

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 389 of 2005

Wednesday, this the 9th day of August, 2006

C O R A M :

HON'BLE SHRI K B S RAJAN, JUDICIAL MEMBER

C.S. Sudhir Kumar,
S/o. C.N. Sudhan, Chanayil House,
Panayappilly P.O., Kochi - 5
Now Residing in the official
Address Railway quarters No.20,
Edappally, Elamakkara P.O.

... Applicant.

(By Advocate Mr. P.K. Asokan)

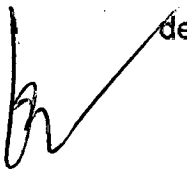
v e r s u s

1. The Union of India represented by
The Secretary to the Government,
Ministry of Railways, New Delhi.
2. The General Manager, Southern Railway,
Park Town, Chennai - 600 003
3. The Divisional Railway Manager,
Southern Railway, Thycaud,
Thiruvananthapuram - 14
4. The Senior Divisional personnel Officer,
Southern Railway, Thycaud,
Thiruvananthapuram - 14
5. The Chief Executive Engineer,
Central Public Works Department,
Ernakulam

... Respondents.

(By Advocate Mr. K.M. Anthru)

This application having been heard on 12.07.06, the Tribunal on 9-8-06
delivered the following :



ORDER
HON'BLE MR. K.B.S. RAJAN, JUDICIAL MEMBER

Recovery of damage rent for the alleged unauthorized possession of Railway quarters is the challenge in this case. Brief facts of the case as contained in the O.A. is as under:

(a) The applicant while working as the Station Master, Cochin Harbour Terminus was allotted Quarter No.9 of the Mattanchery Halt Railway Station. After the expiry of 4 months of the said allotment, the applicant was transferred to Vaikom Road in August, 1996. The applicant was considered as deemed to have been relieved from Cochin Harbour Terminus to the new place on 2.9.96. The applicant even disputes the said relieving, which is not in consonance with the provisions of the Indian Railway Establishment Manual .

(b) The applicant joined Vaikom Road Railway Station on 30.07.97 which is after a gap of 11 months since he was deemed relieved from Cochin. He continued there till he was transferred to Edappally on 16.2.2000 . On the very next day, i.e. on 17.2.2000, the applicant joined duty at Edappally. All along this time, the applicant was living at the quarters at Mattanchery Halt. After his joining at Edappally, the applicant was allotted a quarter during the month of August, 2000, after a gap of seven months of his joining at Edappally. The applicant vacated his quarter at Matanchery Halt on 17.8.2000 and came into occupation of his newly allotted quarter at Edappally on the very next day, i.e. on 18.8.2000.

 (c) The applicant has, living with him his aged mother, and a daughter who

is studying in standard IV. According to the respondents, the occupation by the applicant at Mattanchery Halt in the concerned quarter from November 1996 to August, 2000 is treated as unauthorised and, therefore, penal rent is being deducted from the salary of the applicant. Nominal rent is Rs. 59/- or so and penal rent deducted per month from the salary of the applicant comes to about Rs. 4,214/-. The applicant was not allotted a quarter at Vaikom Road though he was functioning as the Station Master and he is considered as an essential category person under the Indian Railways. Post facto permission was granted to retain the quarter on account of the transfer of the applicant to Vaikom Road. Since the relieving of the applicant was on the basis of a deeming provision with effect from 2.9.96, the Railways calculated the unauthorised retention of the quarter from 2.11.96 to 17.08.00.

