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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1104/95

Date of Decision: 11-4-1997

Banwarilal Sharma

.. Applicant

Shri P.G.Zare

.. Advocate for  
Applicant

-versus-

U.O.I. & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for  
Respondent(s)

CORAM:

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

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to  other Benches of the Tribunal ?

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

O.A.1104/95

FRIDAY this the 11<sup>th</sup> day of APRIL, 1997

CORAM:

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

Banwarilal Sharma,  
Chief Bridge Foreman,  
Central Railway,  
Manmad

By Advocate Shri P.G.Zare .. Applicant

-versus-

1. Union of India  
through  
The General Manager,  
Central Railway,  
Mumbai.

2. The Executive Engineer  
(Bridge & Floods)  
Manmad, Central Railway,  
Maharashtra.

3. The Divisional Railway Manager,  
Central Railway,  
Jabalpur.

By Counsel Shri V.S.Masurkar .. Respondents

-: O R D E R :-

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

The applicant who was working as  
BRI Gr.II in Jabalpur Division at present  
working as Chief Bridge Foreman, Central Railway,  
Manmad has challenged the penal house rent  
recovery amounting to Rs.9544/- for the period  
from November, 1981 to January, 1989. The contention  
of the applicant is that in connection with  
urgent construction work of the Railways  
he was transferred from one place to another in quick  
succession as below :

- (a) 6-80 to 11-81 With HQ as Jabalpur Under Open line
- (b) 11-81 to 11-82 With HQ as Jabalpur Under Construction Br.
- (c) 11-82 to 2-84 At Wani Under Construction Organisation
- (d) 2-84 to 1-85 At Manmad -do-
- (e) 1-85 to 7-85 At Bhusaval -do-

- (f) 7-85 to 11-87 At Manmad Under Construction Organisation
- (g) 11-87 to 12-88 At Bhusaval under XEN(C)Bridges, MMR
- (h) 1-89 to 1-90 At Bhusaval Under Open Line Organisation
- (i) 1-90 to 6-90 At Gwalior - do -

Initially the transfer was temporary with permission to retain HQ at Jabalpur but subsequently although the transfer was stated to be temporary the HQ came to be shifted from Jabalpur to various other places like Wani, Bhusaval, Manmad etc. This would have affected applicant's the education of ~~2~~ children because of change in the ~~medium~~ of instruction from Hindi to Marathi and therefore he retained the quarters at Jabalpur. His case was also taken up officially by his superior officers vide letter dt. 1-6-1990 (page 20) and earlier letter dt. 27-12-1984 (page 21) in which his superiors strongly recommended for ~~continued~~ occupation at Jabalpur of Govt. quarters and non charging of penal rent and the matter was also taken up ~~by the~~ Union in the PNM meeting. However, his request was turned down and the recovery was ordered. Applicant has therefore sought the relief of directing the railway administration to set aside the action of the penal rent recovery taken against the applicant.

2. Respondents have opposed the O.A. According to the respondents initially the HQ was retained at Jabalpur but later on the HQ was shifted and accordingly the applicant should have vacated the quarters. Moreover the applicant had claimed transfer and packing allowance of Rs.1350/- as per transfer rule. Applicant was repeatedly requested to vacate the quarters. The applicant ought to have applied for alternate railway accommodation to the construction department but he had not applied for quarter of construction organisation at Jabalpur and unauthorisedly

occupied Open Line quarter intentionally and deliberately. Therefore the action to recover the **penal** rent is perfectly justified.

3. The application lacks material particulars relating to the normal rent of the quarters and the penal element in the recovery order. Moreover the contention of the applicant about his not having taken TA advance etc. is also not borne out. All the same, the detailed transfer statement itself indicates that the applicant was frequently transferred in the interest of departmental work and the case was recommended by the superior officers of the construction division. Although the applicant cannot be said to have any right to continued occupation of the quarters of an organisation from which he has been transferred, the levy of penal rent appears essentially to have arisen as a result of lack of completion of inter-departmental formality relating to the notional transfer of pool of the quarters viz. Construction vs. Open line. Equity, therefore, demands that the applicant should not be subjected to the penal rent recovery. The action of the respondents to make the penal rent recovery, moreover, appears to be an afterthought and all along, applicant appears to have been given an understanding that his case may be considered favourably.

4. Under the circumstances, O.A. is allowed and the action of the department to recover penal rent amounting to Rs.9544/- is quashed and set aside subject to adjustment of transfer advance and

subject to deduction of normal rent.

5. No order as to costs.

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MR. Kolhatkar

(M.R. KOLHATKAR)  
Member(A)