

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.505/90

Date of Order: 16-9-92

BETWEEN:

Mohd. Ahmed Hussain

.. Applicant.

A N D

1. Senior Divisional Personnel Officer,
Officer of the Divisional Railway Manager/MG/SC,
Personnel Branch,
S.C.Rly., Secunderabad.

2. Assistant Personnel Officer, Office
of the Divisional Railway Manager/MG/SC,
S.C.Rly., Secunderabad.

3. Loco Foreman, Lalaguda/MG,
S.C.Rly., Lalaguda,
Secunderabad.

.. Respondents.

Counsel for the Applicant

.. Mr. S. Lakshma Reddy

Counsel for the Respondents

.. Mr. N. R. Devraj SC f MRys

CORAM :

HON'BLE SHRI T.CHANDRASEKHARA REDDY, MEMBER(JUDL.)

(Judgement of the Single Member Bench delivered by
Hon'ble Shri T.Chandrasekhara Reddy, Member(Judl.)).

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This is an application filed under Section 19 of the Administrative Tribunals Act to set aside the impugned proceedings No. OEP/4103/ELR/MG dated 18.6.1990 issued by the First respondent for recovery from the salary of the applicant the penal rent as per rules and also electricity charges from 25.1.1980 onwards which works out to Rs. 48,134.20 up to May, 1990 as arbitrary, illegal and violative of principles of natural justice and to pass such other order or orders as may deem fit and proper in the circumstances of the case.

The facts giving rise to this OA in brief are as follows:-

The applicant is an employee as Diesel Assistant under the control of the 3rd respondent, Loco Foreman at Lalaguda. Earlier the Divisional Railway Manager(P) South Central Railway, by an order dated 20.11.1989 ordered a sum of Rs.26,763/- towards recovery of electricity charges and rent in respect of quarter No.594/2 South Lalaguda from 25.1.1980 to 31.10.89 on the ground that the applicant has occupied the said quarter and not paid the house rent and electricity charges. The applicant challenged the said order before this Tribunal in O.A.999/89. This Tribunal as per its judgement dated 29.12.1989 ^{has set aside the orders dated 20.11.1989 and} directed that was open to the respondents to issue notice to the respondents and pass appropriate orders after giving an opportunity to explain by making a representation against the proposed action. Thereafter, after issuing a showcause notice and after receiving the explanation of the applicant for the said show cause notice, the impugned order dated 18.6.1990 is passed and hence the present OA ^{is filed for} relief as indicated above.

3. Counter is filed by the respondents opposing this OA.

4. The case of the applicant is that even though he was allotted quarter bearing No.594/2, South Lalaguda in the month of January, 1980 that he did not occupy the same as it was in a bad condition and that the applicant expressed his inability to occupy the said Railway quarter to the respondent and asked the respondents to allot him some other quarter at North Lalaguda. So, it is the case of the applicant, as he was never in the occupation of the said quarter and besides he had expressed his inability to occupy the said quarter at the earliest possible time after allotment of the said quarter, that the applicant is not liable to pay to the respondents any amount towards rent or electricity charges and that there is no justification on the part of the respondents in initiating action to collect penal rent and electricity charges for the period from 25.1.1980 to 31.10.1989 during which period, the applicant is alleged to have occupied the said quarter No.594/2 South Lalaguda.

5. In view of the contention of the applicant that he was never in the occupation of the said quarter, burden is heavily cast on the respondents to prove that the applicant was in occupation of the said quarter from 25.1.1980 to 31.10.1989. Even though, it is contended by the respondents in their counter that they have material to show that the applicant was in occupation of the quarter from 25.1.1980 to 31.10.1989, very strangely, the respondents did not produce any material before this Tribunal to show that the applicant was in occupation of the said quarter during the said period. So, for want of evidence on behalf of the respondents to show that the applicant was in occupation of the said quarter from

on 25.1.80 to 31.10.1989, this OA is liable to be allowed.

There is one strong circumstance in favour of the applicant to show that the applicant was not in occupation of the quarter from 25.1.80 to 31.10.89 as contended by the respondents. As already pointed out, it is the case of the applicant that he had expressed his inability to occupy the Railway quarter after it was allotted to him, as the same was in a bad condition and that, he had also sent a letter to the respondents, refusing the occupation of the said railway quarter bearing No.594/2 at South Lalaguda. The respondents had denied as having received the said letter. Witnesses may lie but circumstances do not lie. Admittedly, for the entire period from 25.1.1980 to 31.10.1989, the respondents have paid the house rent allowance to the applicant. It is a well known fact, where a Government employee is in the occupation of the Government accommodation that the Government employee would not be paid the house rent allowance. Besides, the licence fee/rent would be deducted from the employee out of his basic salary. Admittedly, in this case, nothing had been deducted towards licence/rent from the salary of the applicant. As already pointed out, the applicant had been paid HRA from 25.1.1980 to 31.10.1989. So, this circumstance would go to show that the applicant was not in the occupation of the said quarter No.594/2 and in all probability, the applicant should have expressed his inability to occupy the said quarter No.594/2 for whatever reason it might be. So, the payment of the HRA to the applicant and non-deduction of Licence fee/rent from the applicant out of his salary for the said period from 25.1.80 to 31.10.89 cuts at the very root of the case of the respondents.