- (d) The applicant was transferred to Mayyanad on 22.04.01, after a gap of eight months on administrative grounds. On the very next day, i.e. on 22.04.01, the applicant joined Mayyanad. Again, he was not allotted a quarter at Mayyanad. Thereafter, from 23.04.01 to 01.10.02, the applicant worked at Mayyanad and thereafter on 2.10.02, on his transfer, he joined the Mattanchery Halt which was on the basis of a request made by him. Again, he was not allotted any quarter anywhere. He worked at Mattanchery from 2.10.02 to 16.08.03. Again based on a request, the applicant was transferred to the Cochin Harbour Terminus and he joined duty there on 16.08.03. Again, he was not allotted any quarters. The applicant continued his employment at Cochin but the same was closed on 1.8.04 and, therefore, he was transferred to his present post at Ernakulam West 'C' Cabin and he continues there since 2.8.04. He is not allotted any quarter at Ernakulam also. Again, a post facto permission on a ground of transfer for two months was granted with effect from 22.04.01 to

21.06.01. From 22.06.01 onwards, the applicant's occupation of the quarter at Edappally is taken as unauthorised and the same rate as mentioned earlier panel rent is being deducted from the salary of the applicant. On several occasions, the applicant had submitted representations before the concerned authorities. During the year 2000 itself, the applicant had submitted a representation before the third respondent. Concerning the amounts already deducted as penal rent concerning the quarter at Mattanchery, the applicant officially lodged a claim dated 8.3.04 before the fourth respondent. Without any application of mind, the respondents have now rejected the claim of the applicant vide A/7 and A/7A impugned orders.

- (e) Since substantial injury is caused to the applicant on account of the realization of penal rent charges as also the threat of being evicted from the Edappally quarters and also the requirement of having comprehensive guidelines concerning such allotment of quarters, the applicant had approached the Hon'ble High Court of Kerala by filing Writ petition No. 13425 of 2005. Hon'ble High Court disposed of the aforesaid case holding that the applicant has to approach this Tribunal seeking appropriate reliefs.

- (f) Grounds for relief:

- (i) The act of the respondents in rejecting the claim of the applicant concerning the penal rent charges so far recovered is absolutely illegal.

- (ii) What the applicant was wanting is only a place to live in. He has his daughter and aged mother with him. He is a person not having any dwelling house also. In such circumstances, denying a dwelling place and at the same time asking to move constantly is an illegal act from the side of the respondents.



(iii) In the absence of any statutory guidelines, it is an exercise of power by a persons in authority in a whimsical fashion. From about Rs. 59/- per month more than Rs. 4000/- is charged as penal rent.

(iv) Unless and until damages are specifically proved, a claim for damages will not lie.

(v) Annexures A7 and A7(a) or at the time of deducting penal rent which practically wipes out, the entire salary of the applicant, not even a single opportunity is afforded to the applicant to explain the facts available. Besides, now a threat is raised that the applicant will be evicted from his premises. At least reasonable notice is liable to be served on the applicant.

(vi) The respondents are acting not only in an arbitrary manner but also in discriminatory fashion. Similarly placed persons are being treated differently. This is violative of the principle that equals should not be treated as unequals and a person with lesser privilege than the applicant is granted more benefits.

2. Respondents have contested the O.A. and their contention, as per the reply is that there are decisions from the Hon'ble Tribunals to the effect that recovery of penal rent/damages can be effected from the salary of the Railway employees in the cases of unauthorised occupants [See order of the Full Bench of Allahabad C.A.T., Ram Poojan vs. Union of India & Ors., 1994-96 A.T. Full Bench Judgement at page 244)].

3. Rejoinder, additional reply and additional rejoinder, reiterating the respective contentions as contained in the O.A and reply have also been filed. In the additional rejoinder certain other instances of permission having been granted in such a situation in respect of other employees has been given. Written submission on behalf of the applicant has also been made.

4. The applicant relies upon the decision of the Hon'ble Apex Court in the case of *Chandra Prakash Jain v. Principal/DIG, Police Training College-II*, (2003) 12 SCC 173 which reads as under:-

"1. Leave granted.

2. We have heard Shri Chandra Prakash Jain, the appellant, who is appearing in the case in person and Shri Anoop G. Chaudhari, learned Senior Counsel appearing for the respondents.

