

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 340 OF 2009

Thursday, this the 18th day of February, 2010.

CORAM:

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

R. Raveendran Nair,
Helper Grade II/C&W/ERM-CD,
Southern Railway, Ernakulam.

... Applicant

(By Advocate Mr. K.A. Abraham)

versus

1. Union of India represented by the
Secretary, Ministry of Railways,
Rail Bhavan, New Delhi.
2. Senior Divisional Mechanical Engineer,
Southern Railway, Trivandrum.
3. Divisional Personnel Officer,
Southern Railway, Trivandrum. ... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 18.02.2010, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the action of the respondents in recovering Rs.5,148/- from the salary of the applicant for the month of April, 2009 as reflected in Annexure A13 Salary Slip for the said month.

2. The brief facts of the case are that the applicant was allotted Railway Quarter No.146A at Thampannur, Trivandrum for his official use. The applicant was removed from service w.e.f. 06.03.2008 vide Annexure A1 advice order No.V/M 226/XIV/C&W 14(1) R.R.N. dated 06.03.2008. The



Appellate Authority modified the aforesaid order and reinstated him in service by imposing a lower penalty of reduction to the post of Helper Gr.II (C&W) in the scale of Rs.2550-3200 at pay Rs.2550/- for five years (R) vide Annexure A2 order No.V/P.227/A/2008/37/Mechl. dated 30.07.2008. Along with the said order, he was also transferred to Ernakulam for a period of five years. However, during the pendency of the appeal, the respondents had issued Annexure A6 notice dated 15.05.2008 to the applicant stating that he was an unauthorized occupant of the aforesaid Railway quarter and he has not vacated it in spite of repeated requests and to show cause as to why an order of eviction should not be made against him in terms of Section 4, Subsection (1) of the Public Premises (Eviction of unauthorized occupants) Act, 1971. He was also given a personal hearing on 09.06.2008. In reply to the said show cause notice, the applicant made the Annexure A7 representation dated 20.06.2008 to the Divisional Railway Manager (Works), Trivandrum. However, the respondents have not proceeded further under the aforesaid Act to evict him from the premises. The applicant, has, therefore, submitted Annexure A8 representation dated 01.09.2008 to the Sr. DPO, Trivandrum Division stating that since, as per the Appellate Authority's order, he has already been reinstated in the service and thereafter he was transferred to Ernakulam, he should be allowed to retain the said accommodation on the ground that he has got two daughters, both totally deaf and dumb and one partially blind, studying in an institution for handicapped person at Trivandrum and he is not in a position to shift his family to Ernakulam. Thereafter, the respondents issued the Annexure A11 letter No.V/P 555/QRS/Retention dated 09.02.2009 directing the applicant to furnish the details regarding the institution in which his daughters were studying, whether it was affiliated to any University or not, when their academic year started, etc. The applicant submitted a



certificate from the National Institute of Speech and Hearing stating that Ms. Naveena L.R., one of the daughters of the applicant was a student of Bachelor in Fine Arts (BFA) course (2008-12 batch) and that the said course was affiliated to University of Kerala and the academic year begins in June every year. Thereafter, according to the applicant, the respondents have not taken any action in the matter and the amount of Rs.5,148/- was recovered as penal rent from his salary for the month of April, 2009 without any further notice.

3. The applicant challenged the aforesaid action of the respondents on the ground that he was liable to be charged only normal rent or single flat rate of license fee/double the rent/market rent in accordance with rules particularly in terms of Annexure A12 order P.B.C. No.91/2001 issued by the Railway Board regarding retention of railway quarter on transfer, deputation, retirement, etc., which reads as under :-

**"RETENTION OF RAILWAY QUARTER ON
TRANSFER, DEPUTATION, RETIREMENT, ETC.**

R.B.E No. 100/2001

P. B. C. No. 91/2001

Copy of Board's Letter No. E(6)2000
QRI-23 dated 01.06.2001 on the subject cited for
information and guidance.

Board's letter dated 30.11.2000 referred
to therein has been circulated as PBC No. 190/2000
dated 18.12.2000.

Retention of Railway quarter on transfer,
deputation, retirement, etc.

The instructions governing retention of
Railway accommodation by Railway employees in the
event of their transfer, deputation, retirement etc, as
contained in Ministry of Railways (Railway Board)'s
letter of even number dated 30-11-2000, have been
further reviewed by the Railway Board and it has been
decided to revise/modify the said instructions as
under:-



1. Permanent Transfer:

- (a) A Railway employee on transfer from one station to another which necessitates change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of two months on payment of normal rent or single flat rate of licence fee. On request by the employee, on educational or sickness account, the period of retention of Railway accommodation may be extended for a further period of six months on payment of special licence fee, i.e, double the flat rate of licence fee / rent. Further extension beyond the aforesaid period may be granted on educational ground only, to cover the academic session in which he/she was transferred on payment of special licence fee.

Beyond the permitted/permissible limits, however, no further extension will be allowed on any ground whatsoever. Therefore, no request or representation on this score shall be entertained. For all occupations beyond the permitted period, immediate action should be taken to cancel the allotment, declare the occupation as unauthorized and initiate eviction proceedings, charging damage rent for the over-stay.

- (b) Where the request made for retention of Railway quarter is on ground of sickness of self or a dependent member of the family of the Railway employee, he will be required to produce the requisite Medical Certificate from the authorized Railway Medical Officer for the purpose.
- (c) In the event of transfer during the mid-school/college academic session, the permission to be granted by the competent authority for retention of railway accommodation in terms of item (a) above will be subject to his production of the necessary Certificates from the concerned school/college authority.

