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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION-NO.1526 of 1995

DATE OF ORDER:16.7.96

BETWEEN:

SYED JAFFAR

.. Applicant

and

1. The Divisional Railway Manager (Personnel),
South Central Railway,
Vijayawada,
2. The General Manager,
S.C.Railway, Rail Nilayam,
Secunderabad,
3. The Sr.Divisional Electrical Engineer (Maint.),
S.C.Railway, Vijayawada,
4. The Secretary, Railway Board,
New Delhi,
5. The Director of Audit,
S.C.Railway, FA&CAO's Compound,
Secunderabad.

.. Respondents.

COUNSEL FOR THE APPLICANT: Shri G.V.SUBBA RAO

COUNSEL FOR THE RESPONDENTS: SHRI V.BHIMANNA, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE)

JUDGEMENT

Heard Shri G.V.Subba Rao, learned counsel for the applicant and Shri V.Bhimanna, learned standing counsel for the respondents.

2. The applicant in this OA was deputed to Jordan Railways on Secondment through RITES from 18.12.81 to 30.11.86. He joined back in the same post after release from Jordan Railways on 10.12.86. Earlier to his Secondment to Jordan, he was occupying a Railway quarter and he was paying the usual rent in accordance with the

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rules. However, it was decided by the Railway authorities to recover the penal rent amounting to Rs.72,550/- for the Railway house occupied by his family during the period he was on Secondment to Jordan Railways, by the order No.B/P.555/Reallotment/Vol.III dated 27.11.95 (Annexure AI). The recovery is to be started from October 1993 onwards in terms of the impugned letter No.B/P.483/II/Vol.II dated 30.9.93 (Annexure A-II).

3. Aggrieved by the above, he has filed this OA for setting aside the impugned orders dated 27.11.95 (Annexure A-I) and 30.9.95 (Annexure A-II) by holding them as arbitrary, illegal, unconstitutional and violative of Articles 14 and 16 of the Constitution of India.

4. An interim order was issued on 8.12.95 suspending the impugned order dated 27.11.95.

5. The applicant contends as follows:-

(i) The applicant was deputed to Jordan Railways on the condition that he is entitled to retain quarter at his last place of posting in Indian Railways i.e, at Vijayawada and this was incorporated in Para 3 of the agreement. The applicant also states that the rule by which he is governed for recovery of the rent is Para 3(ii) of the Serial Circular No.4/84 conveyed by the letter No.P/612/EL/Divn/Traction dated 21.1.1984. The applicant further submits that when he left for the



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Secondment he was not informed about the penal rent and he was under the impression that he will be allowed to retain his quarter at Vijayawada on payment of usual rent as he was not asked to vacate the quarter before being relieved to go on Secondment to Jordan. In his relief letter also there is no condition that he should vacate the quarter before proceeding to Jordan. He further submits that a lot of correspondence had taken place between R-1 and R-2 and both of them recommended his case for recovery of rent at the usual rate and not at the penal rate from his salary after his return back from Jordan. However, R-4 without appreciating his case in full has rejected his case and directed the Railways to recover the penal rent. Even after he joined at Vijayawada after he was released from the Secondment from Jordan, he was not immediately told to pay the penal rent. But when an objection was taken by the Audit at a later date, his case was reopened and he was asked to pay the penal rent as per the Railway Board's letter. The officials in this connection have failed to follow the rules which resulted in ordering penal rent and recovery thereof from his salary from October 1993.

(ii) The learned counsel for the applicant also relies on the judgement of this Tribunal in O.A.NO.623/92 decided on 11.8.94 (Abdul Rasheed v. Union of India) wherein it was held by the Tribunal that the applicant therein is entitled to pay only usual rent and not penal rent during the period he was on Secondment to Zimbabwe to



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state that the above direction holds good in this case also. He also relies on the judgement of this Tribunal in O.A.NO.375/94 (A.Krishna Murthy v. Railways) wherein the applicant in that OA was deputed to Hubli Division within the Railways and when he came back, even though penal rent was sought to be recovered, the same was held as irregular and hence the recovered amount was reimbursed to the applicant therein. In all these cases, the applicant submits that the principle laid down is that whenever an employee is sent on deputation, he should be allowed to retain quarter at the last place of posting from where he was relieved without collecting penal rent. It was also submitted that without cancellation of the original allotment order, he cannot be levied penal rent. As eviction proceedings are not started, he is not liable to pay penal rent.

6. I have heard at length the arguments of Shri G.V.Subba Rao, learned counsel for the applicant. I will answer all his contentions one by one.

