

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 390/98

Wednesday, this the 21st of April, 1999.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

A.K. Balakrishnan, S/o A.C. Kittu,
Senior Section Engineer,
Electrical,
Carriage and Wagon Works,
Perambur.
Permanent Address:
Arangattil House, P.O. Meloor,
Trichur District, Kerala.

...Applicant

By Advocate Mr T.C. Govindaswamy.

Vs.

1. Union of India through
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Madras -3.
2. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum.
3. The Senior Divisional Electrical Engineer,
Southern Railway,
Trivandrum Division,
Trivandrum -14.
4. Shri K. Rajendran,
Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum -14.

...Respondents

By Advocate Mr P.A. Mohamed.

The application having been heard on 21.4.99, the
Tribunal on the same day delivered the following:

O R D E R

The applicant seeks to quash A-13, to declare that he is entitled to be paid TA/DA during the period of his service at Cochin Harbour Terminus from 1.4.96 to 26.9.97 and that withholding an amount of Rs.6102/- from his salary towards damages/ damage rent for occupation of the Railway Quarter No. 115-D at Trivandrum is arbitrary and unconstitutional and direct the respondents to refund the aforesaid amount with interest.

2. While the applicant was working at Trivandrum, he was transferred to Cochin Harbour Terminus as per A-1 order dated 20.3.96. He joined at Cochin Harbour Terminus on 1.4.96. As per A-2 dated 22.4.96 he was transferred from Cochin Harbour Terminus to Perambur. He challenged A-2 order before this Bench of the Tribunal in O.A. 489/96. By virtue of the Interim Order passed by this Bench of the Tribunal in the said O.A, he was allowed to continue at Cochin Harbour Terminus. The O.A. was disposed of as per judgment dated 24.6.96 stating that the matter will be examined by the General Manager and he will decide as to which of the two orders should prevail and depending on his decision, he may ask the authority whose order he thinks should not remain in force, to withdraw or cancel such order. The applicant had requested the authority concerned to allot him the earmarked Quarter at Ernakulam and till such allotment to allow him to retain the Railway Quarters allotted to him at Trivandrum. There was no response to his request. His claim for TA was rejected by the respondents and recovery of Rs. 6102/- was effected from his salary on the ground that he was in unauthorised occupation.

3. Respondents say that the applicant is not eligible for TA/DA on transfer from Trivandrum to Cochin. There was no illegality in effecting recovery from the salary of the applicant. Though an amount of Rs.10,120/- was recovered, a part of that amount has been refunded to the applicant.


4. As far as A-13 is concerned, it is a very cryptic order containing no reason. An order which subject to judicial review should necessarily contain reasons. In the absence of any reason the authority sitting in judicial review will not be in a position to know on what ground the finding or decision has



been arrived at. Since A-13 does not contain any reason, on that ground alone the same is liable to be quashed.

5. As far as the recovery of Rs.6102/- is concerned, from the salary of the applicant the respondents justify it on the ground that the applicant was in unauthorised occupation. Here, it was not simply a case of recovery of Rs. 6102/- from the salary of the applicant on the ground of his unauthorised occupation. It was a case of recovery admittedly Rs.10,120/-. Subsequently, the respondents refunded Rs.4,363/-. According to the respondents, they realised the mistake in having recovered the said amount of Rs. 4,363/- from the applicant's salary and therefore, the same was refunded. The authorities are expected to take reasonable care before making any deduction from the salary of any employee and see whether it is really warranted in accordance with law or not. It cannot be a case of mechanically making deduction from salary and later on refunding saying that due to some mistake recovery was effected. It cannot be a case that the authorities are not accountable to anybody. It is very easy to say due to some mistake recovery was effected wrongly. The action of the respondents in having recovered an amount of Rs. 4,363/- from the salary of the applicant, though it has been refunded, cannot be justified. It will be always desirable for the respondents in their own interest to be acquainted with the rules in force and act in accordance with rules.

6. Coming to the question of recovery of Rs. 6,102/- on the ground that the applicant was in unauthorised occupation of the Railway Quarater No.115-D at Trivandrum, learned counsel appearing for the applicant submitted that the said recovery was effected behind the back of the applicant and in total violation of the principles of natural justice.



