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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

M.A.No.780/96 in O.A. 293 of 1990.

Date: 1st October, 1996.

Between:

T. Mercy. Applicant.

and

1. Union of India represented by
its Secretary, Railway Board,
New Delhi.
2. The General Manager, S.C.Railway,
Secunderabad.
3. The Divisional Railway Manager,
S.C.Railway, Secunderabad.

Respondents.

Counsel for the Applicant: Shri K.Sudhakar Reddy.

Counsel for the Respondents: Shri V.Rajeswara Rao, Standing
Counsel for the Respondents.

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, Vice-Chairman.

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER (A).

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O R D E R

(PER HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN.)

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REASONS.

The miscellaneous application is an off-shoot of the interim order passed in the O.A., which has been finally disposed of without however making any final direction as regards the interim order.

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2. The material facts which give rise to this M.A., briefly stated are as follows:

The applicant is a retired Railway servant. She was working as a Teacher at Railway Boys High School, near Lalaguda. Her husband was also serving under the Railways till he retired from service on 30-6-1989.

While in service ~~he~~ had had been allotted Type IV A Quarter No.90/1 in which he had been residing. The applicant resided with him in the said quarter. In view of the ensuing retirement of the husband the applicant applied about 4 months prior to the retirement date of the husband to the South Central Railway Authorities for allotment of a Railway Quarter on out of turn basis to her. That request was denied by the respondents on the ground that her husband had already constructed his own house in 1983 for which he had availed of a loan from the Railways and therefore under the rules ~~she~~ she was not entitled for out of turn allotment.

3. Aggrieved by the said denial the applicant filed the O.A. on 2-4-1990 seeking a direction to the respondents to allot her Type III accommodation on out of turn basis.

4. The interim order passed in the O.A., on 5-4-1990 is quoted below.

"Admit. By way of interim directions applicant to continue in the quarters now

occupied or to allot a quarter to which she is entitled under the rules. In the event of the applicant failing in this case she would be liable to pay the penal rent leviable as per rules. Post after six weeks."

The respondents moved for vacating the Order by their reply but the order remained in force till the O.A., was finally disposed of by Order dated 14-9-1993. The O.A., was dismissed. Consequently the applicant failed to get a direction to allot her a quarter on out of turn basis. She was not found entitled to get that relief. The applicant continued to stay in the husband's quarter on the strength of the interim order till she voluntarily surrendered it on 31-8-1990.

5. It appears that after the disposal of the O.A., an amount of Rs.18,615.00 has been recovered by the respondents from the settlement dues of the applicant as damage rent for occupation of the Type IV Quarter for the period from 5-4-1990 to 31.8.1990. A representation filed by the applicant against that action was rejected by the DRM(P) on 18-8-1995. The applicant has therefore filed the M.A. (on 2-8-1996) seeking a clarification whether the recovery is in terms of the interim order

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as there was no such direction made in the final order on the D.A.

6. The respondents oppose the application.

They contend that the interim order speaks for itself and needs no clarification as prayed and justify their action relying upon the last part of the order. The learned counsel for the applicant on the other hand relies on the earlier part of the Order in support of the request for clarification.

7. Heard the submissions of Mr. K. Sudhakar Reddy, learned counsel for the applicant and Sri V. Rajeswara Rao the learned standing counsel for the respondents.

8. We do not propose to enter upon the question as to whether the M.A., is misconceived though it is debatable and would rather resolve the controversy to avoid further litigation making an endeavour to place an harmonious construction on the two parts of the Order which on the face of it would appear to be mutually inconsistent.

9. In order to understand the true nature of the interim order it is necessary to remember the back ground in which it was made and the intention and purpose behind it. The applicant had been residing with her husband in his quarter. She had no independent right to remain in the said Type IV quarter after the retirement of her husband. It was therefore that she had applied for allotment of

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Type III quarter on out of turn basis in advance of retirement of her husband which request however had been rejected by the respondents. She had therefore no right to occupy any Railway quarter after the husband had vacated his quarter consequent upon his retirement on 30-6-1989. Hence pending the adjudication on the question of her claim to be allotted Type III quarter on out of turn basis which was the subject matter of the O.A., the interim order was passed obviously on equitable consideration that till her claim was adjudicated upon she should not be deprived of residence in a Railway quarter. With that view apparently it was left open to the respondents to accommodate her in Type III quarter pending the disposal of the O.A., and till such quarter was made available to her she was allowed to continue to stay in her husband's Type IV quarter notwithstanding his retirement. In the absence of any right to continue to remain in Type IV quarter coupled with the direction to provide her Type III Quarter the concession granted to her to remain in Quarter Type IV must be construed to have been relating to Type III quarter. The applicant could not therefore be treated to have unauthorisedly remained in Type IV quarter for the period for which the recovery has been made for the purpose of charging penal rent and that has to be based on the quantum chargeable for Type III Quarter. To that extent the action of the respondents is required to be modified. However since a concession was given to the applicant

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the normal rent for Type IV quarter had to be paid by her. The applicant fortunately does not dispute that liability.

