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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
HYDERABAD

O.A. No. 268 of 1999.

DATE OF DECISION. 29-5-2000.

Between:

B.S.H.Rao, s/o late Rama Krishna Rao,
Retd. Dy. Chief Personnel Officer, South
Eastern Railway, Deor. No. 49-47-6A,
Shantipuram, Visakhapatnam-530 016.Applicant

a n d

1. Union of India, rep. by General Manager, S.E.Railway, Garden Reach, Calcutta-700 043.
2. General Manager, South Eastern Railway, Garden Reach, Calcutta-700 043.
3. Divisional Railway Manager, South Eastern Railway, Waltair, Visakhapatnam-530 004.
4. Chief Project Manager, (now designated as Chief Engineer) (Con), South Eastern Railway, Visakhapatnam-530 004.

....Respondents

COUNSEL FOR THE APPLICANT :: Mr. B.S.H.Rao (Party-in-Person)

COUNSEL FOR THE RESPONDENTS : Mr. C.V. Malla Reddy

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)

Heard Mr. B.S.H.Rao, Party-in-Person and the learned Standing Counsel Mr. C.V. Malla Reddy for the Respondents.

(Signature)

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2. The applicant's case is that he retired as Dy.Chief Personnel Officer (Con) of S.E.Railway at Waltair with effect from 31.7.1996 and vacated the Government quarter on 29.10.1996. The applicant alleges that a huge sum of Rs.38,619/- was recovered from him as arrears of House Rent and rent for AC machine. The same was recovered from DCRG of Rs.1,29,000/- and the remaining sum of Rs.90,381/- was paid to the applicant in February, 1997. The same was accepted by the applicant under protest by submitting a representation dated 10.2.1997.

3. The applicant joined Waltair Division as Divisional Officer on 30.11.1985 and while in occupation of type-III quarter, was allotted Quarter No.WAT/5, which was occupied with effect from 2-9-1986. The recovery is objected to mainly on the ground that same was abruptly resorted to without notice. The applicant made a representation dated 10.2.1997, but the same did not evoke any response. Only an issue was raised with General Manager by S.E. Railway and the Promotee Officers' Association in its formal Meeting held on 21-3-1997 was informed that ^{the} procedure and policy for fixation of licence fee followed for such old non-standard quarter by S.C.Railway, be adopted in S.E.Railway also. The CPM/Visakhapatnam, vide his letter dated 12.2.1998 stated that the policy decision for fixing licence fee for non-standard quarters by increasing 20% of the assessed rent stands good and needs no revision and that any further examination of the decision would mean a lot of computational work apart from refunding the rent already realised since 1.7.1990.

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4. The applicant refers to Rule 16(1) of Chapter-II of the Railway Services (Pension) Rules, 1993, according to which if the Directorate of Estates does not intimate 8 months before retirement about the outstanding licence fee in respect of the period 8 months prior to his retirement, it has to be presumed that no licence fee was recoverable. The said Rule 16(1) of Railway Services (Pension) Rules, 1993, is extracted below :-

"(1) The Directorate of Estates on receipt of intimation from the Head of Office under sub-rule (1) of Rule 98 regarding the issue of No Demand Certificate shall scrutinise its records and inform the Head of Office eight months before the date of retirement of the allottee, if any licence fee was recoverable from him in respect of the period prior to eight months of his retirement. If no intimation in regard to recovery of outstanding licence fee is received by the Head of Office by the stipulated date, it shall be presumed that no licence fee was recoverable from the allottee in respect of the period preceding eight months of his retirement.

(2) The Head of Office shall ensure that licence fee for the next eight months, that is up to the date of retirement of the allottee is recovered every month from the pay and allowances of the allottee.

(3) Where the Directorate of Estates intimates the amount of licence fee recoverable in respect of the period mentioned in sub-rule (1), the Head of Office has to ensure that outstanding licence fee is recovered in instalments from the current pay and allowances of the allottee and where the entire amount is not recovered from the pay and allowances, the balance shall be recovered out of the gratuity before its payment is authorised".

