and set aside all the consequential action taken/orders already issued in these cases including levying of damage/penal rent, initiation of eviction proceedings, if any and the disciplinary proceedings. The respondents are directed to refund the amount of damage/penalty charges recovered from the applicants concerned. The penalty orders imposed on the applicants are also quashed and set aside. In cases where the Applicants had to vacate the quarters, on making representations, they shall be allotted suitable accommodation on priority basis. Considering the fact that the Respondents in these O.As also have perpetuated the same illegal action in spite of imposition of Rs. 1000/- as cost in OA 54/03, we are constrained to order the Respondents to pay cost of Rs. 2000/- (Two thousand) to each of the Applicants. The respondents shall comply with the above directions within two months from the date of receipt of this order.

Dated this the 22nd day of March, 2006

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

S.

CERTIFIED TRUE COPY

Date 2006

Section Officer (Judl)