10. There is a controversy on the point as to when the respondents offered the Type III Quarter and whether applicant was unable to occupy it on the alleged ground that it was inhabitable. She has already been relieved of the burden to pay the compensation for the same for the period from 1-9-1990 to 31-12-1991. We need not go into that aspect as that is not germane for deciding this M.A.

11. The last part of the Order clearly implied that in the event of applicant failing in the O.A., she would be liable to pay penal rent. That shows that the concession given to the applicant to stay in Type III quarter (and to remain in the Type IV quarter till that was made available) during the pendency of the O.A., was not on the basis of such a right possessed by the applicant but it was given purely on equitable considerations. But for the protective shield of the interim order such occupation would be illegal. Keeping in mind this paradoxical situation the equitable concession must be deemed to have been extended on the implied condition that if it were eventually found that the applicant had unjustly occupied a Railway quarter depriving the Railways of its use for another legitimate claimant the applicant should



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compensate the Railways in the shape of penal rent chargeable as per the rules for the legal injury caused to them by reason of illegitimately occupying the quarter. This is normal rule when an equitable order is granted under the Code of Civil Procedure and there is no reason not to extend it to matters like the present one under service Jurisprudence. The applicant cannot be heard to make a grievance about it as she has availed of the benefit flowing from the order. Unfortunately the Order did not clarify as to whether the penal rent was chargeable for Type III Quarter or Type IV quarter. Reasonably construed the implication of the last part of the Order could apply to the entire period of occupation of Type III quarter or from the date of the Order till the date of vacating the same consequent upon the dismissal of the O.A., or occupation of Type IV quarter in lieu of Type III quarter for the said period. We are however concerned only with the period from 5-4-1990 to 31-8-1990 since the further period from 1-9-1990 to 31-12-1991 has been otherwise dealt with. In our opinion the respondents were justified in charging penal rent as that was permissible on the terms of the interim order itself but that had to be done with reference to Type III Quarter. The applicant having earned the concessions of continuance in the Railway quarter without having possessed of any legal right and refund of rent chargeable for Type III

Quarter from 1-9-1990 to 31-12-1991 despite having a family house is not justified in disputing the liability to pay the penal rent. Afterall the Railway is a public utility service and so many of its employees would be waiting for allotment of Type III quarter in their own turn, cannot be made to suffer simply because the applicant had been able to obtain the interim order which unfortunately the respondents could not get vacated.

12. Taking into account the overall circumstances of the matter as discussed above following Order is passed:

ORDER.

1. The occupation of applicant of Type IV Quarter during the period from 5-4-1990 to 31-8-1990 shall be treated as occupation in lieu of Type III quarter.
2. Consequent to above the penal/damage rent chargeable shall be limited to the amount calculated at the quantum payable as per Rules for Type III Quarter for the aforesaid period. The recovery of excess amount is set aside.
3. The respondents are directed to release the settlement dues of the applicant to the extent of the excess amount.

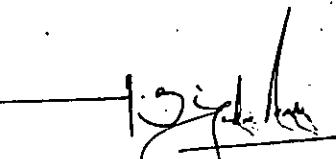
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4. The recovery of rent at the normal rate for Type IV quarter for the period from 5-4-1990 to 31-8-1990 shall remain undisbursed undisturbed.
5. This Order is confined only to the question of penal rent,

The M.A., is disposed of in terms of above Order. No order as to costs.


H. RAJENDRA PRASAD,
MEMBER (A)


M.G. CHAUDHARI, J
VICE-CHAIRMAN.

Date: 1st October 1996

Pronounced in open Court.

*for the court
Deputy Registrar (O) CC*

sss.

11/10/96
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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Dated: 1 - 10 - 1996

~~ORDER~~ / JUDGMENT

M.A.R.A.C.L. No. 780/96,
in

O.A.No. 293/90.

T.A.No. (w.p.)

Admitted and Interim Directions

Issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
DESPATCH

11 OCT 1996