5. While therefore there is no constraint on recovering the outstanding (arrears) license fee from DCRG, it is evident from the rule position that no such step could be taken unless the procedure prescribed in the preceding sub-rules, being sub-rules (1) and (2) of Rule 16 is followed.

6. The entire emphasis in this OA is with regard to the competence of the respondents to recover the outstanding licence fee out of gratuity in cases where the entire amount is not recovered from the pay and allowances before the retirement of the official concerned.

7. According to the applicant the increase of rent by 20% of the existing rent in respect of non-standard old quarters (with massive stone/brick masonry walls and large veradahs), vide Para 4.1 of G.M.'s letter dated 31.8.1989, was within the powers vested by the Ministry of Railways, vide Para 2(ii) of Railway Board's letter dated 25.9.1987. The final decision communicated by the General Manager (Engineering), vide CPM's letter dated 12.2.1998 to the applicant upheld, vide Para 1 of FA's letter dated 17.11.1997, the earlier decision contained in GM's letter dated 31.8.1989. Further, according to the applicant ~~at~~ the decision contained in Para 2 of FA's letter at Annexure A-12 at page 50, that re-examination of the decision as suggested would mean a lot of computational work for each of the non-standard house apart from the refund of rent already realised since 1.7.1998 was illegal, arbitrary and against all Principles of Natural Justice.

8. Further, according to the applicant, when rentable area of the quarter was 97 sq.mtrs as per the rentable building registrar of Titlagarh District of the then Bengal Nagpur Railway Company Limited, the charging of rent for 278.48 sq.mtrs (55 Sq.mtrs of wall + 65 Sq.mtrs of Verandahs) was highly irregular, arbitrary and illegal. Further according to the applicant, the life of Quarter No.WAT/5, constructed in 1912, having outlived its utility, recovering such huge sum of Rs.28,759/- in 1997, after retirement as

enhanced house rent from 1987, particularly without any modern facilities, was unfair and unjust, according to the applicant. Further, according to him, had it been known at the initial stage of introduction of flat rate licence fee that the rent of this old non-standard quarter would be increased by applying flat rate licence fee, the applicant would have moved to a better house with modern construction and more hygienic with comparably less rent. It is highly arbitrary, according to the applicant, to say that after 10 years the rent would be recovered at higher rates from retrospective dates and hence recovery of such huge amount from DCRG, according to the applicant, is illegal and unconstitutional.

9. Further, according to the applicant, withholding of an amount of Rs.9,860/- towards rent for AC machine provided in the Chamber of the applicant, the recovery was decided to be made on 20.12.1996 i.e., after 4 months of retirement, which according to the applicant was not permissible without any show cause notice.

10. In the above background of the case, the reliefs claimed by the applicant are as follows :-

- (i) To set aside the letter dated 8.1.1997 issued by the CPM/SE Railway, Visakhapatnam, ordering recovery/withholding of Rs.38, 618/- from DCRG as recovery of such a huge sum about 1/3rd of the DCRG payable from retiral benefits without any show cause notice, was illegal, arbitrary and against all Principles of Natural Justice;
- (ii) To set aside or quash Para 2 of FA/S.E.Railway/Garden Reach's Letter No.FB/X-3/PR/24/4, dated 17.11.1997 by declaring the same as arbitrary, illegal and highly opposed to all Principles of Natural Justice:

(iii) To issue direction to the respondents to refund the sum of Rs.28,750/- recovered from the DCRG of the applicant towards House Rent arrears from 1987 and also excess rent recovered beyond rentable area of 97 sq.mtrs together with penal interest at the rate of 24% per annum;

(iv) To issue direction/directions to the respondents to pay penal interest at the rate of 24% on Rs.9,860/- withheld from DCRG on 31.7.1996 and later refunded.