7. Learned counsel appearing for the respondents drew my attention to Rampoojan Vs. Union of India and another, (1996) 34 ATC-434) and submitted that in the case of recovery of damages/damage rent, there is no necessity to comply with the principles of natural justice and as per the provisions of Indian Railway Establishment Manual, the respondents have got every right to deduct amount from the salary of an employee.

8. Learned counsel appearing for the applicant drew my attention to P.K. Gangadharan VS. Union of India and others, (1997)35 ATC-107, wherein it has been held that in Sankar Vs. Union of India, (1994) 26 ATC 278, the Bench did not discuss the matter and proceeded on the basis that the applicant before it "is doing illegal and unauthorised act".

9. The ruling relied upon by the learned counsel for the respondents is one relying on Sankar Vs. Union of India. In Rampoojan's case the basic question was whether a specific order of cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the Quarters on transfer, retirement or otherwise is necessary before further retention of accommodation can be considered and penal/damage rent levied. The question whether recovery on the ground of unauthorised occupation without a pre-decisional notice is authorised in law or not was not directly and substantially an issue in Rampoojan's case.

10. In P.K. Gangadharan's case this Bench of the Tribunal has held that:

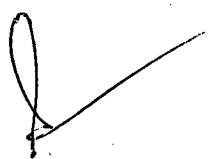
"the principles of natural justice have been chiselled, honed and refined enriching its content, by Courts. Authorities are legion where the highest court in the country has pointed out that a pre-decisional hearing, and

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."

11. The learned counsel appearing for the respondents drew my attention to M.P. Kanal Vs. Union of India and others, (1997) 35 ATC-208, following Rampoojan's case. Rampoojan's case was decided relying on Sankar's case and Sankar's case has been distinguished between Gangadharan's case by this Bench of the Tribunal.

12. The procedure adopted in this case is abhorrent to the notion of natural justice and fair play. Recovery effected is illegal. Respondents are directed to refund the amount of Rs. 6,102/- to the applicant within one month from the date of receipt of a copy of this order. Irrespective of whether the applicant may make out a good defence or not, the Railways shall issue a notice to the applicant stating the grounds upon which they propose to determine damages and the scale upon which such damages are proposed to be levied. They then shall consider the applicant's defence and thereafter pass appropriate orders. If the applicant is in unauthorised occupation, whatever the law permits, could be recovered from him. If the respondents wish to proceed further in the matter, they shall issue a show cause notice as indicated therein within 30 days from today and proceed further.

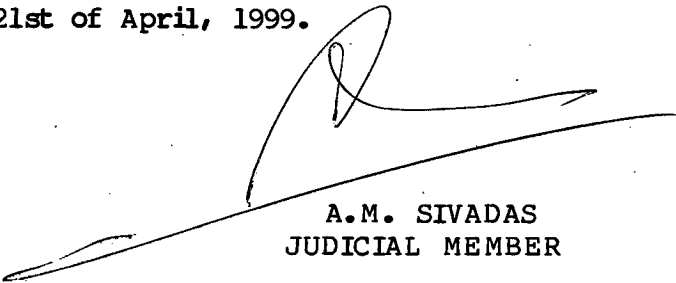
13. The applicant is permitted to submit a representation with regard to his claim for TA/DA for the period from 1.4.96 to 26.9.97 to the first respondent within one month from today. If such a representation is received, the first respondent shall dispose it himself or shall pass on the same to be disposed



of by an authority competent under him within three months from the date of receipt of the representation.

14. The Original Application is disposed of accordingly.
No costs.

Dated the 21st of April, 1999.



A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THE ORDER

1. Annexure A1, A true copy of the Office Order No.11/96/EL dated 20.3.96 issued by the 2nd respondent.
2. Annexure A2, A true copy of the Office Order No. 15/96 dated 22.4.96 issued by the second respondent.
3. Annexure A13, A true copy of the letter No.V/E 150/1/misc. dated 7.11.97 issued by the third respondent.