7. The first contention is that his contract to Jordan Railways does not stipulate any condition for recovery of penal rent if he retains the quarter in his last place of posting in India. As a matter of fact he was permitted to retain quarter under the provisions of the contract vide Para 3 of the contract. As there is no order in regard to the recovery of the penal rent even in his relieving order, he cannot now after his return from

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Jordan be forced to pay the penal rent.

8. Before analysing his contentions, it is essential to reproduce Para 3 of the agreement as given in Page 3 of the OA. This para reads as below:-

"Subject to the approval of Ministry of Railway and in accordance with the extant rules you will be given facilities from the Indian Railways during the period of your assignemnt in respect of retention of railway accommodation under your occupation, Railway passes and Medical facilities in India". (Emphasis added).

No doubt this para does not indicate that the penal rent has to be paid during the period he was away on Secondment. But this para clearly stipulates that he should be given facilities for retention of Railway accommodation under his occupation in accordance with the extant rules. The learned ^{1 applicant's} counsel himself has admitted that he is governed by the extant rules as incorporated in Para 3(ii) of the Serial Circular No.4/84. For the purpose of clarity, Rule 3(ii) along with the notes (i) and (ii) beneath that rule is reproduced below:-

"(ii) An employee on deputation abroad may be permitted to retain the railway quarters as follows:-



(a) for the entire period of his deputation abroad provided family passage facility is not availed of;

(b) in case an employee avails of the family passage concession he/she may be permitted to retain the quarters for a period of 2 months or upto the date of departure of family in India, whichever is earlier.

Note:

(i) "Deputation Abroad" means transfer of an employee for service abroad, during which period - 'pay and allowances' of the employee is charged to Government of India-revenues.

(ii) Railway employees posted abroad in the Indian Missions against posts pay and allowances of which are borne by the Ministry of Railways will be treated as on permanent transfer for the purpose of retention of quarters in India".
(Emphasis added).

As per rules, during the entire deputation period abroad if family passage facility is not availed of or not provided, the employee may be permitted to retain quarter for a period of two months or upto the date of departure of family in India whichever is earlier. Note (i) under this rule is very important. As per this ^{note} ~~rule~~, the applicant during the deputation period may be permitted to retain the quarter paying usual rent under this rule

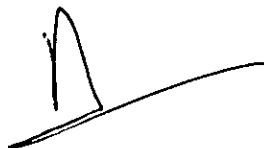
provided during that period "pay and allowances of the employee is charged to the Govt. of India revenues". It is an admitted fact that the applicant was given a bachelor accommodation in Jordan because of which he could not shift his family and hence he claims that he should be given the relief as given in Para 3(ii) of the Circular under study. But the note under this rule clearly states that the pay and allowances during that period should be debited to the Govt. of India revenues. Nowhere it has been brought out that the pay and allowances while he was working in Jordan Railways were debited to the Government of India revenues. As a matter of fact, he was sent on Secondment to Jordan Railways on getting pay and allowances from the Jordan Government through RITES. Hence it cannot be held that he was paid by the Govt. of India and that the payment is chargeable to Govt. of India revenues. In the absence of his pay and allowances not being charged to the Govt. of India revenues, he cannot claim the relief as asked for in this OA under this rule. As Para 3 of the contract clearly states that his retention of the accommodation is governed in accordance with the extant rules and as the rule in question, which he himself admit is 3(ii), ^{the} said circular No.4/84 quoted above and since that relevant rule does not provide for retention of quarter on payment of usual rent on Secondment to Jordan Railways as his pay and allowances are not chargeable to Govt. of India revenues, the applicant cannot now ask for remission of penal rent. Hence this contention fails.

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9. The next contention of the applicant is that the quarter allotted to him is not cancelled and when he came back from Secondment he was permitted to occupy the same quarter and hence he cannot be subjected to the rigours of payment of penal rent without proper cancellation of the quarter allotted to him. This point is to be considered from the welfare angle of the family during his absence at Jordon. If the allotment of quarter is cancelled when he was away at Jordan, his family may have to vacate the quarter and search for a suitable quarter and in case his ^{family} could not get a suitable accommodation then his family will be on streets, if evicted. This will cause more damage to the applicant than levying penal rent during the period he was away on Secondment to Jordan. As, such an eventuality probably may drive him to come back to India in the middle of his Secondment, the Railway took a very lenient view and has not cancelled the allotment order but issued orders for levying penal rent after his return to India. It may be argued that the cancellation of his quarter could have been issued at least after he comes back from Jordon. The Railway is at liberty to do that. But the Railways either on sympathetic consideration or failure to force the consequences, reallotted the quarter after his rejoining Indian Railways. Though there is no cancellation of the earlier allotment of the quarter, it cannot be argued that on this count the applicant should not be asked to pay penal rent for the period of over-stayal in the quarter. The applicant could have on his own initiative asked for clarification from the Railway authorities in regard to the condition for retention of

