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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.271/92

Date of decision: 24-2-1993

BETWEEN:

K.Kothendarama Pillai

.. Applicant.

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1. Union of India, rep. by
its General Manager,
South Eastern Railway,
Garden Reach, Calcutta.

2. The Divisional Personnel Officer,
South Eastern Railway,
Visakhapatnam, Andhra Pradesh.

.. Respondents.

Counsel for the Applicant

.. Mr.N.Raghavan

Counsel for the Respondents

.. Mr.N.R.Devraj

CORAM:

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

--- T. S. R. f

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

This is an application filed under Section 19 of the Administrative Tribunals Act to direct the respondents to refund the sum of Rs.10,740/- to the applicant that is withheld by the respondents from out of the gratuity of the applicant towards damage rent of the quarters the applicant was in occupation with interest at 18% per annum till the date of the repayment of the same together with costs and to pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this ^{in brief} O.A. ^{are} as follows:-

3. The applicant was working as Senior Commercial Inspector with head quarters at Waltair, South Eastern Railway. By virtue of service he was eligible for allotment of Railway Quarters and was accordingly allotted Railway Quarter Type-I at Marripalem, Visakhapatnam. The monthly rent was Rs.20/- and the same used to be recovered from the salary of the applicant regularly. While so, the applicant passed suitability test for promotion to the post of Commercial Inspector Grade-II held on 22.6.1988 and was regularly promoted as Commercial Inspector Grade-II ^{with} ^x increase in traffic and its related problems in JYP-KRDL line. It was felt that Inspector in a higher grade should be made incharge of the Section. So, the applicant herein was transferred on promotion as Commercial Inspector, Grade-II to Kirandul. The said transfer orders of the applicant from Waltair to Kirandul is dated 2.8.1988. In the said transfer order it was specifically brought to the notice of the transferred railway employees including the applicant herein ~~that they~~ should vacate the railway quarter if any

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under their occupation before officiating the transfer to New Station. The applicant subsequently assumed charge at Kirandul as per the said transfer orders of the post of Commercial Inspector, Grade-II. But the applicant continued to be in occupation of the said quarters at Marripalem, Visakhapatnam upto 20.4.1991. So, in view of the instant rules/instructions, the railway administration recovered from the salary penal rent of Rs.80/- per month from January, 1989 to 30.4.1991. The said penal rent of Rs.80/- p.m. was collected from the ~~salary~~ applicant 4 times of the normal rent in terms of the railway board instructions vide Lr.No.F(X)-72/RN 3/1 dt.23.9.76. The applicant retired from service on 31.5.89. In view of the Railway Board Instructions as per the Lr.No. F(X)1-86/II/9 dt. 1.4.1989 (issued ^{upto} withdrawing instructions dt. 23.9.1976), Damaged fees at Rs.15/- per Sq.M of Plinth area with regard to unauthorised occupation in respect of quarters of Type A to D was ordered to be fixed and collected. The said ~~in~~ instructions came into effect w.e.f. 1.4.1989. The damaged rent at the revised rates had not been recovered from the applicant w.e.f. 1.4.1989. So, a sum of Rs.10,740 was withheld by the respondents from out of the gratuity towards the damaged rent that was liable to be paid by the applicant to the respondents w.e.f. 1.4.1989 upto 30.4.1991. According to the applicant withholding of Rs.10,740/- towards the difference of damaged amount for the said period from 1.4.1989 upto 30.4.1991 is unconstitutional and arbitrary. The respondents inspite of the representations by the applicant had not paid him the said sum of Rs.10,740 withheld by them from out of the gratuity payable to the applicant, the applicant had filed the present application for the relief as already indicated above.

4. Counter is filed by the respondents opposing this O.A.

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5. The fact that the applicant had been under occupation of the railway quarters from 1.1.1989 upto April 1991 is not in dispute in this O.A. In view of the railway board instructions dated 23.9.1976 that penal rent had been recovered from the applicant 4 times of the normal rent at the rate of Rs.80/- per month is also not in dispute in this O.A. The applicant has not rightly challenged the collection of penal rent of Rs.80/- per month w.e.f. January, 1989 to April 1991 as per the railway board letter dt. 23.9.1976 to which reference is already made. So, the action of the respondents in collection of penal rent of Rs.80/- p.m. for the period from 1.1.1989 to April 1991 under the circumstances is valid and as already pointed out is not challenged by the applicant.

6. As already indicated the railway board through their letter dt. 1.4.1989 had withdrawn the instructions issued under the letter dt. 23.9.1976 and had fixed the damaged licence fees at the rate of Rs.15/- per Sq.M. of plinth area in respect of quarters of Type A to D. It is only on the basis of the said instructions of the Railway Board Lr.dt.1.4.1989 that the sum of Rs.10,740/- had been withheld by the respondents towards damaged rent from out of the gratuity payable to the applicant. As could be seen from the submissions made on behalf of the applicant the applicant never appears to have been aware of the instructions of the railway board letter dt. 1.4.1989 with regard to the damaged licence fees at the rate of Rs.15/- per Sq.M. plinth area in respect of quarters Type A to D. As on 1.4.1989 admittedly the applicant was in service. As already pointed out the applicant as having retired on 31.5.1991 is not in dispute in this O.A. So, even though the Railway Board's Instructions as per the letter dt. 1.4.1989 regarding the revised rates of damaged rent at the rate of Rs.15/- per Sq.M plinth area had come into effect from 1.4.1989, we are unable to understand why from 18.4.1989 onwards till 31.5.1991 that is roughly for

