

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 385/2001

Monday, this the 19th day of November, 2001.

CORAM:

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

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

V. Narayana Moorthy,
SCP/TI/O/ERS,
138-E, Railway Quarters,
Ernakulam South.

- Applicant

By Advocate Mr B Krishnamani

Vs

1. The Additional Divisional Railway Manager,
Southern Railway,
Trivandrum Central,
Thiruvananthapuram.

2. The Senior Divisional Personnel Officer,
Divisional Office,
Personnel Branch,
Southern Railway,
Trivandrum Central,
Thiruvananthapuram.

3. The Traffic Inspector, TI/ERS,
Southern Railway,
Ernakulam South,
Ernakulam.

4. Union of India represented by
General Manager,
Southern Railway,
Chennai. - Respondents

By Advocate Mr Thomas Mathew Nellimootttil

The application having been heard on 19.11.2001 the Tribunal
on the same day delivered the following:

O R D E R

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

The applicant while working as Traffic Porter in
Ernakulam South was allotted a Type-I, Quarter No.12. The

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quarter was in a dilapidated condition and was unfit for allotment as is reported by Section Engineer, Works(A-3). The request of the applicant for allotment of a habitable quarter did not yield any response. The applicant, whose wife is a cancer patient, without obtaining any order of allotment from the competent authority, entered Quarter No.138 E and started living there with effect from 4.6.98. The applicant sent a letter to the Divisional Railway Manager informing that he has occupied the quarter. However, he was served with A-5 letter dated 14.8.98 from the Secretary, Housing Society intimating that he was in unauthorised occupation of the quarters requiring him to vacate the quarter immediately and informing him that failure to comply with the direction would entail recovery of damages. Though the applicant sent a reply seeking to justify his unauthorised occupation, he did not vacate the quarter. He was thereafter served with an order imposing on him a penalty of withholding of annual increment for the misconduct of unauthorised occupation of the Railway quarters. The applicant submitted an appeal (A-8). The appellate authority issued A-9 notice proposing to enhance the penalty. Finding that a sum of Rs.1862/- was being recovered from his pay and allowances from 14.4.2000 onwards by way of damage rent, the applicant has filed this application for the following reliefs:

- i) Issue a direction directing the respondents not to deduct any damage rent or penal rent from the salary of the applicant and to refund the amount so collected from the applicant.

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ii) Declare that the deduction of damage rent or penal rent from the salary of the applicant as illegal and unjust.

iii) Issue a direction directing the respondents to regularise and ratify the occupation of quarters No.138-E/Type I ERS by the applicant.

iv) Issue a direction directing the respondents not to evict the applicant forcibly from quarters No.138-E/Type I ERS until orders are passed in A-8 and A-10 by the 1st respondent.

v) Issue a direction directing respondents to pay the increment due to the applicant forthwith.

2. The respondents seek to justify the impugned action on the ground that the applicant having unauthorisedly occupied Railway quarters and having refused to vacate the premises despite demand in that regard, is as per Rule liable to pay damage rent.

3. We have heard the learned counsel on either side and have perused the material placed on record. The learned counsel for the applicant relied on the Circular of the Railway Board dated 31.5.61 which reads as follows:

"Recovery of rent for unauthorised occupation of Railway Quarters -

It has been brought to the notice of the Railway Board that recovery of penal rent for unauthorised occupation of Railway quarters has been held to

infringe the provisions of the Payment of wages Act, and consequently illegal. The Railway Board, therefore, desire that in such cases punitive action may be taken under the Discipline and Appeal Rules, subject to the condition that penalty imposed shall not amount to a deduction from wages, as defined in Section 7 of the Payment of Wages Act. In addition, the Railway Administrations, when necessary, may also take suitable steps, under the Government Premises Eviction Act to get the quarter vacated by the occupant."

and argued that in view of the above circular the action on the part of the respondents in recovering the damage rent is illegal and therefore, the Tribunal should intervene and restrain such action. Learned counsel for the respondents sought time to get instruction in the matter and to produce evidence to show that the abovesaid circular of the Railway Board has since been recalled. Theafters respondents have filed an additional reply statement producing a Railway Board letter No.F(X)/1-64-RN3/7 dated 14.4.67 (R-3) which reads as follows:

"The question of recovery of penal rent from staff governed by the Payment of Wages Act has been examined in consultation with the Ministry of Labour and Employment and the Ministry of Law. The Board are advised that in respect of unauthorised occupation of Railway Quarters, recovery of penal rent is permissible as long as it does not exceed the value of the house accommodation occupied by employees and that the view of the house accommodation may be taken to be the market rent of such house accommodation. In view of this, there should be no difficulty in recovering penal rent direct from the wages of the employees concerned.

2. This is in partial supersession of the earlier instructions contained in Board's letter No.F(X)1-60-RN3/4 dated 31.5.61 and No.F(X)1-62-RN3/3 dated 9/10th January 1963."

It is evident from Annexure-R3 that the Railway Board's instruction contained in the letter dated 31.5.61 has since been modified to the extent of permitting the Railway

Administration to recover damage rent not exceeding the value of accommodation from the employees who are in unauthorised occupation. We, therefore, find that the recovery of damage rent from the applicant is in accordance with rules and instructions on the subject. The applicant trespassed into the Railway Quarters and refused to vacate despite demand. Therefore, he has necessarily to bear the consequence.

4. In the light of what is stated above, the application which is devoid of merit is dismissed. No costs.

Dated, the 19th November, 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

APPLICANT'S ANNEXURE

1. Annexure A1: True copy of the representation dated 1.1.1998 filed by the applicant before the Senior Divisional Personnel Officer, Trivandrum Central, Thiruvananthapuram.
2. Annexure A2: True copy of the representation dated 21.1.1998 filed by the applicant before the Senior Divisional Personnel Officer, Trivandrum Central, Thiruvananthapuram.
3. Annexure A3: True copy of the communication issued by the Section Engineer of Works, Ernakulam South dated 19.5.1998.
4. Annexure A4: True copy of the letter send by the applicant to the Divisional Railway Manager.
5. Annexure A5: True copy of the notice issued by the Secretary, Housing Committee, Trivandrum Central dated 14.8.1998.
6. Annexure A6: True copy of the reply filed by the applicant dated 31.8.1998 to Annexure A5.
7. Annexure A7: True copy of the order passed by the Divisional Operating Manager, Trivandrum Central dated 9.8.1999.
8. Annexure A8: True copy of the Appeal Memorandum dated 22.9.1999 filed by the Applicant before the Additional Divisional Railway Manager, Trivandrum Central.
9. Annexure A9: True copy of the notice received by the applicant from the 1st respondent dated 8.2.2000.
10. Annexure A10: True copy of the reply dated 8.3.2000 to Annexure A9 submitted by the applicant.
11. Annexure A 11: True copy of the representation dated 7.11.2000 filed by the applicant before the 1st respondent.

RESPONDENT'S ANNEXURE

1. Annexure R1: True copy of letter No.ERS/12 dated 8.6.88 issued by the Section Engineer Works/Ernakulam Junction.
2. Annexure R2: True copy of the Judgement dated 18th April 2001 in O.A. No.1028/98.
3. Annexure R3: True copy of Railway Board's letter No. F(X)/1-64-RN3/7 dated 14.4.67.

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