

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 10 OCT 1994

APPLICATION NO: 16 of 1994.

APPLICANTS:- Sri.P.Jayanandam,Cuddapah.
V/S.

RESPONDENTS:- The Chief Engineer(Constructions),
Southern Railways,Bangalore and another.,

T.

1. Sri.B.Chidananda, Advocate,
No.2593, Upstairs, IIth Main,
E-Block, IIInd Stage, Rajajinagar,
Bangalore-560 010.
2. Sri.A.N.Venugopala Gowda,
Advocate, No.8/2, Upstairs,
R.V.Road, Bangalore-560004.

Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 28-09-1994.

Issued on

10/10/94

[Signature]

[Signature]

[Signature]

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

O.A. No.16/94

WEDNESDAY THIS THE TWENTY EIGHTH DAY OF SEPTEMBER 1994

Shri Justice P.K. Shyamsundar ... Vice-Chairman

Shri T.V. Ramanan ... Member [A]

**P. Jayanandam,
S/o P.Swamidas,
I.O.W./Gr.I[Retd.],
Southern Railway,
R/of No.4/344, Vivekananda
Nagar, Near RTC Bus Stand,
Cuddapah-516 001[A.P.]**

... Applicant

[By Advocate Shri B. Chidananda]

v.

**1. The Chief Engineer,
Construction Department,
Southern Railways,
Cantonment,
Bangalore-560 046.**

**2. The Executive Engineer,
Construction Department,
Southern Railways,
Ananthapur[A.P.].**

... Respondents

**[By Advocate Shri A.N. Venugopal ... Standing
Counsel for Railways]**

O R D E R

Shri Justice P.K. Shyamsundar, Vice-Chairman:

1. Admit. We have heard this matter at length on more than one occasion and in particular today, the hearing having lasted over two hours. But ultimately we found that the complaint by the applicant is without any substance. The applicant is now retired from service from the Railways and that happened in December 1991. It so transpires that just a day before his retirement the applicant was served with an order



at Annexure A-6 telling him that for having unauthorisedly occupied the government quarters at Chitradurga he is liable to pay damage rent for the period from 11.2.1989. It is this order which is virtually challenged nearly two years after the passing of the same. However, there being a question of delay we have condoned the delay in the filing of this application and treated it as having filed in time but even that generosity has proved futile as further facts will show.

2. An amount of Rs.19,000 odd as per the calculation produced by the learned Standing Counsel for Railways has been placed on record and that amount is said to have been adjusted from the leave salary account of the applicant. The challenge to this kind of adjustment is that it virtually tinkered with the retiral benefits of a retired employee and, therefore, was without competence and is untenable. It is also argued that whatever was said and done, the applicant should have been put through an enquiry by issuing a show cause notice as to why the said amount should not be recovered and lastly it is argued that there is some mistake in the calculation in the matter of computing the damage rent, etc. We find no substance in any of the contentions. As for the argument that there is violation of natural justice in the absence of a preliminary hearing we find it was made clear to the applicant that if he overstayed in the railway quarter he will be liable to pay penal rent as enjoined by the railway rules. The applicant admittedly overstayed and that aspect becomes clear because he asked

for permission to overstay, the same was given from a further representation made in that behalf having remained without any response it becomes clear till he vacated the quarters in July 1991 he must certainly be deemed to be in unauthorised occupation from the date of expiry of the permission granted to him to be in occupation. Therefore, these facts not being in dispute at all and being very much within the knowledge of the applicant who is an official of the railways he cannot insist that he should have been told beforehand that something was going to be recovered from his retiral benefits and in its absence the recovery is bad in law. We find no substance in this argument. Reliance in this connection placed on the decision of the Calcutta Bench of this Tribunal as also the one decided by the Calcutta High Court. Their lordships of Calcutta High Court appear to have proceeded on the basis that the Government and the officer occupying the quarters create a relationship of landlord and tenant and therefore without terminating the tenancy by notice, no steps could have been taken to recover penal rent. With respect we beg to differ from the dicta of the Calcutta High Court and must point out that the allotment of official quarters does not create any landlord-tenant relationship between the Government and its servants. At best it could be a relationship of licensor and licensee which means the possession always remained with Government and only permission given to the Government servant




to occupy the same. Therefore, no question of violation of tenancy rights does arise and therefore the decision of the Calcutta High Court relied upon by the applicant cannot be of any assistance to him. On the other hand the Calcutta Tribunal in O.A. No.1/93 SHANKAR AND OTHERS V. UNION OF INDIA 643.Swamy's CL Digest 1993 has held that so far as Government quarters are concerned different considerations^{arise} and has negatived the contention of the applicants therein that damage rent should not be recovered without giving a notice. It is sufficient for us to refer to the head note found at page 1005 which reads as follows:

"Not obligatory to resort to Public Premises [Eviction of Unauthorized Occupants] Act, 1971, to recover damages from a railway employee unauthorizedly occupying quarters and no show-cause notice necessary for recovery of same from salary."

The decision of a sister bench of this Tribunal is binding on us and we follow the same and hold that no notice is necessary. In any view of the matter a show cause notice was not at all necessary in this case because the applicant himself has stated in his representation dated 31.8.1991 that soon after coming to know of the rules regarding attraction of damage rent for the unauthorised retention of quarters, he was vacating the quarters on 1.8.1991. This statement from his own representation makes it clear that he very well knew what was the outcome of overstaying in the official quarters. Therefore, he cannot now plead ignorance and demand that he should have been

put on enquiry. This argument is thoroughly baseless and totally futile.

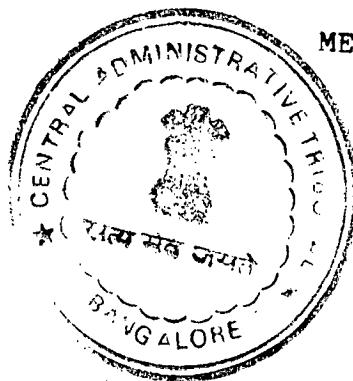
3. We now come to the last segment regarding the calculation of the damage rent being wrong etc. We find that there is no substance in this contention. The only point raised was that damaged rent is not in accordance with the permissible limits enjoined in the Railway Board letter dated 1.4.1989. We do not see any error in the computation of the damage rent and hold it to be in accordance with the diktat of the Railway Board. A point was raised as between Rs.450 which the applicant drew as HRA during his stay at Bangalore and Rs.220 the HRA he drew at Chitradurga for the duration when he was posted the difference alone should have been recovered ie., a sum of Rs.230 and not such sum as determined by the railways in the working sheet produced including regarding the calculations made by the railways and produced through their counsel. We do not understand how there could be scope for difference. What the railways has done is to treat the applicant who was in unauthorised occupation of the quarters at Ananthapur as not being entitled to payment of any HRA irrespective of the question whether he drew it at Rs.450 at Bangalore or Rs.220 at Chitradurga because owing to unauthorised occupation of the railway quarters at Ananthapur he was, under the rule, not entitled to payment of any



HRA but having made irregular payment of HRA the railways have recovered the total sum paid back at Rs.450 and Rs.220 from the applicant. We see nothing wrong in the recovery as ordered.

4. Thus having covered all the points urged we find no substance in any of them and therefore dismiss this application as baseless but make no order as to costs.

bsv



Sd/-
MEMBER [A]

Sd/-
VICE-CHAIRMAN

TRUE COPY

[Signature]
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore