

40

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :  
AT HYDERABAD.

O.A. No.489/99.

DATE OF ORDER : 07-9-1999.

BETWEEN :

Y.K. Paratpara Rao,  
S/o Bhavanarayana,  
aged about 65 years,  
Retired Railway Driver,  
H.No.76-14-1, Turpuveedi,  
Karicharlavari Veedhi,  
Eluru, W.G.District.

.. APPLICANT

(By Advocate Mr.N. Sudhakar )

A N D

1. The South Central Railway,  
rep. by its General Manager,  
Secunderabad.
2. The Senior Divisional Personnel  
Officer, South Central Railway,  
Divisional Office, Vijayawada.
3. The Divisional Railway Manager,  
South Central Railway,  
Divisional Office,  
Vijayawada.
4. The Labour Enforcement Officer  
(Central), Prakashnagar,  
Rajahmundry.

.. RESPONDENTS

(By Standing Counsel Mr.V.Rajeshwara Rao)

CORAM :

THE HONOURABLE MR. JUSTICE D. H. NASIR, VICE-CHAIRMAN.


Contd... 2.

O R D E R.

Justice D.H. Nasir, VC :

1. The respondents are sought to be directed in this OA to pay various amounts as prayed for with interest @ 24% per annum. The amounts in question are alleged to have been illegally recovered by the respondents from the applicant. The applicant who was working with the South Central Railway for about 34 years, retired from service on 31.7.1995 as a Railway Driver. He was in occupation of Quarter No.41/C at Rajahmundry. He was transferred to Vijayawada on 31.8.1982; but at that time the applicant could not vacate the quarter in question as it was middle of the year and his children were prosecuting their studies at Rajahmundry and also because his wife was taking treatment in the Railway hospital at Rajahmundry. The applicant was retransferred to Rajamundry on mutual transfer basis on 7.5.1984. The allotment of the said residential quarter to the applicant was regularised by the then D.P.O. Sri R. Gopal Rao, Electrical, by his office order dated 9.9.1991. But in spite of the same, the Department, according to the applicant, erroneously recovered money from his salary. The applicant made as many as 15 representations to the concerned officials on various dates but his complaints fell on deaf ears.

2. Further according to the applicant, in June, 1992 he made a representation to the Enforcement Officer (Central), Prakash Nagar, Rajahmundry, which was allowed by order dated 6.2.1997 directing the Railway Divisional Manager, South Central Railway to refund the excess amount recovered from him; but no action was taken by the concerned officials on the said order. In the meantime,



42

the applicant made a further representation to the then DPO, Vijayawada Miss Pramila Bargavi who was pleased to sanction the amount. However, the applicant was made to run from pillar to post for redressal of his grievances without any success.

3. While contesting and opposing the applicant's claim for refund, the respondents 1 to 3 in their reply statement contended that the applicant was permitted to retain the railway quarter for six months from 31.8.1982 to 31.10.1982 on payment of normal rent and from 31.10.1982 to 28.2.1983 the applicant was directed to pay double the assessed rent or 10% of the emoluments whichever was more vide letter dated 3.3.1983. Further according to the respondents, the applicant while working at Central Railway was transferred to Vijayawada on 31.8.1982 and he was permitted at his instance to retain the railway quarter No.41/C/RJY which was in his occupation from 31.8.1982 to 30.10.1982 on payment of normal rent and from 31.10.1982 to 28.2.1983 on payment of double the assessed rent or 10% of the emoluments etc. The applicant had to vacate the railway quarter after expiry of the permissible period but the applicant failed and neglected to vacate the quarter and continued to occupy the same unauthorisedly beyond 28.2.1983.

4. On the question of legality of the action taken by the respondents for recovery of penal rent, it was contended that as per the extant instructions circulated vide Circular No.26/85 when an employee was posted back to the original station, the regularisation of occupation of quarter which was not vacated by the employee at the original station could be considered only if he reverted back to the original station within the permissible period for retention of the railway quarter. But the

②

applicant joined at his original station, i.e., Rajahmundry only on 7.4.1984 in spite of the fact that he was permitted to retain the quarter only upto 28.2.1983 and therefore, according to the respondents, it was not permissible under rules to regularise the occupation beyond 28.2.1983 and in that view of the matter, the applicant's occupation of the quarter in question had to be treated as unauthorised.

5. by letter dated 9.9.1991 the Divisional Railway Manager's office (Personnel Branch) in connection with reallocation of railway quarter at Rajahmundry it was directed that the railway quarter No.41-C/RJY was re-allotted in favour of Sri Y.K. Paratpara Rao (applicant), Driver/RJY on account of his transfer to Rajahmundry from Vijayawada and that the same was regularised with effect from 7.5.1984 ( i.e. date of joining at RJY). According to the respondents, however, it was erroneously done so. But in fact, according to the respondents, the applicant was not eligible for regularisation of his occupation of the railway quarter beyond 28.2.1983 because the office order dated 9.9.1991 was superseded by letter dated 16.2.1995 and the said quarter was reallocated on out of turn basis to the applicant with effect from 9.9.1991 as a special case, because the applicant had not joined the original station within the permissible period from 28.2.1983; but the quarter was re-allotted to him with effect from 9.9.1991 on out of turn basis as a special case subject to penal rent to be recovered from 1.3.1983 to 8.9.1991. Further according to the respondents, this issue had already been discussed in detail in the Divisional PNM of South Central Railway Employees' Sangh on 1.11.1994 and 2.11.1994 by the Divisional Railway Manager/BZA and the following minutes were recorded.