7. There is one more circumstance in favour of the applicant. If the applicant was in occupation from 25.1.80 to 31.10.89, ^{for the said quarter} electricity bills should have been served on the applicant. No proof is placed before us to show that

the electricity bills for the said quarter No.594/2 were served on the applicant and electricity charges were collected from the applicant. So, this circumstance also strengthens the case of the applicant that he was not in occupation of the said quarter No.594/2 at South Lalaguda.

8. During the course of hearing of this OA, Mr NR Devraj, Standing Counsel for the respondents stated that the applicant had sublet his quarter to one Sri Tonny and that, the said Sri Tonny had made a statement before the respondents that he was in occupation of the said quarter as the same was sublet by the applicant. So, Mr NR Devraj, Standing Counsel for the respondents contended on the basis of the statement of the said Sri Tonny that it could be accepted that the applicant had taken possession of the said quarter and that the applicant had sublet the said quarter to the said Sri Tonny. The statement of the said Sri Tonny is recorded behind the back of the applicant. As a matter of fact, the truth of the statement of Sri Tonny is strongly disputed on behalf of the applicant. As the said statement of Sri Tonny had been recorded behind the back of the applicant, the same cannot be used as against the applicant to come to the conclusion that the said Sri Tonny was in occupation of the said quarters bearing No.594/2 after the same had been sublet to the said Sri Tonny by the applicant herein. Nevertheless, it was open to the respondents to let in evidence before this Tribunal to show that the said Tonny was in possession of the said quarter No.594/2 and that the same had been sublet to him by the applicant herein. The said Tonny is not examined as a witness before this Tribunal to prove the said fact of subletting of quarter to him. So, an adverse remark had got to be drawn to the case of the respondents with regard to the said subletting of the quarter by the applicant to Tonny. As already pointed out, there is no material to show

To

1. The Senior Divisional Personnel Officer,
O/o the Divisional Railway Manager/
MG/SC, Personnel Branch, S.C.Rly,
Secunderabad.
2. The Assistant Personnel Officer,
O/o the Divisional Railway Manager/MG/SC,
S.C.Rly, Secunderabad.
3. The Loco Foreman, Lalaguda/MG,
S.C.Rly, Lalaguda, Secunderabad.
4. One copy to Mr.S.Lakshma Reddy, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
6. One spare copy.

Thru 2nd copy
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that the applicant was in occupation of the said quarters for the period from 25.1.80 to 31.10.89. It is possible that somebody else might have been in occupation of the said quarter for which the applicant herein cannot be blamed. There is no proof to show that the applicant was responsible for subletting the said quarter to other/others. Mr NR Devraj, Standing Counsel for the respondents at the conclusion of his arguments in this OA very fairly conceded that there is no material on behalf of the respondents to show that the applicant was in occupation of the said quarter No.594/2, South Lalaguda from 25.1.80 to 31.10.89 except the statement of Sri Tonny which statement, we are not prepared to accept for the reasons already indicated. So, for want of required proof in this case that the applicant was in occupation of the quarter No.594/2 from 25.1.80 to 31.10.89 and that the applicant was responsible for subletting the said quarter, we see no other alternative except to allow this OA.

9. Hence, we set aside the impugned proceeding dated 18.6.90 issued by the first respondent for recovery from the salary of the applicant, the HRA along with penal rent and also electricity charges. If any amount had been recovered from the applicant in ^upersuance of the letter dated 18.6.90, the same shall be refunded to the applicant within 3 months from the date of the communication of this Judgement. Original application is allowed accordingly, leaving the parties to bear their own costs.

T - C. L. -
(T. CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 16 September, 1992

sd/mvl

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Realty Regd (J).

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: 16 - 9 - 1992 ✓

ORDER / JUDGMENT

R.A./C.A./M.A. No

in

O.A. No. 505/90

T.A. No.

(W.P. No)

Admitted and interim directions
issued

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered / Rejected

No orders as to costs.

Central Administrative Tribunal

DESPATCH

25 SEP 1992 ✓

HYDERABAD BENCH.

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