3. The controversy raised before us relates to the demand of penal rent from the appellant and its adjustment from his retiral dues. Though the petitioner retired from service on 1-11-1990, he vacated the government quarters, which he was occupying when he was in service, on 27-2-1997. Thus, he remained in unauthorised occupation of the quarters for more than six years. The question for consideration is what is the rent which he is liable to pay for such unauthorised occupation of the quarters? Certain rules, circulars and executive instructions have been placed before us by the appellant and also learned Senior Counsel for the respondents. We are satisfied that the deduction of the sum of Rs. 2,07,979 from the retiral benefits of the appellant, is erroneous. The calculation is based on a circular which is not applicable in the case.

4. Considering the facts and circumstances of the case, we are of the view that the appellant is liable to pay three times the standard rent of the residential quarters in his occupation during the period of overstay beyond four months from the date of retirement. The

standard rent will be calculated taking into account the last basic pay drawn by the appellant before retirement. This exercise will be completed within three months from today and the surplus amount, if any, deducted from the retiral benefits of the appellant, will be paid to him together with interest @ 12% PA from the date of deduction till payment.

5. The judgment of the High Court under challenge is modified to the extent noted above. The appeal is disposed of. No costs."

5. The applicant has also relied upon another order of this Tribunal dated 19.1.2004 in O.A. No. 189/03, P.S. Ajayakumar vs. Union of India & 3 Others.

6. On the other hand, the counsel for the respondents heavily relied upon the decision of a Full Bench in the case of Ram Poojan vs Union of India and others (1994-96) A.T. Full Bench Judgment 244.

7. I have considered the entire pleadings, the arguments and the written submission on behalf of the applicant and the decisions relied upon by the respective side.

8. The following are the admitted details of posting and retention of quarters by the applicant:



<i>Sl No</i>	<i>From</i>	<i>To</i>	<i>Place of Posting</i>	<i>Accommodation at</i>	<i>Remarks</i>
1	April 96 July, 1997	30-07-97 16-02-2000	Cochin Harbour Terminus Vaikom from July, 1997 to February, 2000	Quarter No. 9, Mattanchery Halt Rly. Stn.	Posted to Vaikom in Sep. 96 but the applicant joined in July, 97. Applicant contends his deemed relieving from Cochin Harbour Terminus in Sep. 96 was illegal. Applicant retained this accommodation till he was allotted accommodation at Edappalli in August, 2000.
2	17-02-2000	22-04-2001	Edappalli	Quarter No. 20, Type II, Edappalli since August 2000	Vacated the quarters at Matanchery on being allotted accommodation at Edappalli. Latter accommodation retained till
3	23-04-2001	01/10/02	Mayyanad	-do-	Not allotted any quarters at Mayyanad
4	02/10/02	16-08-03	Mattanchery	-do-	Request transfer
5	16-08-2003	01/08/04	Cochin Harbour	-do-	Unit closed on 01-08-04
6	02/08/04	Till date	E'kulam West C cabin	-do-	

9. The Rule on the subject (Quoted from A.T. Full Bench Judgements 1994-96, Page 244 in the case of Ram Poojan vs. Union of India & Others):

"Para 1711 of the Indian Railway Establishment Manual - Recovery of Rent:

(a) The rent charged to a railway servant in respect of quarters

supplied should not exceed 10 per cent of his/her monthly emoluments irrespective of the scales of pay allotted.

- (b) Notwithstanding anything contained in sub-para (a), Railway Administration may, by general or special order, provide for charging a rent in excess of 10 per cent of the emoluments from a railway servant
 - (i) Who, is not required or permitted to reside on duty at the station at which the residence is supplied to him or
 - (ii) Who, at his own request, is supplied with accommodation which exceeds that which is appropriate to his status, or
 - (iii) Who is permitted to sublet the residence supplied to him, or
 - (iv) Who sublets without permission the residence supplied to him, or
 - (v) Who does not vacate the residence after the cancellation of the allotment..

Note: Rent will be recovered from such railway servants who sublet their quarters without permission of the Competent Authority at the rate of 7 ½% of the total outlay of the quarter including the cost of land.