2. Railway Officers/staff proceedings on deputation to newly formed Railway Public Sector Undertakings/Societies.

Railway officers/staff posted on deputation to newly formed Railway Public Sector

Undertakings /Societies may be permitted to retain Railway accommodation but this facility can be provided by the Board on merits on a request by the PSUs and will be applicable only for a period of five years from the date of incorporation of the PSU/Society. Rent chargeable will be at normal rate (flat rate of licence fee) for a period of two months. On request of the employee, the period of retention of railway accommodation may be extended for an overall period up to five years from the date of incorporation of the PSU/Society, on payment by the PSU/Society to the Railways, an amount equivalent to the house rent allowance admissible to the officer plus the flat rate of licence fee prescribed by the Railways from time to time in respect of the said Railway accommodation. The concerned PSU/Society may, however, recover normal licence fee from the Railway employee.

3. Railway officers/staff proceeding on deputation to other PSUs etc.

Railway officers/staff posted on deputation to other Railway and non-Railway PSUs/Societies already established for more than five years would be permitted to retain the Railway quarters only for a period of two months on normal rent chargeable from the date they have joined Public Sector Unit. After this period, they will be treated as unauthorized occupants and action taken accordingly.

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This letter supersedes Railway Board's letter of even number dated 30.11.2000.

This issues with the concurrence of the Finance Directorate of Ministry of Railways (Railway Board) and the approval of this Hon'ble Minister for Railways. No. P(R) 555/P/Vol.VI dated 13.6.2001."

4. The respondents in their reply has submitted that the applicant's case was considered in accordance with the aforesaid railway board order, P.B.C. No.91/2001 which provides for retention of quarters on educational grounds, initially for two months on payment of normal rent or single flat rate of license fee and for further period to cover the current academic session in



which he was transferred on payment of special license fee. They have further submitted that the maximum period for which permission could be given was upto the period ending the current academic session in which he was transferred. However, in the case of the applicant, those instructions were not applicable as he was removed from service on 06.03.2008. According to them, as per the instructions of the Railway Board's letter No.E(G) 85/R1-9 dated 15.01.1990, an employee removed from service is permitted to retain the Railway quarters for a period of only one month on payment of normal rent/flat rate of license fee and accordingly, on his request the applicant has already been granted permission to retain the said quarters for the period from 06.03.2008 to 05.04.2008 vide letter No.V/P.555/Qrs/Retention dated 22.10.2008, but the same was not challenged by him at any stage. They have, therefore, submitted that, the retention of the accommodation beyond 05.04.2008 is unauthorized and the applicant has to pay market rent. They have further submitted that the applicant's daughter joined the BFA Course only in June 2008, which was during the period of his unauthorized occupation of Railway Quarters and hence he cannot claim for retention of quarters on academic grounds.


5. The applicant has filed a rejoinder stating that in pursuance of Appellate Authority's Annexure A2 order dated 30.07.2008, he has joined Ernakulam office but he was posted back to Trivandrum on 10.07.2009. He has, therefore, submitted that the only incident which has any impact on his retention of the accommodation is the said order of the Appellate Authority and nothing else. Accordingly, he can retain his accommodation for two months from 30.07.2008 to 30.09.2008 on payment of normal rent or single flat rate of license fee and thereafter, on his request on educational/sickness account, the



period of retention can be extended for a further period of six months i.e., upto 30.03.2009 on payment of special fee i.e., double the flat rate of license fee/rent. The question of payment of any enforced rent would arise only thereafter. Since he has already posted back to Trivandrum on 10.07.2009, his liability for payment of the enforced rent is limited to the period from 31.03.2009 to 09.07.2009.

6. We have heard Shri. K.A. Abraham, learned counsel for the applicant and Shri. Thomas Mathew Nellimoottil, learned counsel for the respondents. The undisputed facts in this case are that the Disciplinary Authority has issued order removing the applicant from service w.e.f. 06.03.2008, but the Appellate Authority has modified the said order by imposing a minor penalty of reduction to the lower post of Helper Gr.II (C&W) and transferring him to Ernakulam, vide Annexure A2 order dated 30.07.2008. Therefore, the contention of the respondents that the applicant is liable to pay damage/market rate of rent after the expiry of one month from the date of removal from service is not at all tenable. Once the Appellate Authority has modified the Disciplinary Authority's order, it does not exist any more. Therefore, the provisions of the Annexure A12 Railway Board's Circular, P.B.C. No.91/2001 would apply in his case as an employee who has been transferred from one place to another.

7. Accordingly, we dispose of this O.A. by holding that the applicant was in service at Trivandrum upto 30.07.2008. On his transfer to Ernakulam, he is liable to pay only the normal rent or single flat rate of license fee for two months i.e., from 31.07.2008 to 30.09.2008 and special fee i.e., double the flat rate of license fee/rent for 6 months i.e., from 30.09.2008 to 30.03.2009. As the applicant has already been posted back to Trivandrum on 10.07.2009, the



aforesaid accommodation shall be regularized in his name from the said date and for the period from 31.03.2009 to 09.07.2009, the applicant is liable to pay rent/market rent as per the existing rules/instructions for which the respondents shall give him a bill within two months after taking into consideration of his rental liability as stated above and after adjusting the amount already recovered from him including the amount of Rs.5,148/- recovered from his salary for the month of April, 2009.

8. There shall be no order as to cost.

(Dated, the 18th February, 2010.)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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