

65

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A.No.417/99.

Date of Decision: 13-03-2000.

Dr.A.V.S.Ramachandra Rao

.. Applicant.

Vs

1. The General Manager,
SC Railway, Rail Nilayam,
Sec'bad.
2. The Sr. Deputy General Manager,
SC Railway, Rail Nilayam,
Sec'bad.
3. The Chief Personnel Officer,
SC Railway, Rail Nilayam,
Sec'bad.
4. The Secretary (Establishment),
Railway Board, Rail Bhavan,
New Delhi.

.. Respondents.

Counsel for the applicant : Mr.V.Venkateswara Rao

Counsel for the respondents : Mr.C.V.Malla Reddy, SC for Rlys.

CORAM:-

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

ORDER

ORAL ORDER (PER HON'BLE SHRI R. RANGARAJAN: MEMBER (ADMN.))

Heard Mr.V.Venkateswara Rao, learned counsel for the applicant and Mr.C.V.Malla Reddy, learned counsel for the respondents.

2. The applicant in this OA was ~~represented~~ sent on deputation to Saudi Arabia for foreign assignment on the basis of the department sponsorship as an expert Doctor in Cardiology by office memorandum No.5/49/91-FAS dated February, 1992 (Annexure-I). On the basis of that the applicant left and joined at Saudi Arabia on 24-5-92. By order dated 19-06-92 (Annexure-III) the Senior Deputy General Manager





accorded sanction for retention of Railway Quarter No.626/1 in favour of the applicant herein for a period of one year from 24-05-1992 on payment of flat rate of licence fee on his deputation to the Government of Saudi Arabia. The applicant by his letter dated 7th March, 1993 (Annexure-IV) informed the Respondent No.3 that his contract has been extended and requested to spare his service for one more year. ~~In that letter he has~~ ^{was} docketed to the Deputy General Manager, SC Railway, Secunderabad with a request to permit him to retain the quarter No.626/1, Rail Nilayam, Secunderabad for one more year. The Embassy of India has also written to the Ministry of Railway i.e., R-4 herein recommending his ^{new} ~~renewal~~ of his extension. The applicant also by his letter dated 5-3-94 (Annexure-VI) has asked for permission to get his contract extended by one more year. In that letter also he has requested the SDGM, SC Railway, Secunderabad to permit him to retain the Railway Quarter No.626/1, Rail Nilayam, Sec'bad for one more year. Even in the earlier letter dated 19-6-92 (Annexure-III) the CPO has stated that in case the deputation of the applicant is not extended further he should vacate the quarter on or before 23-5-93. Even at that time there is no endorsement to that effect that after 23-5-93 he has to pay the damage rent.

3. The applicant submits that his wife is paying house rent regularly and ~~she~~ has enclosed letter dated 2-8-94 (Annexure-VII) to say so. The applicant was informed by letter dated 26-8-94 (Annexure-IX) that since the permissible period of retention is over, you are requested to vacate the above quarter. However, you are informed that your request for further retention has been forwarded to the Board. If the Board ^{does} not sanction for further retention of quarter by you beyond the permissible period, necessary action will be taken to recover damaged~~ed~~ rate of rent till date the vacation of quarter. Even in this letter there is no mention that the damage rent will be levied from 23-5-93 if retention is not accepted by the Railway Board. This could have been easily stated so but R-3 did not say anything in this connection.

4. The applicant went on representing his case. But finally it was decided by the Railway Board by the impugned letter No.E(G)97 RMS-2 dated 12-08-97 (Annexure-XIII) that the railways have considered the matter and approved the South Central

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Authority action of charging rent at damage rates towards unauthorized retention of quarter by the applicant herein for the period of his secondment to Government of Saudi Arabia. That was once again reiterated in the impugned letter dated 28-07-98 (Annexure-XV).

5. The applicant was charged at the flat rate of licence fee for the period from 24-5-92 to 23-5-93. Thereafter till he vacated the quarter on 19-12-1994, ^{the} The applicant was asked to pay the damage rent for the period from 24-05-93 to 19-12-94.

6. This OA is filed to set aside the impugned letter No.P.508/GAZ/MD/AVSR dated 28-7-98 (Annexure-XV) issued by the R-3 by holding the same as illegal, arbitrary and for a consequential direction to the respondents to refund the damage rent recovered from the applicant from November, 1996 with 18% interest p.a.

7. A reply has been filed in this OA. The respondents ^{have} enclosed the letter dated 14-7-92 (Annexure R-III to the reply) to state that the applicant was sent on secondment to the Government of Saudi Arabia for a period of not exceeding 3 years. That was known only on 14-7-92 and before that date the railways were of the opinion that he was sent on deputation. Hence the initial letter dated 19-6-92 was issued for retention of the quarter on payment of flat rate. Hence, the Railway have acted in accordance with rules. They also submit that the applicant was informed earlier also that his case has been referred to the Railway Board by letter dated 26-08-94 (Annexure-XI) in regard to the payment of rent either flat rate or damage rent. The letter dated 26-08-94 recommended for retention of quarter beyond the permissible period and only if it is rejected by the Railway Board then only the recovery will be made at the damage rent till the vacation of quarter.

