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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 623/92.

Dt.of Decision : 11-8-94.

Abdul Rasheed

.. Applicant.

Vs

1. Sr. Divl. Mech. Engineer,
SC Rly, Diesel Shed, Gooty.
2. Sr. Divl. Personnel Officer,
SC Rly, Guntakal.
3. General Manager,
SC Rly, Rail Nilayam,
Secunderabad.

.. Respondents.

Counsel for the Applicant : Mr. G.V.Subba Rao

Counsel for the Respondents : Mr. V.Bhimanna, Addl.CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

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O.A. 623/92.

Dt. of Decision : 11-8-1994.

ORDER

¶ As per Hon'ble Shri A.V. Haridasan, Member (Judl.) ¶

In this application filed Under Section 19 of the Administrative Tribunals Act the applicant, Master Craftsman (Electrical) Diesel Shed At Gooty, had prayed that the respondents may be directed to stop further recovery, which is being made without notice or furnishing any particulars to him and to refund the excess amount recovered with an interest at the rate of 18% there-on, by declaring that the action of Sr. Divisional Personnel Officer, Guntakal in effecting the recovery is illegal, arbitrary and violative of Articles 14 and 16 of the constitution.

2. The facts in brief can be stated as follows:-

While the applicant was working as Diesel Electrical Fitter HSG-I in Diesel Shed at Gooty, he was sent on deputation to Zimbabwe through the Rail India Technical and Engineering Services. He was on deputation in Zimbabwe from 17-11-1984 to 16-11-1986. At the time when the applicant was sent on deputation he was residing at Railway Quarters No. 201/A Type - II. The rent for the quarters at the time when it was allotted was Rs. 29/- per month from the date of allotment, and the same has been revised to Rs. 55/-per month, after the implementation of IVth pay commission report. In Zimbabwe, the applicant was not provided with family accommodation but was given only bachelors' accommodation.

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So, when the applicant went on deputation his family continued to stay in the quarters. The rent at Rs. 29/-+ electrical charges and on revision at the rate of Rs. 55/- was being regularly remitted. The authorities did not raise any objection ^{for} in the continuous occupation of the quarters by the applicant's family and never informed the applicant that he was liable to pay any higher rate of rent for occupation of the quarters by ^{his} family while he was on deputation. The rent remitted regularly was being accepted. However after the applicant returned from deputation he started living in the very same quarters. From January, 1980 onwards, the respondents started recovering a sum of Rs. 200/- per month, from the pay and allowances of the applicant. This decision to recover, was taken by the Sr.Divisional Personnel Officer, Guntakal without any notice to the applicant on the ground that the applicant was liable to pay penal rent for retention of the quarters, while he was on deputation. Since the representation of the applicant against the deduction from his pay and allowances did not bear fruit, he got a lawyer notice issued to the third respondent on 27-1-91 stating that the recovery was illegal and unjustified and demanding back the amount recovered. There was no response to this legal notice and the respondents continued to make recovery. It was under these circumstances that the applicant has filed this application. Though the application was admitted on 1-12-92 and posted on several days, to enable the respondents

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to file reply, no reply has so far been filed. Today I have heard Shri G.V.Subba Rao learned counsel for the applicant and Mr.V.Bhimanna, learned standing counsel for the respondents and have also perused the application and the documents annexed there-to.

3: Shri G.V.Subba Rao, learned counsel for the applicant argued that unilateral decision to make a recovery from the pay and allowances of the applicant, of huge amount purporting to be collection of penal rent without any notice to the applicant is arbitrary, irrational and unjustified and for that reason, the respondents have to be directed to pay back whatever has been recovered from the applicant with interest and not to make further recovery. He invited my attention to the fact that while the applicant was relieved to go on deputation, he was not directed to vacate the quarters, nor was he told that retention of the quarters till the period of deputation is over, would be treated as unauthorised for which he would be liable for payment of penal rent. Therefore, the learned counsel for the applicant argued that it is not permissible for the respondents to take a unilateral decision for recovery of penal rent as if the applicant is a trespasser. Mr.V.Bhimanna, learned counsel for the respondents argued that the Railway Board had issued a letter dt. 17-12-1983 which was circulated vide circular Sl.No. 5/84, wherein it was stipulated that railway employees on secondment to Rail India Technical and Engineering Services and Indian Railway

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constructions for service abroad, would be permitted to retain railway quarters for a maximum period of 2 months and if they retain the quarters longer than that, they would be liable for payment of penal rent. He argued that it was on the basis of this Railway Board circular, that the recovery is being made from the pay and allowances of the applicant and therefore the action of the respondents is in accordance with the circular of the railway board which is having statutory force.

