

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 15.5.2001

OA No. 519/2000

Trilok Mishra s/o Shri G.N.Mishra r/o Railway Quarter No. 202 B, Bayana, at present employed on the post of TCM Grade-I under CTCI, Bayana.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Chairman Housing Committee, Bayana, Western Railway Bayana, Kota Division.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. T.P.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

ORDER

PER HON'BLE MR. S.K.AGARWAL, JUDICIAL MEMBER

In this Original Application filed under Section 19 of the Administrative Tribunals Act, the applicant makes a prayer to declare the action of the respondents in making recovery of Rs. 10,398 for the period January, 1997 to December, 1997 and Rs. 14,515 for the period from January, 1998 to October, 1998 as illegal, arbitrary and direct the respondents to refund the amount which have been already recovered from the pay of the applicant.

2. In brief, case of the applicant is that applicant was transferred from Bayana to Devpura in January, 1997. On the date of

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his transfer from Bayana to Devpura, applicant was residing in Railway Quarter No. 202 B at Bayana. After his transfer, the applicant made a request to regularise the period of retention of that quarter which was regularised for two months. After his transfer from Devpura to Bayana in December, 1997, the case of the applicant was considered by respondents and respondent No.3 (Housing Committee) gave his consent for regularising the quarter to the applicant on out of turn basis and on the basis of the consent given by respondent No.3, the quarter in question was regularised in favour of the applicant on out of turn basis vide order dated 2.4.1998. It is stated that applicant joined back to Bayana within a period of one year and he retained that quarter because of the education of his children. Therefore, the period from January, 1997 to December, 1997 must be regularised in favour of the applicant on normal rent. It is also stated that another show-cause notice was given to the applicant before ordering any recovery from the applicant. These actions of the respondents are illegal, arbitrary and against the principles of natural justice, therefore, the applicant filed this OA for the reliefs as above.

3. Reply was filed. In the reply, it is stated that after the transfer from Bayana to Devpura, the applicant was required to vacate Quarter No. 202 B at Bayana, but he did not vacate. It is also admitted that for two months period permission was accorded to the applicant to retain the quarter on normal rent and the competent authority has given his consent on 2.4.1998 for re-allotting that quarter in favour of the applicant on out of turn basis. It is denied that representations dated 24.6.99, 3.6.99 and 10.5.99 were received by the respondents. It is stated that after allowing two months retention to the applicant, the applicant did not vacate the said quarter. Therefore, penal rent was charged and action of the respondents is in no way illegal, arbitrary and in violation of the

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principles of natural justice. Therefore, applicant has no case for interference by this Tribunal.

4. Heard the learned counsel for the parties and also perused the whole record.

5. It is not disputed that applicant was transferred from Bayana to Devpura and remained on transfer to Devpura till December, 1997. It is also undisputed fact that applicant was allowed to retain the said quarter on normal rent for two months. The letter dated 17.12.1983 on the subject of retention of railway quarter by railway employees on occurrence of various events such as transfer, retirement etc. ~~issued by the Railways was~~ incorporated in the said letter. The relevant provisions in the said letter reads as under:-

(i) A railway servant on transfer from one station to another which necessitates change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of 2 months on payment of normal rent. On request by the employees on educational ground or ground of sickness the period of retention of railway accommodation may be extended for a further period of six months on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is the highest.

(ii) If a railway employee requests for retention of the railway quarters at the former station on the ground of sickness of self or a member of the family retention of the quarter at the former station of posting can be permitted for a total period of upto six months- first two months on payment of normal rent and next four

months or till recovery, whichever is earlier, on payment of double the assessed or double the normal or 10% of the emoluments whichever is the highest. The Railway employee will be required to produce requisite medical certificate from the recognised Medical Attendant for this purpose.

(iii) In the event of transfer during the mid-school/ college academic session, as employee may be permitted to retain the railway quarters at the former place of posting for a total period of upto 8 months, the first two months on payment of normal rent and the next 6 months or till the current academic session ends, whichever is earlier, on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is the highest."

6. On perusal of this letter, it is apparent that initially retention can be permitted for 2 months on payment of normal rent. Further, it can be extended for 6 months on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is higher.

7. In the case of Ram Poojan vs. Union of India and others delivered by the Full Bench of Allahabad Central Administrative Tribunal in OA No. 936/93, it was held :-

"(a) In respect of a railway employee in occupation of a railway accommodation, in our considered opinion, no specific order cancelling the allotment of accommodation on expiry of their permissible/permitted period of retention of the quarters on transfer, retirement or

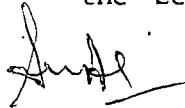
otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied.

(b) Our answer is that retention of accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorised occupation and there would be an automatic cancellation of an allotment and penal/damage rent can be levied according to the rates prescribed from time to time in the Railway Board's circular.

39. We further hold that it would be open to the Railway Authorities to recover penal/damage rent by deducting the same from the salary of the Railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971".

8. On the perusal of the said judgment and the instructions issued from time to time by the Railway Board, it appears that a railway servant in normal course can be allowed to retain a railway quarter for 2 months on normal rent and thereafter for another 6 months on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is higher. The learned counsel for the applicant submits that applicant is ready to pay for another 6 months double the assessed rent or double the normal rent or 10% of emoluments, whichever is higher as per rules and for rest of the period the applicant is ready and willing to pay the damage rent as per rules.

9. In view of the facts and circumstances of this case and the settled legal position, I am of the opinion that respondent



Department must consider the retention of quarter No. 202 B by the applicant as per provisions contained in letter dated 17.12.83 and expected to regularise this period according to the instructions given in the said letter.

10. As regards the period commencing from January, 1998 to October, 1998, it appears that a consent was given to allot quarter No. 202 B to the applicant on out of turn basis vide letter No. 2.4.1998. Therefore, the applicant is entitled to pay normal rent of the said quarter after this date. Regarding the rent from January, 98 to 31st March, 1998 the Department may consider the circumstances under which the quarter in question was retained by the applicant and the consent was given by the Department to allot the said quarter to the applicant on out of turn basis. For this purpose the applicant may file a representation.

11. In view of above, this Original Application is allowed with following directions:-

- i) Respondents shall regularise the retention of Quarter No. 202 B by the applicant w.e.f. 15.3.1997 to 15.9.1997 (for six months) as per instructions issued on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is higher.
- ii) The applicant shall pay the damage rent as per rules/instructions from 16.9.97 to 31.12.97 as per rules applicable for this purpose.
- iii) Regarding the period commencing from 1.1.98 to 1.4.98, the applicant may file a representation within 15 days from the date of passing of this order to the competent authority who will consider the case of the applicant sympathetically in view of the consent given to the applicant for out of turn allotment and circumstances

which led to the applicant to retain that quarter.

iv) The amount already recovered from the applicant, if it is in excess, the same can be adjusted against the damage rent payable by the applicant.

v) No order as to costs.


(S.K. AGARWAL)

Judl. Member - KAR