8. ^{unopposed} The learned counsel for the applicant submits that for the first one year i.e., from 24-5-92 to 23-5-93 no recovery will be made in view of the letter dated 19-6-92. However, the recovery of damage rent is necessary for those who are not paid from the railway revenue during the period of their working abroad in view of the serial circular No.27/90 dated 14-2-1990. They rely on the note under para-4 of that letter that 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. Only

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when it is under deputation abroad an employee may be permitted to retain the quarter on the basis of flat rate otherwise only the damage rent has to be paid.

9. It is a fact that the respondents came to know of his secondment to Saudi Arabia only by letter dated 14-7-92 enclosed as Annexure R-III to the reply. Earlier they have issued the letter dated 19-6-92 permitting him to retain the quarter on payment for flat rate. If they come to know of his secondment of Saudi Arabia during which period he has to pay damage rent for retention of his quarter they could have easily withdrawn the earlier dated 19-6-92 when they received the letter dated 14-7-92. The respondents did not act. ^{et} They kept quite. They did not even inform the applicant at that time that he is likely to pay the damage rent in view of his secondment to Saudi Arabia and not on deputation to Saudi Arabia. Even in the letter dated 19-6-92 it is made it clear that in case his deputation is not extended further he should vacate the quarter on or before 23-5-93. Such an endorsement is not called for if he has to pay the damage rent. The applicant on his own volition had written to the SDGM, SC Railway, Secunderabad by his letter dated 7-3-93 requesting the SDGM to permit him to retain the quarter for one more year. At that time the letter of the Railway Board dated 14-7-92 and the Serial Circular issued by the Zonal Railway on the basis of the letter dated 14-2-90 were available with the respondents. At least when the letter dated 17th March, 1993 was received by the SDGM he could have easily rejected his request for retention of quarter on payment of flat rate. No action appears to have been taken in that connection. Subsequently, the applicant by his letter dated 5-3-94 (Annexure-VI) the SDGM was once again requested to permit him to retain the quarter. Nothing has been done. The Railway themselves by their letter dated 26-8-94 appear to have recommended his case to retain his quarter. But it is made clear that in case the retention is not permitted damage rent will be levied. Even in this letter there is no mention in regard to the Serial Circular No.27/90 dated 14-02-90. The respondents could have easily quoted the SI.Circular No.27/90 to inform the applicant the consequences on his retention of the quarter at that time and they could have brought to the notice of the applicant that his case is only secondment in view of the letter dated 14-7-92. But no action to bring the necessary details to the notice of the applicant was taken at that time.

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When the recovery started in the year 1996 and the applicant started requesting for stoppage of recovery and to permit him to retain the quarter at flat rate he was informed by the impugned letter dated 28-07-98 that he is not eligible for retention of the quarter at flat rate and hence recovery has to be made. It is not understood why the respondents did not take action at the appropriate time inspite of the rule position known to them way back in 1990 itself. Subsequently also the respondents did not reply ^{to} _A the request of the applicant for retention of the quarter. Had it been known to the applicant he could have vacated the quarter probably much earlier. The respondents submit that they will recover only the flat rate for the first year even if during the first year he was on secondment. When they can give such a concession for one year it is not understood as to why they should refuse such permission for the period beyond the ^{period} _{elapse} of one-year i.e., only for a period of one year and 7 months from 24-5-93 to 19-12-94.

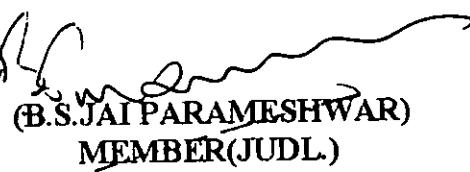
10. It appears that the local railway took action only after approaching the Railway Board in this connection. But that is too late a realization. The respondents in our opinion failed to act in time. If the respondents had acted in time the recovery of huge amount from the applicant could have been easily avoided. The applicant himself may have vacated the quarter well in time and shifted to the private residence even before the secondment to Saudi Arabia or later if the authorities had informed him the rule position. But it appears that the inaction on the part of the respondents led to the present position thereby a huge amount of recovery is to be effected from the applicant herein. We feel such a huge recovery from the applicant due to the failure on the part of the respondents cannot be accepted as a reason to allow the recovery dismissing this OA. Hence, considerable relief has to be extended to the applicant. In that view of the fact that as the respondents informed the applicant that his case is being referred to the Railway Board for deciding the issue of damage rent by letter dated 26-8-94 the damage rent can be levied only from that date onwards. We reluctantly agree for the above payment of damage rent from 26-8-94 as we feel that it is essential to avoid loss to public exchequer also. Hence, the following direction is given:-

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The applicant has to pay the flat rate of licence fee for retention of the quarter No.626/1, Rail Nilayam, Secunderabad from 24-5-92 to 25-8-94. Beyond 26-8-94 till he vacated the quarter on 19-12-94 the applicant has to pay the damage rent. The recovery already made should be adjusted as above and any excess recovery already made more than what is permitted as per the above direction should be returned back to the applicant within a period of one month from the date of receipt of a copy of this order. We do not think it is a fit case to grant ~~any~~ interest if any to be paid to the applicant for the amount already recovered from him till the date of repayment as it will burden the exchequer.

11. The OA is ordered accordingly. No costs.


(B.S.JAI PARAMESHWAR)
MEMBER(JUDL.)


(R. RANGARAJAN)
MEMBER(ADMN.)

Dated: The 13th March, 2000.
(Dictated in the Open Court)


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