9. In the letter dated 17.12.1983, on the subject of retention of Railway quarter by the Railway employees on occurrence of various events such as transfer, retirement etc. were issued by way of consolidated instructions. The relevant provision in the said letter reads as under:

- (i) A Railway servant 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 2 months on payment of normal rent. On request by the employee on educational ground or ground of sickness the period of retention of railway accommodation may be extended for a further period of six months on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is the highest.



- (ii) If a Railway employee requests for retention of the Railway quarters at the former station on the ground of sickness of self or a member of the family retention of the quarter at the former station of posting can be permitted for a period of upto six months - first two months on payment of normal rent and the next four months or till recovery, whichever is earlier, on payment of double the assessed or double the normal or 10% of the emoluments, whichever is the highest. The Railway employee will be required to produce requisite medical certificate from the recognised Medical Attendant for this purpose.
- (iii) In the event of transfer during the mid School / College academic session, as employee may be permitted to retain the railway quarters at the former place of posting for a total period of upto eight months - the first two months on payment of normal rent and the next six months or till the current academic session ends, whichever is earlier, on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is the highest.

10. In para 17 of the said letter it was provided as follows:

17. On expiry of the permissible period indicated in all the above cases, the allotment of quarters in the name of the employee at the old station will be automatically terminated. Retention of quarters by the employee after expiry of permissible period will be treated as unauthorised. During the period of unauthorised occupation the employee should be required to pay market rent in respect of the railway quarters. Realisation of market rent should not be pended on the ground that the employee has appealed, or the case of the employee has been referred to the Ministry of Railways for regularisation of the excess period of retention. If the appeal of the employee succeeds he will be allowed refund as due."

10. True, the applicant's stay both at Mattanchery and at Edapalli in the respective quarters stretches beyond his posting at the respective places. According to the respondents, his stay at Mattanchery beyond the permissible period of two months of transfer upto the date of vacation i.e. from 02-09-2996



to 17-08-2000 was declared as unauthorized and so is the retention of Edappalli quarters from 22-06-2001 till date. It is the above two so called unauthorized retention that the applicant has questioned.

11. The Division Bench of this Tribunal in the case of P.S. Ajayakumar in OA 189 of 2003 (supra) has dealt with an identical case. The facts of the case in that matter, as contained in para 2 are as under:-

"2. The short facts of the case are : The applicant who was working as Station Master Grade – III at Quilon Railway Station was promoted and posted as Station Master in-charge of Mayyanad Railway Station in April, 1998. He was initially permitted to retain the quarters allotted to him at Quilon for a period of 2 months upto 19.06.98 on normal rent by A-1 Memo dated 20.07.98. In the said A-1 Memo, it was stated that on expiry of permitted period of retention the allotment of quarters at the old station would be deemed to have been terminated automatically and continued retention would be treated as unauthorised occupation entailing damages, eviction etc. By A/2 letter dated 17.06.98, the applicant requested the 3rd respondent for permission for further retention of the Railway Quarters at Quilon on the ground that he was not provided with any Railway quarters at Mayyanad and that he was not able to shift his family from Quilon on account of the medical treatment of his wife. By A/3 communication, the applicant was permitted to retain the quarters for a further period upto 19.12.98 at double the normal rent. Although the applicant belonged to the essential category, no quarters were allotted at Mayyanad. The two type-II quarters were at Mayyanad were under occupation of an Electrical Signal maintainer with headquarters at Quilon and a keyman with headquarters at Paravur. On 25.1.99, the applicant addressed a representation to the 2nd respondent (A-4) highlighting the above facts and pointing out that he was entitled to quarters at Mayyanad. Accordingly, the applicant sought permission for continued occupation of quarters at Quilon till he was provided with quarters at Mayyanad. There was no response to the said letter. The applicant thereupon made a further representation (A-5) dated 4.3.2000 to the 2nd respondent. It was also stated

