

O.A.No.1470/96.

Date of Decision: 9th September, 1997.

Between:

P. Vasantha Rao. .. Applicant.

And

1. The Financial Advisor & Chief Accounts Officer, South Central Railway (BG), Sanchalan Bhavan, Secunderabad.
2. The Senior Divisional Accounts Officer, South Central Railway (BG), Sanchalan Bhavan, Secunderabad. .. Respondents.

Counsel for the applicant: Sri P.Krishna Reddy.

Counsel for the respondents: Sri J.R.Gopala Rao, Standing
counsel for Railways.

JUDGMENT.

(by Hon'ble Sfi H.Rajendra Prasad, Member (A) *JS*
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JUDGMENT

O.A.No.1470/96.

(by Hon'ble Sri H.Rajendra Prasad, Member(A)

..

The applicant, while working as Senior Cashier, was removed from service on 24--12--1993 as a sequel to disciplinary proceedings initiated against him for of public loss/money from his custody, whereupon he filed an appeal which was disposed of Departmentally, confirming the penalty. The applicant preferred a revision against the appellate order under Rule 25 of D & A Rules which was disposed of on 17--5--1995 confirming the order of the Appellate Authority. Aggrieved by this the applicant filed O.A.No.1101/95 challenging the order of removal. An interim order was passed in the said O.A., which is as under:

"We feel that in the circumstances, the applicant may be permitted to retain the quarters till the disposal of the criminal case or disposal of this O.A., whichever is earlier on payment of penal rent."

The applicant in the meanwhile filed another O.A.(1627/95) with a prayer to direct the respondents to pay him the Honorarium as well as T.A., to which he had become/was entitled. The O.A. was disposed off

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on 7--3--1996 directing the respondents to dispose of his representation in this regard made by the applicant on 22--9--1995 within a period of two months.

While disposing of the representation dated 22-9-1995 (in which he had requested the disbursement of Rs.41,182/- towards Honorarium and T.A.) on 9-8-1996 in pursuance of the said the order in O.A(1627/95) the applicant was informed that the amounts claimed by him were being set-off against the loss of amounts/to the Administration caused by the applicant. It was also mentioned therein that Rs.59,201/- towards damage rent was also due from him in respect of the quarters which were under his occupation.

The applicant is aggrieved by this Order on two counts.

- 1) The said order dated 9--8--1996 is contrary to the decision of this Tribunal which had held that he would be permitted to retain his quarters till the disposal of criminal case or disposal of O.A.1102/95 whichever is earlier on payment of penal rent. Thus, while the Tribunal had ordered recovery of penal rent, the respondents are seeking to impose damage rent on him.

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ii) He is liable to pay penal rent only from the ^{passing of} date of [^]interim orders and not from the date of his removal from service as contemplated by the Authorities.

In support of the above contentions, the applicant states --

i) ~~that~~ he was removed from service on 24-12-1993 whereupon he filed an appeal on 28-12-1993/3-1-1994 which was disposed of on 22-7-1994 against which he filed a revision petition which was disposed of on 17--5--1995; therefore,

in any event

ii) ~~that~~ the respondents cannot [^]collect from him either the penal or damage rent up to the date of disposal of the revision petition viz., 17--5--1995;

^{for,}
iii) ~~that~~ ^x the Authorities had not initiated any eviction proceedings nor did they intimate that his failure to vacate the premises would invite imposition of damage rent;

iii) that no notice was served regarding the proposed recovery of damage rent; and

only
iv) that if [^]he had been informed of his liability to pay a heavy amount towards damage rent, he might have made efforts to secure alternate ^{to} accommodation and [^]vacate the quarters;

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iv) the amount calculated as damage rent viz.,

Rs.1870/- per mensem is arbitrary and
 as
 without any basis inasmuch as the quarter allotted to and
 occupied by him was an old structure
 with limited accommodation and sub-standard
 construction; and finally.

v) The criminal case against him is still pending
 in the Metropolitan Sessions Court.

On the basis of the above contentions and arguments
 the applicant prays for the following reliefs:

i) to direct the respondents to pay him

Rs.41,182/- due to him by way of Honorarium
 and T.A., with interest at 24% per annum from
 22--9--1995, and

it
 ii) to direct the respondents not to set off the
 sum of Rs.41,182/- towards the loss said to have
 been caused by him (by way of misappropriation)
 to the Railways.