11. My attention was drawn to the provisions of Rule 15 of the Railway Services (Pension) Rules, 1993. The relevant extract of which is reproduced below :-

'15(1) 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.

(2) 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 the 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).

(3) xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

(4)(i) A claim against the railway servant may be on account of all or any of the following :-

(a) xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

(b) other Government dues such as overpayment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance premia, or outstanding advance;

(c) xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

(ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in Rule-8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pensions Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of Rule 8, and any recovery on account of sub-clause items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity

which are not subject to the Pension Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the members of his family in the case of a deceased railway servant.

(iii) xxx xxxx xxx xxxxxxxx xxxxxxxxxx xxxxxxxxxx
(iv) In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are withheld from the gratuity payable to them shall not be disproportionately large and that such amounts are not withheld or the sureties furnished are not bound over for unduly long periods. To achieve this the following principles should be observed by all the authorities concerned :-
(a) xxx xxxxxxxx xxxxxx xxxxxxxxxx xxxxxxxx xxxxxxxx
(b) xxx xxxxxxxxxx xxxxxxxx xxxxxxxxxx xxxxxxxx xxxxxxxx
(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits :
(d) xxxx xxxxxxxxxx xxxxxxxxxx xxxxxxxx xxxxxxxx."

12. On carefully examining the pleas taken by the applicant and the contentions raised by the respondents, there could be no hesitation in coming to a conclusion that the respondents were very much acting within the ambit of power vested in them by deducting arrears of rent from the DCRG of the applicant. No illegality could be attributed to the steps taken by the respondents for ensuring that the legitimate dues of the Government do not stand frittered away. There is, however, one snag which has to be examined to find out whether it comes in the way of the respondent-

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Railway, inasmuch as no show cause notice is alleged to have been served upon the applicant before resorting to recovery of the arrears of rent and without giving the applicant an opportunity of being heard on the legality of the recovery made by the respondents. This lacunae on the part of the respondents is an absolute violation of the rules of Natural Justice and the applicant cannot be subjected to the recovery in question without being heard. We can also not lose sight of the fact that Rule 16(1) of the pension rules make it obligatory upon the Respondents to intimate before 8 months of his retirement about the outstanding license fee in respect of the period prior to 8 months of retirement.

Obviously, the above rule position does not seems to have ^{been} followed, according to ^{the} applicant ~~as~~ which vitiates the Respondents' power to recover the part dues.

13. From the above discussion, it appears that the main bone of contention is whether the applicant was put to notice with regard to the proposed revision in rent ^{at} 8 months before the applicant's date of retirement, secondly whether such recoveries could be made from DCRG payable to the government servant on his retirement.

14. As far as the first point is concerned while it is true that ^{WZS} no specefic notice ~~as~~ issued to the applicant for the recoveries made from DCRG or from the pension payable to the applicant. The fact that ^{the} applicant was aware and concious of the fact that the rent was going to be revised which is evident from the perusal ^{cannot be ignored} of Annexure A/5 (page-35 to the OA), This is a letter dated 5-11-1993 issued by the Chief General Engineer, S.E.Railway to the Divisional Railway Manager, SE Railway, Nagpur, Waltair and Sambapur

in respect of the revision of the rate of license Fee (Standard Fee) for residential accommodation all over the Indian Railways with effect from 1.7.1990. In para-2 of the said letter it has been mentioned that the issue ^{has} ~~has~~ been examined and the revised rent for all Standard Type Quarters should be revised as per Railway Board's letter dated 8-10-93. In the third para of the said letter it is stated that as regards rent for Old Non-Standard Houses having very Large Plinth Area reference is being made to Board for further consideration separately.