in the said letter that he stood first in the registration for transfer on request to Quilon and that since the demand for quarters at Quilon was very low, permission be granted to him to occupy the Quilon quarters on regular allotment to avoid penal rent. There was no reply to the applicant's representation but there was a recovery of an amount of Rs. 1,518/- from the applicant's salary for the wage period ending 10.10.2000. The applicant made A-6 representation requesting suspension of recovery from his salary and also to regularise the allotment of quarters at Quilon which was already under his occupation. In A/6 also, the applicant had pointed out that the quarters at Mayyanad were under occupation of officials with headquarter at places other than Mayyanad. He also pointed out instances where Railway staff including Station Masters were provided with quarters at stations other than their official quarters. A/6 too went unresponded to and the recovery of Rs. 1,518/- month after month without any notice and without orders in that regard. Under these circumstances, the applicant filed O.A. 201/2001 praying for a declaration that recovery of damage rent from the applicant was unsustainable. The Tribunal by interim order dated 1.2.2001 directed the respondents not to recover any damages/damage rent from the applicant's salary on account of occupation of the Railway quarters subject of the outcome of the O.A. During the pendency of the O.A, the applicant was transferred back to Quilon. The O.A. 201/2001 was disposed of by order dated 14.11.2002 (A-7) permitting the applicant to submit a representation to the 1st respondent and directing the first respondent to consider the same and pass appropriate orders thereon. The interim order dated 1.2.2001 was directed to be kept in force vide A-7 order. The applicant made a representation A-8 dated 1.12.2001 addressed to the first respondent as permitted by the Tribunal. Meanwhile, on 16.9.2002, the applicant vacated the quarters in question. The impugned A-9 order dated 17.02.2003 has been issued in purported compliance with the directions of this Tribunal as per A-7 order. Being Aggrieved, the applicant has filed this O.A. seeking this Tribunal's order quashing impugned A-9 and directing the respondents to refund the damage/damage rent recovered from the applicant's salary since October, 2000 on account of occupation of Railway Quarters at Quilon. "

12. The decision of the Tribunal is as under:-




"8. It is not disputed that the applicant belongs to the essential category of Railway employees. As a Station Master, he was obliged to be on essential duty at Mayyanad, his new headquarters even at odd hours, unlike other non-essential staff. It is a fact that quarters at Mayyanad was not made available to the applicant. It is also perhaps correct arguably that the applicant has no right for any allotment of quarters at Mayyanad.

9. It was keeping in mind the above circumstances that this Tribunal had, on the earlier occasion, remitted the matter to the highest functionary of the Southern Railway for the purpose of considering the applicant's representation. It was expected that such representation should have been dealt with humanitarian consideration and administrative discretion. If the applicant's representation could not be considered, the administration should have been perfectly in order to ask the applicant to vacate the quarters within a specific time frame. But instead, representation has been turned down with the pain of damages/damage rent visiting upon the applicant.

10. Applicant who was working in Quilon was transferred to Mayyanad while he was in occupation of quarters at Quilon. he wanted to continue retention of the quarters at Quilon. He was not provided with quarters at Mayyanad though duties and responsibilities would warrant such allotment. the respondents transferred him back to Quilon at a later date. The Tribunal had asked the department to consider the factual background of the case and take an appropriate decision. In our considered view, the respondents were not justified in proceeding to treat the period of continued occupation of the quarters as unauthorised occupation entailing levy of penal/damage rent."

13. The said order also took into account the Full Bench Judgment in the case of Ram Poojan (supra). The Full Bench had dealt with the need or otherwise to issue a separate cancellation order in the case of unauthorized accommodation and whether the stamp of unauthorized occupant could be affixed upon a government servant if he has retained the quarters beyond the



permissible period. But the Division Bench had clearly dealt with exactly an identical situation as has occurred in this case and allowed the OA without in any way deviating from the decision in the full bench judgment. The applicant has also, in his additional rejoinder, referred to a number of instances where a railway employee holding an office at one station has been permitted to retain the accommodation at the place of previous posting. In one of the communications (Annexure A-5) the authority has spelt out the reason for such permission i.e. in order to avoid loss of revenue. The condition attached to the allotment is to the effect that the allottee should attend to his duties on time, and should not relate to movement of train.

