

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.583/95

Pronounced this the 29th day of JULY, 1997

CORAM:

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

S.D.Jeswani,
R/o. 71-B, Sindhuwadi,
M.G.Road, Ghatkopar(E),
Mumbai - 400 077.

By Advocate Shri K.B.Talreja

.. Applicant

-versus-

1. Union of India
through
The General Manager,
Central Railway,
Mumbai - 400 001.

2. The Divisional Railway Manager,
Central Railway, Mumbai-400001.

3. The Sr.D.A.O.,
Central Railway
Mumbai - 400 001.

By Counsel Shri S.C.Dhavan

.. Respondents

O R D E R

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

This O.A. arises out of the orders passed by this Tribunal in the earlier O.A. No.630/91 decided on 5-1-93. The operative portion of the order is as below :

- "7. We, therefore, direct that the applicant may be treated as having voluntarily retired from the respondents service with effect from 1-7-1991 and his pensionary benefits and other dues should be settled on that basis. It is also directed that while finalising the settlement dues, whatever type of leave is due to the applicant may be adjusted against his absence from 21-10-1982 till the date of retirement after obtaining, if necessary, the required leave application from the applicant. The medical certificates attached to the application may be accepted for this purpose without insisting on a fresh medical certificates. His qualifying

service for pension may be calculated after taking into account such adjusted leave in accordance with the rules. The payment including pensionary benefits may be made within a period of three months from the date of receipt of this order. There will be no order as to costs."

2. The C.F.59-94 in the above O.A. in which the grievance was that the applicant was not correctly paid was dismissed by this Tribunal by giving him liberty to file a fresh O.A. if he desires to challenge the correctness of the payment.

3. Accordingly this O.A. has been filed to claim the relief of directing the respondents to refund a sum of Rs.6684/- being the rent recovered by the respondents as a penal rent.

4. The contention of the respondents is that the applicant was absent from duty from 1982 till 1991 when his notice for voluntary retirement was accepted by the department in terms of the orders of the Tribunal. The applicant was in unauthorised occupation of Railway Quarter from 24-6-83 to 23-8-85 and the penal rent was recovered as per rules. The applicant had never informed the department about his illness and never followed medical rules nor produced medical certificate not sought permission for retention of railway quarter on medical ground, and accordingly 5 times the probed assessed rent has been recovered from the applicant. The applicant contends that he had vacated the quarter voluntarily in August '95 and not in terms of any eviction order. Further it is contended that the Tribunal had directed the department to regularise his leave by taking account of medical certificates attached to the

original application and according to Railway Establishment Manual Para 1728(iii) "A Railway servant on sick leave may be permitted to retain the Railway Quarter allotted to him indefinitely." The department has ~~xxx~~ not taken action in terms of the Tribunal's direction read ^{the} with/above rule. If the same is applied the applicant would not be liable to pay any penal rent.

5. I have considered the matter. In another O.A. 584/95 filed by the same applicant this Tribunal has noted that the Railways have failed to take action strictly in terms of the order of the Tribunal ^{not till date} and have issued formal orders regarding grant of medical leave and other leave. The Tribunal had taken note in its earlier order that the applicant was suffering from mental illness technically called Manic Depressive Psychosis (Depression) and evidently ^{medical} papers in this regard were attached to the O.A. 630/91. The overall period for which the applicant was absent was about 9 years. The period in respect of which penal rent is charged ^{from} is only about 2 years viz. 24-6-83 to 23-8-85. Keeping in view the Tribunal's direction to sanction medical leave to the applicant and keeping in view the statutory rule quoted by the applicant there is no doubt that the respondents were wrong to charge penal rent from the applicant.

6. The counsel for the respondents relies on the following authorities for the proposition that an employee who is no longer entitled to occupation of the Govt. quarters for any reason (in the instant case due to transfer) is liable to pay penal rent.

(1) Ram Poojan vs. U.O.I. & Crs.
1996(3)SLJ CAT93

(2) 1996(3)SLJ CAT 477 S.T.Mishra vs. U.O.I.

(3) 1997 AIR SCW 1404 Amitabh Kumar vs. Dir.
of Estates.

(4) 1997 SC SLJ 52 State of Orissa v. Sadashiv
Mohanty.

(5) 1997(1)SLJ CAT 40 M.P.Kamal vs. U.O.I.

In my view the cases cited by the respondents do
no help them. The present case has a distinct set ^{nature}
of facts and circumstances and taking into account the ^{Tribunal}
of the disease from which applicant suffered/directed
the respondents to regulate his leave between 1982 to
1991 till the date of voluntary retirement by grant
of leave of the kind due including medical leave
supported by medical certificates and the
statutory rules of the railways themselves provide
for retention of quarters indefinitely in respect
of an employee who is on sick leave. Respondents
cannot take the stand that no sick leave was
sanctioned because that would be against the
specific directions of the Tribunal and this
Tribunal has already directed the respondents
^{earlier}
to fully implement the judgment in O.A. No.584/95
vide its order dt. 24-7-1997.

7. In view of the above discussion O.A. is
allowed. Respondents are directed to refund the
~~sum~~ amount of Rs.6684/- to the applicant with interest
at 12% p.a. calculated from 5-4-93 viz. three months
from the date of judgment of the Tribunal in O.A.
630/91.

8. There will be no order as to costs.

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

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