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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 375/94.

Dt. of Decision : 20-9-94.

A. Krishnamurthy

.. Applicant.

Vs

1. Sr. Divisional Personal Officer,
SC Rly. Guntakal - 515 801.
2. Chief Personal Officer,
SC Rly, Rail Nilayam,
Secunderabad - 371,

.. Respondents.

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

Counsel for the Respondents : Mr. D. Gopala Rao, SC for Rlys.

CORAM:

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

THE HON'BLE SHRI A.B. GORTHY : MEMBER (ADMN.)

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OA 375/94.

Dt. of Order: 20-9-94.

(Order passed by Hon'ble Shri A.B.Gorthi,
Member (A)).

* * *

The prayer of the applicant in this application
is two fold :-

Firstly for a direction to the Respondents to
regularise the occupation of Railway Quarter No.792
Vivekananda Nagar, Guntakal, in the name of the appli-
cant and consequently for a direction to the Respondents
to collect only normal rent as per rules from the
applicant and to refund the excess amount of rent
recovered from him from January, 1991, as penal/damaged
rent.

2. The applicant who was serving in Guntakal was
transferred to Hubli where he joined on 31-12-90. Another
(Syed Mohaboob Basha)
person/who was also transferred along with the applicant
from Guntakal to Hubli was not relieved and hence Shri
Bhasha reported ^{at} ~~in~~ Hubli much later on 5-6-91. Even
prior to reporting of Shri Bhasha at Hubli, the applicant
sought for his re-transfer to Guntakal because he was
not able to bring his family to Hubli for the reason
that Medium of education at Hubli was different from
back at Guntakal and continued in occupation of the

...3.

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Railway Quarter No.792 allotted to the applicant. Shri Basha, soon after reporting at Hubli, he was re-transferred to Guntakal but the transfer of the applicant was unduly delayed. It was made only after the applicant approached the Tribunal and obtained orders in his favour for his re-transfer to Guntakal.

3. On a request from the applicant he was allowed to retain the Railway Quarters up to 24-4-91 on payment of normal rent. Thereafter the Respondents started recovering penal rent from the applicant.

5. We may first take up the question of the validity of charging penal rent from the applicant. The short point on which Sri GV Subba Rao laid considerable stress is that the Respondents started ^{at} the recovery of penal rent without either cancelling the ^{allotment of} Railway Quarter or without initiating due proceedings for the purpose of such recovery. In support of his contention he has drawn our attention to a judgment of the Allahabad Bench of the Tribunal rendered in Avdesh Kumar Vs. Union of India(1994 (1) ATJ 59). In that case it was categorically held that where there was no order ~~of~~ cancelling the

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allotment of residential accommodation at the old Station, the authorities cannot charge penal/damage rent.

6. Shri G.V.Subba Rao, learned counsel for the applicant has also drawn our attention to the decision rendered in Bhargavi Amma Vs. The Sub Area Commander Station Head Quarters, Colaba, Bombay & others (1994(1) ATJ 453), wherein it was held as under :-

"There is no evidence on record to show that any proceedings levying damage rent was taken up by the Respondents in accordance with the Law before they imposed damage rent on the applicant from 8-5-91. This action of the Respondents therefore contrary to Law and unsustainable."

7. We find that para 1711(v) of the I.R.E.M., Vol.II is in consonance with what has been laid down in the above cited judgment. The rent charged from the Railway Servant in respect of the Quarter allotted to him may exceed 10% when the employee does not vacate the residence after the cancellation of the allotment (underlined for emphasis).

8. Admittedly in the case before us no proceedings have been initiated for the purpose of recovery of penal rent before imposing the same upon the applicant nor there was any cancellation of the quarter allotted to him. Learned counsel for the ~~appxi~~ Respondents states that once the applicant ^{is allowed} ~~to~~ term, to retain the quarter up-to a particular date, it would imply that there would be automatic cancellation of the quarter after the said date. We

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cannot accept such an argument in view of what has been categorically laid down~~xxx~~ in I.R.E.M. 1711 (v). It may not be presumed that the applicant would know that the allotment of quarter to him stood terminated. For these reasons we find that ~~xxx~~ the Respondents ^{were in &} made error in the manner in ~~xx~~ which they did.

9. On the consequential aspect of the applicant's plea for regularisation of quarter in his name, there can be no doubt that on the transfer of a Govt. Servant, he ~~is~~ has to vacate the quarter allotted to him and he cannot, as ~~is~~ a matter of right, claim continued retention^{of} such accommodation. ^{Applicant's &} ~~As~~ request for retention^{of} accommodation till the end of academic session was accepted by the Respondents, and he was permitted to retain the quarter till 24-4-91. But in this regard Shri GV Subba Rao, counsel for the applicant states that ~~as~~ the applicant ^{was} discriminated vis-a-vis Shri Syed Mahaboob Basha. Whereas the applicant, in compliance with the order of transfer, promptly reported to Hubli, Shri Basha for some reason or the other was relieved much later. ^{& further,} ~~and that~~ the Respondents accepted the request of Shri Basha for re-transfer to Guntakal and transferred him soon after his arrival to Hubli while rejecting the applicant's request for re-transfer to Guntakal. This compelled the applicant to approach the Tribunal in OA 274/92 and it ^{was} ~~is~~ only ^{after &} ~~under~~


.... 6.

(38)

the intervention of the Tribunal through the judgment in the said O.A., the applicant was re-transferred to Guntakal. We find that in this case equity demands that the applicant needs similar treatment as was given to Shri Basha. Admittedly Shri Syed Mahaboob Basha was also in occupation of the Railway Quarter ^{and} is continuing to stay in the ^{same} Quarter after his re-transfer to Guntakal on payment of normal rent only. From this point of view and in the circumstances of the case, there is merit in the applicant's request for a direction to the Respondents to regularise the Quarter No.792/A in the name of the applicant.

10. In the result, the O.A. is allowed and the Respondents are ~~directed~~ directed to refund the penal rent recovered from the applicant after deducting the normal rent due from him and also to regularise the allotment of quarter in the name of the applicant. The Respondents to comply with this order within a period of three months from the date of communication of this order. No costs.


(A.B. GORTHI)
MEMBER (A)


(A.V. HARIDASAN)
MEMBER (J)

Dt. 20th September, 1994.
Dictated in Open Court.

avl/


DEPUTY REGISTRAR (JUDL.)

Typed by
Checked by

Compared by
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(3)

AND

THE HON'BLE MR.A.B.GORTHY : MEMBER(A)

Dated: 20.9.94

ORDER/JUDGMENT.

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

in
O.A.NO. 375/94
T.A.NO. (W.P.NO.)

Admitted and Interim Directions
Issued.

Allowed. ✓

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

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