4. There is nothing on record to indicate that the applicant has been made aware of the existence of the circular Sl. No. 5/84, ^{when} the applicant was sent on deputation in the year 1984. We do not know whether the circular letter No. 5/84 was circulated in the office where the applicant was working before he was sent on deputation. Even if it is presumed that the circular Sl. No. 5/84 was issued prior to the date on which the applicant was sent on deputation, unless the respondents had given a notice that he should vacate the quarters in 2 months and failure to do so would make him liable for payment of penal rent, I am of the considered view that it is not open for the respondents to take a unilateral decision to collect the penal rent now. Another circumstance in this case is, that through-out the period of deputation rent at the normal rate was being paid on behalf of the applicant and that was accepted without any complaints by the respondents. It was only 2 years after the applicant has returned from the deputation

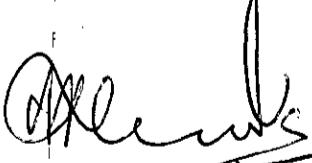
Copy to:

- Divisional*
1. The Senior Mechanical Engineer,
South Central Railway,
Diesel Shed, Gooty.
 2. The Senior Divisional Personnel Officer,
South Central Railway, Guntakal.
 3. The General Manager, South Central Railway,
Railnilayam, Secunderabad.
 4. One copy to Mr.G.V.Subba Rao, Advocate, CAT, Hyderabad.
 5. One copy to Mr.V.Bhimanna, Addl.CGSC, CAT, Hyderabad.
 6. One copy to Library, CAT, Hyderabad.
 7. One spare copy.

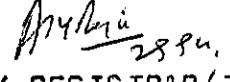
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that the Sr. Divisional Personnel Officers has taken a decision to recover the penal rent that too without giving the applicant any notice. It is further evident from the order of the Divisional Railway Manager, Guntakal dt. 9-1-89 that the quarters No. 201/A Type - II has been regularised in the name of the applicant. The applicant had issued a lawyer notice in the year 1991 complaining against the recovery made from pay and allowances and claiming back the amount recovered by the respondents. Even inspite of having received this notice, the respondents did not choose to send him a reply as to why the recovery was being made. I am of the considered view that the action taken by the respondents in recovering the penal rent is not sustainable.

5. In the result, the application is allowed. The respondents are directed not to make any recovery from the pay and allowances of the applicant towards penal rent and to refund to the applicant the entire amount of penal rent recovered from him so far within a period of 2 months from the receipt of this order. The claim of interest is allowed. There is no order as to costs.


(A.V. HARIDASAN)
MEMBER (JUDL.)

Dated : 11th August, 1994.
(Dictated in Open Court)


28/8/94
DEPUTY REGISTRAR (J)

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Checked by

Compared by

Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. A. V. HARIDASAN MEMBER(J)

AND

THE HON'BLE MR. A. B. GORTHI MEMBER(A)

Dated: 11.8.94

ORDER/JUDGMENT.

M.R./R.P./C.P.NO.

L.A.NO. 628 in
92

T.A.NO. (W.P.NO.)

Admitted and Interim Directions
Issued.

Allowed.

Dismissed, or with directions.

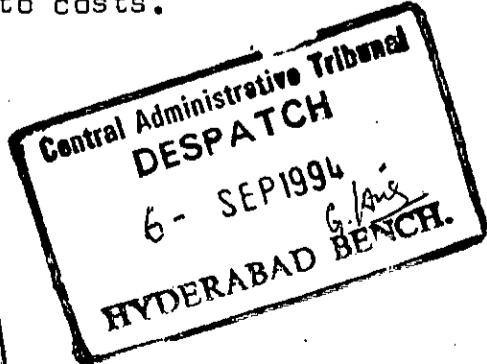
Dismissed.

Dismissed as Withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.



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