

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.379 of 1998.

Tuesday, this the 12th day of December, 2000.

CORAM:

HON'BLE MR A. V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P. Gangadharan, Sr. Gangman,
Karakkad, Shoranur. Applicant

(By Advocate Shri P. Ramakrishnan)

vs.

1. The Divisional Railway Manager,
Southern Railway, Palghat.
 2. Section Engineer (Permanent Way)
Southern Railway, Shoranur. Respondents

(By Advocate Shri Thomas Mathew Nellimoottil)

The application having been heard on 12.12.2000, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant, a Senior Gangman was served with a memorandum dated 13.6.1997 wherein it was alleged that he had violated the Rule 3 (i) (ii) (iii) of the Railway Servants (Conduct) Rules 1966 in as much as Shri Narayanan to whom the quarter No.231/D was allotted had been sub-let to him and he occupied the same. Another Memorandum A-2 dated 16/17-6-97 was issued, calling upon him to vacate the quarter and also to represent as to why the sum of Rs.21,878/- calculated as damage rent should not be recovered from his pay and

allowances. The applicant submitted replies to these memoranda by A-4 and A-5 respectively. The applicant stated that the premises were never sublet to him, that under certain circumstances he happened to go and live in the quarters of Shri Narayanan who is related to him as a guest for a few weeks and that therefore, no action might be taken against him under the Railway Servants (Discipline and Appeal Rules). In his representation A-5 dated 30.6.97 he stated that he was not liable to any penal rent as he stayed in the quarter as a guest for a few weeks and had never occupied the quarters as sub-lessee. After submission of the representation (A-5) the impugned order A-3 dated 18.8.97 has been issued for recovery of Rs.21875/- from the pay and allowances of the applicant in 30 equal instalments. The applicant has alleged in the application that these impugned orders are unsustainable on facts and law.

2. The respondents in their reply statement seek to justify the impugned action.

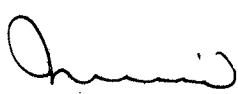
3. We have carefully gone through the pleadings and the materials placed on record. A-3 order has been issued for recovery of an amount of Rs.21,875/- from the pay and allowances of the applicant in 30 equal monthly instalments without holding an enquiry and without establishing that the quarter in question was in occupation of the applicant as sub-lessee. Though the applicant has admitted his presence in the quarter, it has been contended by the applicant that he was living there only as a guest for a few weeks and that he

has never been in occupation of the quarters as sub-lessee. Unless and until the facts of sub-letting is established in an enquiry in conformity with the principles of natural justice, an order for recovery of huge amount like Rs.21,875/cannot be validly made. This action of the respondents is opposed to audi artem partem which is the foundation of rule of law.

4. In the light of what is stated above, we find that impugned order has no legs to stand and we quash the same.

5. If any amount has already been recovered from the pay and allowances of the applicant on the basis of the impugned order, the same shall be refunded to the applicant within three months. No costs.

Dated the 12th December 2000.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

rv

LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-2: True copy of letr. No.SRR/28/PCF(P.Gangadharan) dt.16/17.6.97 issued by the 2nd respondent.
2. A-3: True copy of letr. No.SRR/28/PCF dt.18.8.97 issued by the 2nd respondent.
3. A-4: True copy of representation dt.23.6.97 submitted by the applicant before the 2nd respondent.
4. A-5: True copy of representation dt.30.6.97 submitted by the applicant before the 1st respondent.

Ref-note on pre-page.

OP 11483/01 has been dismissed.

A copy of the judgement dt. 15-10-05 from the Hon'ble High Court of Kerala may be placed before the Hon'ble V.C and the Hon'ble Members for kind perusal.

DR
16/11/05

Ran C
17/11/05

Omman
17/11/05

Registration

SD
18/11/05

Hon'ble V.C

Smack
21/11/05
22/11/05

Hon'ble Member (J. I.)

Hon'ble Member (A.O.)

Hon'ble Member (L.M.)
22/11/05