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15. A letter dt.15-11-1989 appearing at Annexure A/4 (page-29 of the OA) in connection with fixing of standard rent of quarters and a direction was issued to issue the recovery statement for standard rents for various types of Quarters as per the instructions contained in the letter referred to therein and to arrange to recover the revised rents. In the last paragraph of the said letter it is mentioned that this should be implemented for the rent for December, 1989 and arrears may be recovered in 10 equal instalments unless ~~any member of~~ staff are likely to retire earlier.

16. The S.E.Railway also issued a communication dated 31.8.1989 in which in para-36 it is stated ^{that} instructions were issued by the Railway Board advising that recovery of flat rate of rent was circulated vide Board's letter dated 25-9-87 would be subject to a maximum limit of 10% of the monthly emoluments vide their letter No.F(X)I-87/11/6 dated 26-7-88.

17. Thereafter on 5-11-93 the SE Railway issued a further communication stating in para-2 thereof that the issue had been examined in detail and decided that the revised rent ~~that~~ of

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Standard Type Quarters should be revised as per Railway Board's latest letter dated 8-10-1993. As regards rent for all Non-Standard houses having very large plinth area reference was made to the Board for further consideration separately.

18. Instructions pertaining to the same subject have further been issued by a communication in June, 1994 by SE Railway.

19. All the above communications have been produced by the applicant along with the OA without giving any ~~in~~ clarification regarding the person from whose custody the same were obtained by the applicant for the purpose of this OA or whether the copies of the said communication were already in possession of the applicant. In the absence of any such clarification a presumption has to be raised that the applicant produced the same on the record of this case from his own custody and that he was conscious and aware of the subject matter of the communication in question. With this situation in ~~question~~ ^{view} it cannot be ^{said} ~~sated~~ that the enhancement in rent was made and the recoveries were sought to be resorted to in pursuance of the directions contained in the said communication ^{not} was ^{within} the knowledge of the applicant.

20. In view of what is stated above, the word does not lie in the mouth of the applicant that 8 months' notice prior to retirement was not satisfied and that on that ground itself the relief claimed by the applicant could be allowed ^{not} as claimed by him.

21. With regard to the competence of the Government to make recovery of the amount due to the Government from the DCRG is also not ~~in~~ tenable because a specific provision has been made in that regard ⁱⁿ that the Railway Servants Pension Rules, 1993 which we have

already discussed above.

22. On both the counts therefore the applicant fails to make out his case.

23. On the merits of the decision taken by the Railway Board for enhancing the rent, I am afraid the Tribunal is not sufficiently equipped for examining the validity of the upward revision made in the licence fee or Standard Rent. The contention raised by the applicant that when rentable area of Quarter was 97 sq.mtrs as per the rentable building registrar of Titlagar District of the then Bengal-Nagpur Railway Company Limited, the charging of rent for 278.48 sq.mtrs was highly irregular according to the applicant. The applicant also alleges that the life of the quarter No.WAT/5 constructed in 1912, having outlived its utility; recovering such huge amount of Rs.28,759/- in 1997 after retirement as enhanced House Rent from 1987, particularly without any modern facilities was arbitrary and discriminatory. Obviously there is no material before the Tribunal for examining the correctness of the stand taken by the applicant. While therefore the present OA deserves to be dismissed, the applicant may, if he so desires, make a suitable representation to the concerned respondents on the merits of his case without re-agitating the question relating to "notice" and recovery from "DCRG." If such a representation is made by the applicant to the concerned respondents, the concerned respondents shall examine the same on merits after giving the applicant sufficient opportunity of being heard and shall decide the same within three months from the date of receipt of the representation, if made by the applicant. xxxx xxxx xxxx xxxx xxxx

preceding paragraphs. In any case, however, the applicant failed to make out his case that the impugned ~~action~~ of the respondents suffered from the lack of notice of 8 months prior to the date of the applicant's retirement and also on the ground that past dues cannot be recovered from DCRG.

24. The OA is disposed of accordingly. No costs.


(D.H.NASIR)
Vice-Chairman

Dated: 29th May, 2000.


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