The following three questions need answers in this

case:

Whether the applicant is entitled to the payment of
 honorarium and T.A., together with interest at 24% per
 annum?

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- ii) Whether the said amount can be set-off against the loss caused to the administration by his alleged lapse(s) of commission and omission?
- iii) Whether the imposition of damage rent on the applicant is in order? If so, from what date is the applicant liable to pay such damage rent?

The respondents in their counter-affidavit state that their decision in the matter ^{was} reflected in their reply dated 9--8--1996 wherein it was communicated that the amounts claimed by the applicant as due to him were proposed to be set-off against the loss caused to the Exchequer as also against the outstanding arrears of rent. It is further stated that it ^{was} expected in the normal course that the applicant would vacate the quarters allotted to him soon after he was removed from service subject to the ~~minimum~~ period of retention as per rules. After such ~~period~~ period had expired he had become an unauthorised occupant and had therefore become liable to pay damage rent from the date of his removal from service i.e., on 24--12--1993. It is further stated that upto 1--4--1989 there was a system of collection of penal rent in the Railways but after that date the provision relating to

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"penal rent" was substituted by "Damage Rent". Thus on the date of passing of interim orders on 27--9--1995 by this Tribunal in O.A.1102/95, the provision relating to the "Penal Rent" did not exist in the rules and the only rent that could be levied was "Damage rent". It is explained that the penal rent which was in vogue upto 31--3--1989 was calculated at the rate of five times the assessed rent while the damage rent is worked out on plinth area of the quarter which is multiplied by the rate fixed by the Railway Board per square meter. They state that the mere pendency of an appeal ^{Case} ~~in a~~ ^{Court} Criminal ~~Court~~ in a case of mis-appropriation of public money does not constitute any ground for not collecting the amounts due from him by way of rent for the quarters under his occupation. In their further reply filed in response to certain queries by this Tribunal on 25--8--1997 the respondents largely conform to what has been stated above. They clarify that ~~the~~ for collection of the provision of penal rent was effective from 1--8--1976 to 1--4--1989; whereas the damage rent at the rate of Rs.34/- per square meter is recoverable from the date of the applicant's removal from service i.e., from 24--12--1993. They furnish the basis on which the damage rent has been calculated for the plinth

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area of the quarter, which is 55.78 Sq.Mtrs., at Rs.34/- per Sq. Meter, which comes to Rs.1,697/- per mensem.

It is argued by Mr. Gopala Rao, standing counsel for the respondents that the Tribunal had permitted the retention of the quarter under the applicant's occupation on payment of penal rent. Since the interim orders were passed at the admission stage, the respondents had no opportunity to bring it to the notice of the Tribunal that the provision concerning the penal rent had been removed much prior to the date of passing of the said order, and that the imposition of damage rent only was in vogue by then. It was further argued that any interim stay granted could only result in the postponement of recovery of any type of rent due for the occupation of the quarter that could be imposed on the applicant and the entire issue i.e., recovery of penal/damage rent due would be subject to the outcome of the case against him. In that view of the matter the interim order, or even the fact of the applicant having earlier preferred an appeal and revision petition to the Departmental Authorities, could not alter the date of the commencement/

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recovery of rent which had to be related to the date of his removal and not to any subsequent date. It is also stated that far from ~~not~~ paying any damage rent the applicant has not been paying any kind of rent for the quarters under his occupation.

The learned standing counsel for the respondents therefore urged that there ~~is~~ no merit in this applicant and the same needs to be dismissed.

The question of his removal from service is still to be finally settled, in that, the O.A., filed by the applicant (O.A.1102/95) challenging the said removal is still pending disposal before this Tribunal. Until the O.A., is disposed of, it cannot be said that the order of removing him from service has as ^{um} ~~been~~ any finality besides the fact that a case also seems to be pending in the appropriate Civil/Criminal Court. Thus ^{until the} question of his removal is finally settled by an appropriate judicial forum by way of disposal of O.A.1102/95, ^{or the criminal case} it will be ⁱⁿ appropriate to conclude that ~~his removal~~ ^{has acquired finality} from service ^{or that,} consequently, ^{or had not} he had become an unauthorised occupant.

In this view of the matter, any attempt or decision to set off any of his entitlements against rent (whether

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damage or penal) would be premature. This is so because in case eventually ^{the pending} O.A., is allowed and if the same is not ~~set aside~~ by an appellate Court, then it would be ^{come} entirely possible that he ~~will~~ not be treated as an unauthorised occupant. On the contrary if the O.A., is disallowed he would be certainly liable to pay the due and appropriate rent for the entire period of his unauthorised occupation i.e., from the date of his removal from service to the date of his vacating the quarter.

While the above is the position as regards the rent, the applicant's prayer that the amounts due to him by way of honorarium and T.A., should be released in his favour cannot also be countenanced.

The fact as on date is that he was found responsible ^{of public} omission and ^{For this reason,} for the loss/funds by acts of/commission. Until ^{his} the entire question of removal is decided finally it would be inadvisable or even impermissible to order the ^{of} release any such amounts in his favour. In the circumstances, the impugned order contained in Sr. DAO/SC letter No.A/AD/29/1/PVR/CAT/1102/95 dated 9-8-1996 can be merely regarded as a statement of the position taken by the respondents in this case. It can neither be regarded as final nor can it be

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interfered with. The categorical statement of the respondents that the system of imposition of penal rent is no longer in vogue, nor was it applicable on the date of the applicant's removal or on the date of the passing of interim order by this Bench, has been noted. ~~and is accepted.~~ If any rent becomes due, its recovery whether at normal/penal/damage rates can be finally determined only after the disposal of O.A.No.1102/95.

The outcome of the said O.A., shall decide as to whether the applicant is:

- ^{entitled}
(a) to receive payment by way of Honorarium and T.A.; or
- (b) is liable to forfeit the same towards part recoupment of loss caused by him to the Railway Administration;
- (c) required to pay normal rent for the period of his occupation of the quarters; or
- (d) to pay the damage rent for occupation of the quarter from the date of his removal till date of his vacation in terms of the relevant and extant Circulars issued by the Railway Board.

Thus

It will be seen that no final view can be taken **at this stage** in the O.A., until the final disposal of O.A.1102/95.

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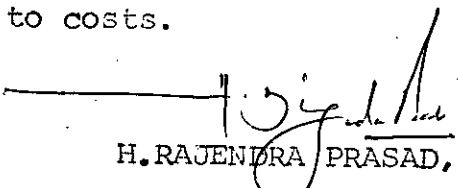
The submission made by the authorities, that the amount of loss caused to the Department plus the rent eventually due from the applicant far exceeded his entitlements which are now held up, appears to be factually correct. If the present situation continues, and if, eventually, the disciplinary action taken by the respondents is upheld in disposing of O.A.1102/95, the present liability of the applicant would be far higher with little prospect of recovery in normal course. This would lead to a **The launching of certain coercive resultant** situation which might result in processes and financial strains beyond the capacity of the applicant to bear or discharge. In order, therefore, to avoid the possibility of further **accumulation** of liabilities on the applicant, it becomes necessary to have a fresh look on the interim orders passed on 27-9-1995 in O.A.1102/95.

Enabling the applicant to retain the quarters any further even at this late stage may well turn out to be against the interests of the applicant himself. Such being the perception at present, it is considered desirable to direct the applicant to vacate the quarter within one month from today, or earlier if possible, if only to eliminate the possibility of his liability piling higher, clearly beyond all his capacity.

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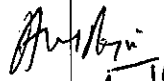
If O.A.1102/95 is disallowed and becomes due for implementation before the applicant vacates^{the} the quarter as directed above, no further orders would be necessary in the matter of providing residential accommodation to the applicant because he would not be entitled to continued occupancy of any accommodation. If, on the other hand, the said O.A.1102/95 is allowed and becomes due for implementation at a later date i.e., after the vacation of the said quarter by the applicant as directed above, in such an event, the respondents may have to provide the applicant a suitable residential accommodation on out-of-turn basis. The eventual outcome either way will depend on the disposal of O.A.1102/95.

The O.A., is disposed in terms of the above
an
order, with/observation that any claim made by the
applicant cannot be granted at this stage in the present O.A.
There will be no order as to costs.


H. RAJENDRA PRASAD,
MEMBER (A)

Date: 09 SEP 97

sss.


Deputy Registrar (C) Co.