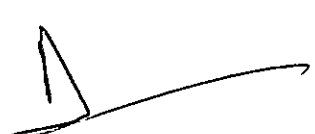
the quarter during his absence from India. But for reasons known to him, he did not resort to this course of action as it is possible that he may be asked to vacate the quarter before his departure to Jordan. I consider under the present circumstances of the case that it is a benevolent act on the part of the Indian Railways not to cancel the quarter allotted to him but only levy penal rent when he came back ~~once~~ again. Same benevolence was once again shown to him by allowing him to occupy the same quarter on his return after reallotting the same in his name. Such benevolence should not be taken as a weakness to contest the collecting of the penal rent. If the applicant had vacated the quarter, somebody else who is in turn would have got that quarter. That implies that the employee waiting for allotment of quarter lost that chance because of non-eviction ^{from} ~~of~~ the quarter occupied by the applicant. Hence in my opinion, even though cancellation of the quarter was not issued and no mention has been made in this connection in the relieving order, the applicant on this pretext cannot ask for remission of penal rent after his return from Jordan. No rule or even departmental instructions prohibiting levy of penal rent due to non-issuance of cancellation of allotted quarter, has been brought to my notice. Hence I am firmly of the opinion that this contention is also to be rejected.

10. The third contention of the applicant is that no notice has been issued to him before issuing the impugned order for recovery of the penal rent. It is well




established law that notice has to be issued when any recovery has to be made. But it has to be seen in the back ground of each case whether issue of such a notice is essential or not. In this case, a lot of water has flown before issue of the impugned order. As a matter of fact, the applicant himself took up his case for not recovering the penal rent. This, for some unknown reason, was supported by R-1 and R-2 though they have not stated any rule for recommending his case. It appears that they relied on some of the contracts of sending Railways employees on Secondment abroad, for recommending the case of the applicant herein which turned out to be irregular and faulty. When the applicant is aware of fact that recommendation to Railway Board has been made by R-1 and R-2 to waive the penal rent on the basis of his representation, it is not necessary at a later date to issue any notice. He has been given enough opportunity to explain his case earlier. Issue of notice before recovering the penal rent under the present circumstances of this case will be a mere formality and will serve no useful purpose. When the case has been gone into in detail by all the authorities including the competent authority viz, Railway Board and after taking all the facts into consideration including the representation of the applicant, levying penal rent without issue of notice is not only not essential but will be a futile exercise. Hence this contention is also to be rejected.

11. The applicant relies on the judgement of this Tribunal in OA Nos.623/92 and 375/94. It will be seen

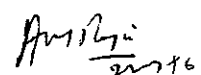


that in both the cases, the applicants therein were not deputed to Jordan. The applicant in OA 623/92 was deputed to Zimbabwe. The conditions of contract for each and every deputation varies. Monetary consideration also varies from each and every contract. Hence it cannot be said that if concession of not levying penal rent is ordered in one case, the same should be applicable in other OAs also. Each case has to be seen on its merit and on the basis of the contract under which the employee was sent on deputation. In this case as per Para 3 of the contract, it is very clear that retention of Railway accommodation of the applicant is in accordance with the extant rules. This has already been explained vividly in Para 8 supra. In view of the above, comparison of this case with the other OA 623/92 is not appropriate. In the case of the applicant in OA 375/94 he was deputed within the Indian Railways and hence has no parallel to the present case. Hence I do not consider it appropriate to take cognizance of the direction given in those OAs for reasons mentioned above.

13. No other contention has been raised. In view of what is stated above, I feel that the applicant has not made out any case for the relief as prayed for in this OA. Hence this OA is dismissed as having no merits. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 16th July, 1996
Open court dictation.


Dated.

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O.A³NO.1526/95

COPY TO:

1. The Divisional Railway Manager, (Personnel),
South Central Railway,
Vijayawada.
2. The General Manager,
South Central Railway, Railnilayam,
Secunderabad.
3. The Senior Divisional Electrical Engineer, (Maint.),
South Central Railway,
Vijayawada.
4. The Secretary, Railway Board,
New Delhi.
5. The Director of Audit,
South Central Railway,
F.A. & C.A.O.'s Compound,
Secunderabad.
6. One copy to Mr. G.V. Subba Rao, Advocate, CAT, Hyderabad.
7. One copy to Mr. V. Bhimanna, Addl. CGSC, CAT, Hyderabad.
8. One copy to Library, CAT, Hyderabad.
9. One duplicate copy.

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COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 16/7/86

ORDER/JUDGEMENT

O.A. NO./R.A./C.P. No.

in

O.A. NO. 1526/95

ADMITTED AND INTERIM DIRECTIONS IS
ALLOUED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

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