

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 385/2000

Date of Decision : 3rd April 2001.

R.S.Arya Applicant

Shri S.P.Saxena Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri V.S.Masurkar Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library yes

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.385/2000

Dated this the 3rd day of April 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

R.S.Arya,
Executive Engineer,
(Construction) Works,
Western Railway,
Churchgate, Mumbai.

...Applicant

By Advocate Shri S.P.Saxena

V/S.

1. Union of India through
The Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. The Chairman,
Railway Board,
Rail Bhawan, New Delhi.
3. The General Manager,
Western Railway,
Churchgate, Mumbai.
4. Dy.Chief Engineer
(Construction),
Western Railway,
Kota.
5. Director of Audit,
Western Railway,
Churchgate Station Building,
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

P.L. Sri -

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking declaration that the retention of the quarter by the applicant was not unauthorised, charging of higher rent/damage rent from the applicant when no decision was taken by the respondents themselves is unjust and bad in law, recoveries towards higher/damage rent from the applicant already made be refunded alongwith 12% interest and letter dated 23.5.2000 for payment of special licence fee and damage rent is illegal be quash and set aside.

2. The applicant was posted at Chittorgarh, (Rajasthan) as Assistant Engineer in 1994 and was in possession of an allotted Quarter No. 119 of Type IV category. He was transferred to Palanpur under Western Railway as AE/C in Mehsana vide order dated 1.9.1994. He carried out the transfer order on 20.9.1994 but his family along with the children remained at Chittorgarh, (Rajasthan). The quarter was vacated by the applicant on 31.12.1997.

3. The applicant applied to the competent authority for retention of the quarter vide Annexure-'A-2' dated 25.9.1994 which was forwarded on 24.10.1995, in compliance the applicant submitted the certificate on 13.4.1995 as he has requested for retention of the quarter on the ground of mid-academic session transfer as his children were studying at Chittorgarh, (Rajasthan)

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He further applied vide Annexure-'A-4' on 27.10.1995. He was not allotted any quarter at Mehsana on the ground that he is occupying the quarter at Chittorgarh. On 18.12.1995, the audit observed the fact that the applicant is in occupation of the quarter at Chittorgarh. The applicant replied to the same vide reply dated 5.12.1995 and 1.1.1996. He further applied for permission to retain the quarter on 2.1.1996 which was forwarded with recommendation by C.P.M. Ahmedabad. On 20.5.1996 the applicant was informed that certificates furnished by him regarding studying of the children at Chittorgarh are not proper. Hence, he was asked to submit proper certificate and he submitted on 27.5.1996. The respondents charged the normal rent for the period 20.9.1994 to 19.11.1994, special licence fee, i.e. double the normal rent on educational ground till May, 1995, penal rent from June, 1995 to October, 1997 at the rate of Rs.2,478/p.m. and for November and December, 1997 at the rate of Rs.2,921/- p.m. Deductions have already been made from September, 1994 to May, 1995 at the rate of Rs.114/-p.m. and June, 1995 onwards at the rate of Rs.1350/- p.m. The respondents have calculated the damage rent at Rs.51,412/-. On 23.5.2000 they have recomputed the rent which comes to Rs.62,458/-. Hence, this OA.

4. The ground agitated by the applicant is that the respondents failed to consider his representation for retention of the quarter at chittorgarh, his case was not forwarded to Railway Board while case of others have been forwarded. So far the applicant has not been declared as unauthorised occupant by the authorities under Public Premises (Eviction of Unauthorised Occupants) Act. He was not allotted the Railway Quarter at Palanpur on the ground that he was having Railway quarter at Chittorgarh.

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5. The respondents have resisted the claim of the applicant and alleged that the OA. is pre-mature as the applicant has not exhausted the departmental remedy available to him before approaching the Tribunal, bad for non-joinder of the parties as the recovery order is issued by the CAO Churchgate who has not been impleaded as respondent and the Tribunal has no territorial jurisdiction as the Railway quarter is situated at Chittorgarh. Though the applicant has sent application on 25.9.1994 and not pursued the same for more than six months. The recovery has not been effected at the instance of the audit but audit has only pointed out the facts. The recovery is as per the extant rules and policy of the Railway Board. The case of the applicant was examined on merit and it was not found proper on merits to send the case to Railway Board for regularisation of unauthorised retention beyond permissible period. Accordingly, Memorandum dated 23.5.2000 was issued endorsing a copy to the applicant. The applicant is not at liberty to compare his case with others. The authorities have concluded that the applicant's case requires no consideration as it lacks merit. The OA. has no merit and it is liable to be dismissed.

6. There are no rules which suggest that when the respondents have passed the orders for charging the damage rent, some departmental remedy is available. The applicant has arrayed Union of India, Ministry of Railways, Chairman, Railway Board,

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General Manager, Western Railway, Dy.Chief Engineer, Western Railway and Director of Audit, Western Railway, Churchgate Station Building as party to the proceedings. When Union of India has been arrayed as respondents, CAO Churchgate is not necessary party to the proceeding. The applicant is now posted at Mumbai hence the Tribunal has a territorial jurisdiction to decide the matter. The Railway quarter though situated at Chittorgarh, but it is the residence of the applicant which gives jurisdiction to this Tribunal. The claim of the applicant is not barred in view of not pursuing the remedy for the reason that the respondents have themselves allowed the applicant for occupation of the quarter since 20.11.1994 to 30.6.1995 on payment of special licence fee, i.e. double the normal rent on educational ground. Hence, all these pleas has no merit, deserves to be rejected and are rejected.

7. At the instance of the audit, the point was taken up by the authorities. There is nothing wrong in it as the audit party is the watchdog of financial administration. The applicant cannot claim any similarity with others in respect of sending his case to Railway Board for regularisation as the facts do not warrant it.

8. In view of 1994-96 Administrative Tribunals Full Bench Judgements 244, Ram Poojan vs. Union of India & Ors., it has been held that no specific order for cancellation of allotment on

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expiry of permitted period on transfer is necessary and further retention of the accommodation by the Railway servant would be unauthorised and penal/damage rent can be levied. It has also been answered that retention beyond the permissible period in view of Railway Board Circular will be and there would be an automatic cancellation of allotment and penal/damage rent can be levied according to rates prescribed from time to time in the Railway Board circular. In view of Railway Board Circular, the maximum period for retention of the quarter on the ground of mid term transfer when the children are studying in school or colleges can be permitted for a period of upto six months and the rent payable is double the assessed or double the normal or 10% of the emoluments whichever is highest. The period comes to an end till the current academic session and or from the date of transfer 8 months whichever is earlier. The applicant has got the maximum relief which is permissible by Railway Board Circular. Hence, the applicant is not entitled to agitate that his case has not been considered by the authorities concerned.

9. The applicant has also challenged the re-calculation of the damage rent. The matter is left for decision by the competent authority if there is some error in calculating the same. The amount recovered towards higher/damage rent from the applicant is in accordance with the rules. Hence, the applicant is not entitled to refund or interest thereon.

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10. In the result, OA. has no merit. It is liable to be dismissed and is dismissed accordingly. The applicant is liable to pay cost amounting to Rs.650/- (Rs.500/- as Legal Practitioner's fee + Rs.150/- as other expenses) to the respondents jointly and safely severally.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

mrj.