

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 1051/93

Date of Decision 4-4-96

Shri N.V.Sohoni

Petitioner

Mr.V.S.Yawalkar

Advocate for the Petitioner.

Versus

U.O.I. & Ors.

Respondent

Mr.P.S.Lambat

Advocate for the Respondents.

Coram:

The Hon'ble Mr. M.R.Kolhatkar, Member(A)

The Hon'ble Mr.

1. To be referred to the Reporter or not? X
2. Whether it needs to be circulated to other X  
Benches of the Tribunal?

M.R.Kolhatkar  
(M.R.Kolhatkar)  
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
CIRCUIT SITTING AT NAGPUR  
O.A.1051/93

Pronounced this, the 4<sup>th</sup> day of April 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Shri N.V.Sohoni,  
F-3, Vishwa Laxmi(East),  
Nagpur - 440 022.

(By advocate Shri V.S.Yawalkar)

.. Applicant

-versus-

1. Union of India  
through  
The General Manager,  
Central Railway,  
Bombay V.T. 400 001.
2. The Chief Administrative  
Officer(Construction),  
New Administrative Building,  
Central Railway,  
Bombay VT 400 001.
3. The Chief Personnel Officer  
(Engineering Const.)  
Bombay - 400 001.
4. Dy.Chief Engineer(Construction)  
Central Railway,  
Jabalpur, M.P.
5. The Sr.Divisional Accounts Officer,  
Central Railway,  
Jabalpur M.P.

(By counsel Shri P.S.Lambat)

.. Respondents

O R D E R

(Per M.R.Kolhatkar, Member(A))

The applicant was working as Chief Inspector of Works under the control of respondent No.4,Dy.Chief Engineer(Construction)Jabalpur. He retired on superannuation on 28-2-90. He is aggrieved by the recovery of house rent at market rate for the alleged unauthorise occupation of railway quarter at Katni and subsequently at Satna station as detailed below:

Sr. No.	Station	Period for which recovery was made	Amount
a)	Katni	21-5-87 to 21-10-87	Rs.455-70
b)	Satna	21-10-87to 25-1-90	Rs.9,701-29

*M* The circumstance leading to the allegation of

unauthorised occupation are as below:

2. While the applicant was working at Katni he was transferred to Satna by order dt. 21-5-87. He was allotted railway quarter at Satna on 25-5-87 but he did not occupy the same because he had not shifted his luggage from Katni for want of grant of joining time as on duty. Subsequently he vacated the quarters at Katni on 21-10-87 and occupied the quarter at Satna. He was subsequently transferred on 4-12-87 first to Majhagawan and then to Manikpur on 7-4-89. But during this period he did not vacate the quarter at Satna but continued to remain in occupation thereof on the basis of oral permission. As mentioned above he superannuated on 28-2-90 and according to the applicant the total amount of Rs.10,156.99 was recovered from his DCRG at the stage of stelement dues. The applicant states that he had been making representation regarding deduction of house rent for railway quarter at Satna from 17-6-87 (when he had actually occupied the quarter) to 21-10-87 and, also non grant of HRA to him, but there was no reply. It was only after his representation after retirement <sup>that</sup> he got a reply dt. 13-11-90 which is reproduced below:

- "1. You have accepted that you took the key of Railway quarter No.RB-II/142-A at Satna on 17-6-87. As such your contention that you occupied the quarter on 21-10-87 has no meaning.
2. It is the primary responsibility of yours' to apply for permission for retention of Railway quarter at Katni/Satna. You failed to do so. It is not necessary to serve notice to apply for retention of railway quarter at the old station when transferred to Majhagawa and Manikpur stations.
3. In Rly.Board's letter No.E(P&A)II-83/HRA-6 dated 20-5-93, it is mentioned as under:-

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"It has been decided in partial modification of the instructions contained in Railway Board's letter dated 23-3-59 that if a Railway servant retains Railway accommodation beyond the permissible unauthorisedly by paying the market rent, he will not be entitled to House Rent allowance at the new station for the period beyond the permissible period irrespective of the fact that he is paying market rent for Railway accommodation at the old station.

In view of this you are not entitled for HRA for the new station."

It is this letter which has been impugned by the applicant on the ground that market rent could not be recovered from the DCRG without notice to him and without in particular proceedings under P.P.Act. The applicant has also filed an MP for condonation of delay, MP(N) 124/95 in which the ground for condonation taken is that he retired on superannuation on 28-2-90 and on the very day his father died and the applicant was required to go to Nagpur without going into details of the settlement dues which were passed in his favour. Thereafter he made representation on 26-3-90 to which he got a reply on 13-11-90. He made further representation on 14-1-91 to which there was no reply. Thereafter he served legal notice on 10-6-93 and 1-7-93 and not eliciting any response filed the O.A. on 17-9-93. The applicant relies on Supreme Court decision in the case of Collector, Land Acquisition, Anantnag & other vs. Mst. Katiji & Ors., AIR 1987 SC 1353, in which it has been laid down that there is no presumption that delay is occasioned deliberately or on account of culpable negligence, or on account of malafides and emphasis<sup>is</sup> placed on justice oriented approach.

3. Respondents have opposed the O.A. firstly on the ground of limitation. According to respondents the respondents reply was sent to applicant in November '91 and he ought to have filed the O.A. within one year thereof but the applicant waited thereafter without explaining the reasons for the wait. The legal notice sent by him in July '93 does not extend the limitation. In fact according to the respondents the delay is three years and seven months because it should be counted from the date of superannuation of the applicant.

4. On merits the respondents have stated that the applicant was in simultaneous occupation of the quarters at Katni and Satna. Even after his transfer to Satna he did not vacate the quarter at Katni but collected the keys of the quarter at Satna. He actually occupied the quarter on 21-10-87. Shortly thereafter he was transferred to other stations but he continued to occupy the quarter at Satna. He had not filed any application for permission to retain the quarters at Satna even though he was transferred to Majhgawan and Manikpur. Regarding recovery it is contended that the same was not made from DCRG but from leave salary. The market rent has been charged for unauthorised occupation of the quarters as per rules. The question of refund of recovery of quarter rent for the period from 21-5-87 to 21-10-87 does not arise because he did not vacate the quarter from which he has transferred.

5. So far as the limitation is concerned I am prepared to consider the difficult situation in which the applicant found himself when his father ~~expired on the~~ same date as the date of his retirement

and as a result of which he accepted whatever retirement dues were given to him without going into the details. It is noted, however, that he did make representation on 26-3-90 to which he got a reply on 13-10-90. The limitation would, therefore, start from this date. There is no explanation as to why he did not file the O.A. within the permissible period of limitation. There is no explanation as to why after having made a further representation on 14-1-91 he waited for 2½ years i.e. upto 10-6-93 for serving a legal notice and on the basis of that legal notice filed the O.A. on 17-9-93. In my view, therefore, the applicant is not able to give satisfactory explanation for his lack of vigilance ~~failings~~ from November '90 onwards. In the facts and circumstances of the case, the Supreme Court decision cited by the applicant is of no avail. It is also noted that the recovery which has been made by the respondents is not from the pensionary benefits but from the leave salary and the conduct of the applicant in keeping ~~with himself~~ keys of two railway quarters simultaneously ~~is~~ also not free from blame. Without going into the merits, however, I am inclined to hold that the O.A. is barred by time and dismiss the same accordingly. There will be no order as to costs.

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*MR. Kolhatkar*  
(M.R. KOLHATKAR)  
Member(A)