14. The applicant's contentions that merit consideration are as under:-

- (a) The deemed relieving with effect from Sept. 1996 from Mattanchery is illegal and his relieving should be taken as only in July, 1997, in which event, the retention of accommodation at Mattanchery till August, 1997 cannot be questioned at all.
- (b) His retention of accommodation at Mattanchery during his tenure at Vaikom was on account of his having not been allotted any accommodation at Vaikom and even when he was posted at Edappalli, he was not accommodation initially and as such, until the next allotment of accommodation (at Edappalli) he had to retain the accommodation at Mattancherry.
- (c) A similar situation has occurred compelling him to retain the accommodation at Edappalli as he has not been allotted any



accommodation thereafter.

15. In other words, at no station there was a situation that the applicant was allotted an accommodation but the same was refused by him and he had retained the earlier accommodation despite such allotment by the Railways. According to the applicant, he has sent many representations to Respondent No. 3 (as averred in para 4(e) but the same has been stoutly denied by the respondents who have stated that the applicant is put to strict proof. If the applicant proves his sincere effort in regard to either allotment of accommodation at the new duty station or in regard to his retention of accommodation at the old duty station, non consideration of the same and omission to communicate timely reply to such representations would result in the respondents being contributory to the retention by the applicant of the accommodation for such a period declared by the respondents as unauthorized.

16. Considering the above aspects, ends of justice would be met by disposing the OA with the following directions:-

(a) The period of retention of Matanchery quarters till 2nd September, 1997 (i.e. two months after the joining by the applicant at Vaikom) shall be treated as authorized and normal rent alone should be deducted. Any recovery of damage rent made upto 2nd September, 1997 should be refunded. (X)

(b) Subject to the applicant's establishing that he had made



representations on many occasion for retention of accommodation at the old duty station or for allotment of accommodation at the new duty station, respondents shall consider grant of ex post facto sanction for retention of the accommodation by the applicatn at Mattanchery till 2000 and at Edapalli for the period he was posted outside Edapalli. This order is, taking into account the averments made by the applicant in the additional rejoinder that various other railway employees were given such permission. If the applicant does not have copies of his representations, he may be given due assistance by the respondent No. 3 to verify the official records in this regard, subject to the applicant's making a request in this regard.

(c) Subject to availability of relevant records, Respondent No. 3, may cause instructions issued to the concerned officials to verify whether there has been any waiting list for allotment of the type of accommodation (allotted to the applicant) at Mattancherry or at Edappalli, during the period from July, 1997 to August 2000 (till he vacated the accommodation at Matanchery) and from October, 2002 at Edapalli and if not, even if the applicant could not establish his having applied for retention etc., consideration be given for grant of ex post facto, as the retention by the applicant of the accommodation at Mattancherry and at Edappalli was (a) as he was not allotted any accommodation at the duty station and (b) as the retention by him the accommodation dis not cause any inconvenience to any other railway employee.

(d) In case there is no evidence of the applicant having applied for retention as averred in the OA and that there was a waiting list for allotment of the related type of accommodation at Mattancherry and Edapalli during the aforesaid period, there is no option save to levy upon the applicant to pay the damage rent as his retention cannot, in



that event, but be treated as unauthorized. For, a concession given to one cannot be at the cost of a vested right of another.

17. The applicant shall make a detailed representation in regard to (b) and (c) above within a period of four weeks from the date of receipt of a copy of this order and on receipt the respondent shall undertake the exercise as contained in para (b) to (d) above and pass appropriate order for either modifying the order of recovery of damage rent or upholding the same in respect of (a) above.

DA is disposed of on the above terms.

18. Under the above circumstances, there shall be no order as to costs.

(Dated, the 9th August, 2006)


K B S RAJAN
JUDICIAL MEMBER

cvt.