

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 376 of 1996

Monday this the 10th day of June, 1996.

CORAM

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

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

P.K.Gangadharan, Fitter,
Grade I, Southern Railway,
Coonoor, residing at
Railway Quarters No.163-F
Ganeshagiri, Shornur.

.... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Vs.

1. Union of India through the
General Manager,
Southern Railway,
Headquarters Office, Park Town PO,
Madras.3.
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Senior Divisional Personnel Officer
Southern Railway, Palghat Division,
Palghat.

.... Respondents

(By Advocate Mr. P.A.Mohammed, Standing counsel for Railways)

The application having been heard on 10th June, 1996
the Tribunal on the same day delivered the following:

O R D E R

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Applicant seeks a declaration that deduction
of "damages/damaged rent" from his salary is illegal.

2. Applicant was occupying Railway Quarters 163-F
at Shornur, since 7.4.87 when he was transferred to
Coonoor, where he joined on 6.6.94. On the assumption
that he continued in occupation of the quarters aforesaid
illegally Rs.1418/- per month was deducted from his
salary bill for November, '95 and Rs.1919/-thereafter till
Feb.1996.

contd....

Admittedly no notice or adjudication or predecisional hearing, preceded recovery. That is under challenge.

3. Counsel for applicant submits that recovery cannot be made, without hearing the person who will be affected, considering his defence. In answer, learned counsel for Railways submitted that in cases like this no notice is required and that the rule of natural justice has no application. According to counsel unauthorised occupation can be presumed and the rates of "damages", fixed by the Railway Board can be applied, even without any enquiry. To lace his contentions, he relied on two decisions of the Bangalore and Calcutta Benches of the Tribunal. The decision of the Calcutta Bench in Sankar and others Vs. Union of India and others, 1994 (26) ATC 278 dealt with a similar case. It considered the question whether Public Premises (Eviction of Unauthorised Occupants) Act, 1971 applies to such cases, in great detail. The Bench concluded:

"We are of the view that if somebody is doing illegal and unauthorised act, namely occupying the Railway quarter unauthorisedly and when in terms of the relevant Railway Board's Circulars, which the applicants as Railway Servants are presumed to know, the same can be recovered from the salary.... We cannot challenge such action of the respondents only on the ground that prior show cause notice was not given to the applicants"

(emphasis supplied)

The Bench did not discuss the law on the subject, and it proceeded on the basis that the applicant before it:

"is doing an illegal and unauthorised act"

contd....

These observations must be confined to the facts of that case. It is settled law in this country, that the rule 'audi alteram partem' demands adherence before passing any order causing deprivation or detriment to a party. Hearing a party before taking a decision adverse to him, is one of the fundamental principles which have received strict observance in our system of law.

4. As observed by Lord Buckmaster in T.B.Barrett Vs. African Products Limited (AIR 1928 PC 261):

"No forms or procedure should ever be permitted to exclude the presentation of a litigant's defence."

Even in the absence of a provision in procedural laws, power inheres in judicial or quasi judicial forum, to adopt modalities necessary to achieve requirements of natural justice and fairplay. It has been a cherished principle atleast in all English speaking countries that a hearing, is a prelude to fair determination. Sir Edward Coke articulated this requirement as the need to:

"Vocate, interrogate and adjudicate".

In Bentley's case, the principle received further affirmation, when it was stated that "the laws of God and man give the party an opportunity of making his defence". In Dhani Devi Vs. S.B.Sharma, AIR 1970 SC 759, the Apex Court found power in Courts and Tribunals even in the absence of a specific provision, to devise reasonable procedure necessary to achieve the mandates of natural justice. In Binapani Dei's case (AIR 1967 SC 1269) the court observed:

contd....

"even an administrative order which involves civil consequences must be made consistent with the rules of natural justice, after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity of being heard and meeting or explaining the evidence."

(emphasis supplied)

Principles of natural justice have been chiselled, honed and refined enriching its content, by courts. Authorities are legion where the highest court in the country has pointed out that a pre-decisional hearing, and an opportunity to show cause, are fundamental to any adjudicatory process. It may be that the party ultimately has no effective cause to show, nor defence to make. But that is no reason to presume that he will have no defence. There may be cases where a party may have innumerable defences, depending on the particularity of the facts and the ingenuity of mind. The decision making body cannot make facile assumptions that the act of the party is defenceless. This will be 'pre-judging' the case. Applicant herein has a specific case that he was not granted House Rent Allowance at Coonoor, in lieu of his occupation of the quarters in question (Ground 'D'). He has a case of estoppel. There could be cases, where amounts are recovered in excess, where credits are not given to certain payments, or where there are arithmetical errors in calculation or cases of mistaken identity. Such cases would require adjudication. It is too much to credit respondents with infallibility

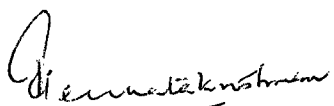
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and invest their decisions with unimpeachable finality. A person cannot be deprived of what is normally due to him, without even being told, for what reason, or under what head the recovery is made.

5. The procedure adopted in this case is abhorrent to notions of natural justice, fairplay, and acknowledged principles of adjudication. If such a course were to be assented to, unlimited arbitrariness can be the result. The recoveries effected are illegal. Irrespective of whether he may make out a good defence or not, respondent Railways shall issue notice to applicant stating, (i) the grounds upon which they propose to determine damages (b) the scale upon which such damages are proposed to be levied. They then shall consider his defence and thereafter appropriate orders will be passed. If he is in unauthorised occupation whatever the law permits can be recovered from him. If respondents wish to proceed further in the matter, they will issue a show cause notice as indicated hereinbefore within thirty days from today and proceed further.

6. Original Application is allowed. Parties will suffer their costs.

Dated the 10th day of June, 1996.


P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN