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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.1023 of 1999.

DATE OF DECISION: 19-11-1999.

BETWEEN:

Md.Khanam Shavali.

.....Applicant

a n d

1. General Manager, (Representing
UOI), S.C.Railway, Rail Nilayam,
Secunderabad-500 071.

2. Divisional Railway Manager,
South Central Railway, Vijayawada
Division, Vijayawada-520 001(AP).

....Respondents

COUNSEL FOR THE APPLICANT :: Mr.S.Ramakrishna Rao

COUNSEL FOR THE RESPONDENTS :: Mr.D.F.Paul

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

1. The respondents in this OA are sought to be directed to refund damage rent of Rs.11,123/- recovered from the applicant's retirement benefits with interest at 18% per annum.

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2. The applicant was appointed as Khalasi at Rajahmundry Loco Shed, South Central Railway on 22-6-1960 and later promoted as Fireman and then Shunter and finally as Goods Driver at Rajahmundry, Loco Shed. While working as such, the applicant applied for Voluntary Retirement due to his illness. His Voluntary Retirement was accepted with effect from 5-7-1990. His terminal benefits were also settled at that time. However, subsequently the respondents issued a letter dated 6-2-1991 informing the applicant that damage rent of Rs.11,123/- had to be recovered from him and that the same was sought to be recovered from the Gratuity payable to the applicant.

3. The applicant ^{earlier} ~~thereupon~~ made a representation dated 31-12-1984 to the respondents praying for regularisation or granting permission to retain the Quarters No.273/A for his children's education and his wife's serious ailment and treatment of Heart at Rajahmundry. However, the respondents ^{paying} ~~did not~~ heed to the applicant's request. According to the applicant, in a similarly placed case of his colleague Sri Y.K.Paratpara Rao, a Goods Driver, the request for permission to retain his Quarter was considered in 1991 after the said employee rejoined in Rajahmundry from Vijayawada on transfer after working at Vijayawada, and the permission was granted with retrospective effect from 7-5-1984.

4. According to the applicant this was an unprecedented and a rare order issued on favouritism. The applicant was not

given the same treatment which according to him amounted to discrimination under Articles 14 and 16 of the Constitution of India.

5. Before the present proceeding, the applicant filed OA.No.196 of 1996 before this Tribunal, which was disposed of at the admission stage on 30-7-1996 with a direction that the respondents should dispose of the representation of the applicant dated 31-10-1994 taking due note of the observations made in the OA.

6. However, on the respondents failure to implement the Order of the Tribunal in OA.No.196 of 1996, the applicant made a representation to the 2nd respondent on 12-5-1997, but his claim was rejected by the 1st respondent by letter dated 14-12-1998.

7. In the reply affidavit filed by the respondents, it is contended that the applicant did not apply for retention of Railway Quarters on transfer till the date of his retirement on 5-7-1990. Our attention was drawn by the learned Standing Counsel of the Respondents to the Board's letter dated 15-1-1990 (Annexure.R-I to the reply). The rules relating to retention of Railway Quarters by Railway employees are extracted in Annexure.R-I in which under the head 'Permanent Transfer' it is stated that ^{(c) 40} a railway employee on transfer from one station to another which necessitates change of residence, may be permitted to retain

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the railway accommodation at the former station of posting for a period of 2 months on payment of normal rent or single flat rate of Licence fee/rent. On request by the employees, on education ~~or~~ sickness account, the period of retention of railway accommodation may be extended for a further period of 6 months on payment of special Licence fee, i.e., double the flat rate of licence fee/rent. Further extension beyond the aforesaid period may be granted on educational ground only.

ii) Where the request made for retention of railway quarter is on grounds of sickness of self or a dependent member of the family of the railway employee, he will be required to produce Medical Certificate from the authorised Railway Medical Officer for the purpose.

iii) In the event of transfer during the mid-school/college academic session, the permission to be granted by the competent authority for retention of railway accommodation in terms of Item (i) above will be subject to his production of the necessary Certificates from the concerned school/college authority.

8. By a letter dated 29-10-1996 (Annexure.R-V to the reply affidavit page 15) concerning the recovery of damage rent from the applicant, the applicant was informed that he was in occupation of Railway Quarter No.273/A (Type-II) at Rajahmundry and transferred from Rajahmundry to Bezawada on 5-9-1982. Later on transferred from Bezawada to CCA and then from COA to Rajahmundry on 2-6-1986. It is further

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pointed out in the said letter that the applicant had voluntarily retired from service on 5-7-1990 and vacated the Railway Quarters on 12-7-1990 and therefore he was in unauthorised occupation of the Railway Quarters from 5-9-82 to 12-7-1990 without any permission from the date he was transferred from Rajahmundry till the date of his voluntary retirement from service.

9. It is further pointed out in the said letter dated 29-10-1996 that the charging of damage rent for unauthorised occupation of residential accommodation and recovery of rent was implemented, vide Railway Board's Letter No.FXI/72/Vol.3/1, dated 23-9-1976 at market rent or 10 percent of emoluments whichever is higher depending upon the classification of city/town and that in terms of the Railway Board's letter dated 7-7-1989 communicated under CPO/SC dated 28-7-1989, the recovery of damage rent was made effective from 1-7-1987 and not from 1-4-1989 as represented by the applicant.

10. In Paragraph 4 of the said letter dated 29-10-1996, it is stated that the applicant's application dated 31-12-1984, said to have been sent to the respondents seeking permission for retention of quarter was not received in the office of the Divisional Railway Manager, (Personnel Branch), Vijayawada, inasmuch as the Railway Quarter was in unauthorised occupation of the applicant from 5-9-1982 to 12-7-1990 and that the rental recovery was made based on the instructions issued

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from time to time and an amount of Rs.11,123/- was recovered from the applicant's retirement gratuity, which according to the respondents was in order.

11. The learned Counsel for the Respondents further submitted that in Rule 15 of Railway Service(Pension)Rules, 1993, relating to recovery of Government or Railway dues from pensionary benefits, it is provided that-

- i) It shall be the duty of the Head of Office to ascertain and assess Government or Railway dues payable by a railway servant due for retirement;
- ii) The Railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the Railway servant shall be adjusted against the amount of retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of Sub-Rule (4).

12. The learned Counsel for the Applicant, however, submitted that gratuity payable to any person on retirement was not liable to be attached for recovery of any dues according to Section 60(g) of the Civil Procedure Code. *In my opinion, ⑩* However, since such recovery is permitted by a categorical mention in the Railway Services (Pension)Rules, 1993, it can be treated as having an overriding effect; because

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under Section 22 of the Administrative Tribunals Act, 1985, the Tribunal is not bound by the procedure laid down in the Civil Procedure Code, but the Tribunal has to be guided by the Principles of natural justice. Rule 15 of Railway Service (Pension) Rules, which provides for recovery of dues from pensionary benefits is not held to be violative of the principles of natural justice. On this ground therefore the respondents cannot be precluded from recovering the railway dues from the gratuity payable to the applicant.

13. The learned Counsel for the Applicant further submitted that the applicant had already made an application to allow him to retain possession of the quarter in question on 3-12-1984. However, the respondents denied the same. The applicant does not appear to have pursued or pressed this point after filing of the reply affidavit by the respondents nor has the applicant produced a copy of his request seeking permission to retain possession of the quarter in question. This submission of the applicant therefore does not render any assistance to substantiate the applicant's case.

14. The applicant's plea that in similar cases in the past the respondents had extended the benefit of retaining possession of the quarter to similarly situated employees is denied by the respondents in Para (iv) of the reply statement, which reads as follows:-

"(iv) Sri Y.K. Paratpara Rao had rejoined the parent station ie., Rajahmundry on 7-5-1984.

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As per his request the quarter was erroneously re-allotted in his favour and regularised w.e.f. 7-5-1984, vide letter dated 9-9-91 (Annexure-R-III). Superse~~d~~ding the above order, the Railway quarters was re-allotted in favour of Sri Y.K.Paratpara Rao on out of turn basis purely as a special case w.e.f. 9-9-1991, vide Memorandum dated 16-2-1995 (Annexure-R.IV), since he was not eligible for re-allotment of quarters from 7-5-1984 and damage rent recovered for the period from 1-3-1983 to 8-9-1991. The OA.No.489/99 filed by Sri Y.K.Paratpara Rao is pending before this Hon'ble Tribunal. Hence, the applicant can't compare his case with that of the applicant in CA.No.489/99. Further, the applicant has applied for re-allotment of Railway quarters after 3 years of his ~~retirement~~ on 5-7-1990 which is not permissible. Thus the recovery of rental dues from the ~~retirement~~ gratuity is in order."

15. It thus appears from the above contention raised by the respondents that some concession had been given in case of Y.K.Paratpara Rao. But the applicant's case, according to the respondents, could not be compared with him mainly on account of the fact that the applicant had applied for re-allotment of Railway Quarters after three years of his retirement on 5-7-1990, which was not permissible. This statement of fact also has not been denied by the applicant or disputed by the applicant by filing a rejoinder affidavit.

16. It was also submitted on behalf of the applicant that the respondents ought to have taken action under Public

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Premises (Eviction of unauthorised occupation) Act, 1971, and got him evicted from the said quarters after giving reasonable opportunity to the applicant. But after keeping quiet for a number of years, according to the learned Counsel for the Applicant, the respondents were not justified in recovering damage rent from the applicant and that inaction on the part of the respondents from taking recourse to the provisions of the said Act was on account of victimisation and causing harassment to the applicant for no fault on the part of the applicant. I do not find any force in this argument. It was for the applicant to ensure that permission was obtained for retaining possession of the existing quarter even after his transfer. He has to face the consequences if he fails to obtain such permission within the time stipulated for that purpose.

17. The applicant has failed to establish that he had sought permission for retaining possession of the quarter and that such permission was granted. If it is the case of the applicant that he had already made an application in 1984 seeking permission of the concerned authorities for retaining possession, there was no reason why the applicant did not remind the authorities for allowing him to retain possession till his retirement. This inaction and negligence on the part of the applicant defeats his case squarely and this Tribunal cannot go to the rescue of such indolent applicant and save him from payment of damage rent.

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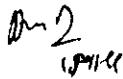
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18. It is pertinent to note that the applicant in his representation dated 16-8-1991 (Annexure.VI at page 20 of OA) in clear terms admits in ground (1) his liability to pay the penal rent and confines his dispute only to the rate at which the penal rent could be recovered. This aspect is covered by Board's letter dated 1-4-1989 appearing at Annexure.III, page 17 of the OA. Nothing more than what is stated therein could be recovered by the Respondents.

19. ¹⁴ ^{Hence} Subject to what is stated in para 18 above, the OA is dismissed, however with no order as to costs.


(D.H.NASIR)
Vice Chairman

dated: this the 19th day of November, 1999


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Reportable Case

6.12.99
16/12/99

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO :-

1. BHMJ
2. HRRN M (A)
3. BZP M (D)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H.NASIR

VICE - CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN :
MEMBER (ADMN.)

THE HON'BLE M.S.S.JAI PARAMESWAR :
MEMBER (JUDL.)

* * *

① DR.G - 2

DATE OF ORDER: 19/11/99

② Reporters - 7

MA/RA/EP. NO.

in
OA. NO. 1023/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

(14 copies)

केन्द्रीय प्रशासनिक औद्योगिक
Central Administrative Industrial
प्रयोग / DESPATCH

23 DEC 1999

HYDERABAD BENCH