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about 2 years the applicant was in service, the respondents had failed to recover the damaged rent at the rates specified in the Railway Board's letter dt. 1.4.1989. So, from the non-recovery of the damaged rent as per the instructions dt. 1.4.1989 naturally might have made the applicant believe that the applicant was liable to pay the penal rent as per the Railway Board's letter dt. 23.9.1976 which was 4 times of the normal rent. The damaged rent payable as per the instructions of the Railway Board's letter dt. 1.4.1989 is 24 times normal rent payable by the applicant and $3\frac{1}{2}$ times the penal rent payable as per the instructions of the railway board letter dt. 23.9.1976. The explanation given by the respondents for noncollection of damaged rent from the applicant w.e.f. 1.4.89 upto 31.5.1991 which is the date of retirement of the applicant is that due to oversight and mistake that had not been done. In the matter of collection of rent, and damaged rent and alertness, ~~much~~ ^{and} vigilance is expected from the respondents. But the respondents have failed in this case to show the required alertness and vigilance in the matter of collection of damaged rent. But by the by the conduct of the applicant also had got to be condemned for his unauthorised occupation of the quarter inspite of his transfer to Kirandul in the year 1988 and having continued in unauthorised occupation of the quarter upto 30.4.1991 one month prior to the date of his retirement on 31.5.1991. It is quite possible that the applicant might have also deprived another eligible and needy employee the Type I quarter by his unauthorised occupation. So, the conduct of the applicant in continuing in unauthorised occupation for such a long time is highly blameworthy. No doubt an explanation is sought to be given by the applicant that through out ~~he~~ ^{he} was kept impression that he would be transferred from Kirandul and due to that belief that he had continued in the quarter even though penal rent of Rs.80/- p.m. was deducted from his salary. Except the oral plea of the applicant that

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he was assured by the Divisional Commercial Superintendent that he would be accommodated at Waltair after transferring the applicant from Kirandul, there is no other material to show that the applicant was kept under the said belief. So, the applicants' explanation that under the belief that he would be transferred in due course before retirement from Kirandul to Waltair that the A quarter was continued in the quarter at Kirandul does not appeal to us at all.

7. But, due to the fact that the respondents had not made any attempt to collect damaged rent from the applicant as per the instructions dt. 1.4.1989 we are of the opinion that the interests of Justice require to pass an equitable order so as to protect the interests of the applicant and also to subserve the ends of the Justice. In view of the conduct of the respondents as already pointed out in the order dated 1.4.1989 to recover damaged rent while the applicant was in service, we do not propose to take up the legal issues involved in this O.A. In our opinion the interests of justice would be served if the respondents are directed to refund the sum of Rs.10,740/- to the applicant that had been withheld by the respondents towards damaged rent for the Type A quarter that was in the unauthorised occupation of the applicant from 1.4.1989 upto 31.4.1991. But we intend to make it clear that we do not propose to lay down any Law that the damaged rent is not liable to be recovered in case of the unauthorised occupation of the quarters as per the railways board's instructions of the letter dt. 1.4.1989. As already pointed out penal rent for the period from January 1991 to April 1991 which is 4 times of the normal rent i.e. Rs.80/- p.m. as per the Railway Board's instructions dt. 23.9.1976 had already been collected from the applicant. As already observed it will be just and equitable in the circumstances of the case to direct the respondents

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to refund to the applicant ^{the} said amount of Rs.10,740/- withheld by the respondents from the DCRG that is payable to him.

8. The applicant had claimed interest of Rs.10,740/- from the date that is withheld. Due to conduct of applicant as pointed out earlier, it will not be just and proper to award any interest on the said sum of Rs.10,740/-. Hence O.A. is liable to be allowed as indicated above.

9. In the result the respondents are directed to refund to the applicant the sum of Rs.10,740/- that is withheld from out of the gratuity payable to the applicant towards damaged rent of the quarter the applicant was in occupation at Marripalem in Visakhapatnam. The applicant will not be entitled to any interest on the said sum of Rs.10,740/-. This order shall be implemented within 3 months from the date of the communication of this order. The parties shall bear their own costs. G.A. is allowed accordingly.

(T.CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 24 February, 1993

8/3/92
Deputy Registrar (J)

To
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1. The General Manager, S.E.Rly, Union of India,
Garden Reach, Calcutta.
2. The Divisional Personnel Officer,
S.E.Rly, Visakhapatnam, A.P.

3. One copy to Mr.N.Raghavan, Advocate, 113, Jeeracompound, Sec'bad
4. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
5. One spare copy.

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TEMPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. V. VEELADRI RAO :V.C.

AND

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

AND

THE HON'BLE MR. CHANDRA SEKHAR REDDY
:MEMBER(J)

AND

THE HON'BLE MR.

DATED: 24/2-1993

ORDER/JUDGMENT:

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

in

S.A.No.

27/92

T.A.No.

(W.P.No.

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No order as to costs

pvm

Central Administrative Tribunal
DESPATCH
8 MAR 1993
HYDERABAD BENCH