44

" Sri Y.K.Pratap Rao, Driver transferred from RJY to BZA on 31.8.82. He was permitted to retain the quarters at RJY upto 28.2.83 as requested by him. After a lapse of more than one year he came back to RJY on 7.5.84. After reporting at RJY he requested for re-allotment of the same quarters. This has been considered by ADRM, purely as a special case as he is in essential category vide O.O. NO. QRS/103/1991 dt.9.9.91."

6. According to the Respondents, as per the extant instructions of the Railway Board when an employee was transferred from one station to another and retransferred to the same station, regularisation/reallotment of quarters at old station could be permitted only if he was transferred back to the old station within the permissible period of retention of the railway quarters. In the instant case, according to the respondents, since the applicant was permitted to retain the quarter upto 28.2.1983 only and in view of the fact that he was transferred back to the old station on 7.5.1984, the reallotment of quarter with effect from 7.5.1984 was not permitted as per the Railway Board's orders. However, this was to be treated as an out of turn allotment with effect from 9.9.1991 and therefore, the question of refund of penal/damage rent to the applicant did not arise.

7. There can <sup>indesol</sup> ~~need~~ be no constraint on the respondents to rectify any error which might have been committed inadvertently and in good faith without any motive. However, in the process of rectifying the error, if any, no prejudice should be caused to a Government servant and he should equally be not penalised for ~~his~~ fault, if any, not intentionally committed by him.

8. In sub-clause (iii) of Clause 2 of the circular letter No.P(R)554/Vol-III dated 22.2.1985 in connection with retention of quarters when any member of the staff

10

US

is transferred to out of station, it is stipulated that where employees are posted back to the original station, regularisation of quarters which are not vacated by the employees at the original station would be considered only if they are reposted back to the original station within the permissible period of retention of quarters as per extant Board's orders. It is further stated in the said sub-clause that for this purpose, the employee should have submitted his application for retention of quarters in time and should have been granted such permission and that the staff can get the quarters occupied by them at the original station regularised in their name with effect from the date of their reposting within the permissible period for retention of quarters.

9. It could be seen from the language of subclause (iii) of Clause 2 of the circular dated 22.2.1985 that the employee is required to have submitted his application for retention of quarters in time and should have been granted such permission. In the case before us, according to the applicant himself, he made his first representation on 24.10.1991 whereas, according to the circular dated 22.2.1985, the employee should have submitted his application for reallocation of quarters in time and that the same should have been granted. In view of the fact that no specific time limit has been laid down under the said circular, a period of three months could be taken as a reasonable period within which the applicant should have made representation to <sup>allow him to do</sup> retain the quarter which was already under his occupation. From the averments made by the applicant in para-6(1) of the O.A. itself, it appears that the applicant did not make any representation either for retention of quarter or for payment of concessional rent earlier than 24.10.1991.

D

10. It becomes quite evident from the contentions raised by the learned Standing Counsel for the respondents that the permission was granted to the applicant for retention of the quarter in question for the period from 31.8.1982 to 30.10.1982 on payment of normal rent and from 31.10.1982 to 28.2.1983 on payment of double the assessed rent or 10% of the emoluments whichever was more. It also transpires that the applicant joined at his original station i.e. Rajahmundry only on 7.5.1984 whereas he was permitted to retain the quarter only upto 28.2.1983 and therefore, it was not permissible under rules to regularise the occupation of the applicant from 1.3.1983.

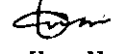
11. If the position is as stated above, the applicant cannot take undue advantage of the error committed by the respondents inadvertently as stated in the communication dated 9.9.1991 (Annexure-III to the reply statement) in which it is stated that the occupation of the quarter was regularised with effect from 7.5.1984. Moreover, the applicant has not come forward with any specific case that he had applied for regularisation within the permissible period for retention of quarters as per the extant Board's orders. We are, therefore, of the opinion that the applicant fails to make out a case that he is not liable to pay penal rent. We do not find any merits in this O.A.

12. Since we have not allowed the claim of the principal amount to the applicant as prayed for by him, the question of granting interest in accordance with the directions given by the Supreme Court in UNION OF INDIA v. JUSTICE S.S. SANDHAWALIA ((1994) 2 SCC 240) does not survive for consideration or application to the facts of the present case.

d

47

13. In the result, therefore, the O.A. is dismissed being devoid of any merits. No costs.

  
( D. H. Nasir )

DATED THE 07th DAY OF SEPTEMBER, 1999.

  
rec.

DJ/