

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUMAHATI BENCH.

O.A./XXXX NO. 166 of 1998. of

DATE OF DECISION 16.5.2001

Shri Suchit Goala

APPLICANT(S)

Mr. Maik Chanda.

ADVOCATE FOR THE APPLICANT(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. S. Sarma, on behalf of Mr. B.K. Sharma, ADVOCATE FOR THE
learned Railway standing Counsel. RESPONDENTS.

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE

1. whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?
5. Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No.166 of 1998.

Date of decision : This the 16th day of May, 2001.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Shri Suchit Goalal
Son of Late Jogi Prasad Goalal,
A.V.Driver, G.R.I.,
Rangapara,
P.O. Rangapara,
District-Sonitpur, Assam.

....Applicant

By Advocate Mr. M.Chanda.

-versus-

1. Union of India,
Through General Manager,
N.F.Railway, Maligaon,
Guwahati-781011.

2. Chief Medical Superintendent,
N.F.Railway/Alipurduar Junction,
P.O. Alipurduar Junction,
District - Jalpaiguri, West Bengal.

3. Medical Superintendent,
I/C Rangapara North
N.F.Railway,
P.O. Rangapara,
District-Sonitpur (Assam)

...Respondents

By Advocate Mr. S.Sarma, on behalf of Mr. B.K.Sharma,
Standing Counsel for the Railways.

O R D E R (ORAL)

CHOWDHURY J.(v.C.).

The key question requiring adjudication in this application pertains to imposition and realisation of damage rent for alleged unauthorised retention of Railway Quarter in the following circumstances :

The applicant at the relevant time was working as Ambulance Van Driver and posted at Alipurduar Junction. He was provided with a Railway Quarter at Alipurduar wherein he used to reside with his family members consisting with his wife and three children. The applicant was transferred to Maligaon Railway Hospital, Maligaon, Guwahati in the year 1990. As per the order of transfer he alone shifted to Maligaon leaving his family at Alipurduar in the Railway quarter allotted to him. The applicant by communication dated 27.11.1990 requested the authority to arrange for his transfer from Guwahati to Alipurduar on the ground of financial stringency as he was to maintain two establishments. In the applications he also mentioned that his children who were attending the Railway Higher Secondary School at Alipurduar and also mentioned that he was the only member in his family to look after them and on that ground he sought for transfer. In fact the applicant was transferred back to Alipurduar Junction in the year 1991. In December 1991 the applicant was again transferred to Rangapara Junction as Driver Grade II. On transfer the applicant joined Rangapara from where he retired on superannuation. The respondents issued communication dated 26.7.1996 asking him to vacate the Railway Quarter within the specified time and he was charged damage rent from 1.5.1992 to 26.7.1996 which would be recovered from salary bill amount to Rs. 46,799. The communication also indicated that it would be recovered from the salary bill commencing from August 1996 to Rs. 1300/- per month in 36 instalments alongwith Damage Rent (Current) Rs. 1256/- per month along with damage rent. The communication also mentioned that electricity energy bill received from SR. EE (P) APDJ for the period from November 1990 to April 1996 amounting to Rs. 2463/- would be recovered from salary bill

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commencing from August 1996 @ Rs. 206/- per month in 12 instalments. The applicant submitted a representation before the authority stating that his occupation was not unauthorised since the Railway Quarter was allotted to him as per law. By the said communication the applicant further stated that if it was at all unauthorised he ought to have been made known so that he could have taken the corrective measure. The aforesaid representation was also turned down by the respondents. Hence the present application challenging the legitimacy of the order dated 26.7.96 as arbitrary and discriminatory.

The respondents filed its written statement and contested the case. The respondents in its written statement pleaded that as per the rules/circulars no railway employee/servant after his transfer or retirement was entitled to retain his accommodation/quarter under occupation without prior approval/permission, such occupation/retention of quarter by any employee was unauthorised and therefore as per law he was required to pay damage rent as penalty. AS to its earlier inaction, the respondents stated that due over sight damage rent was not reliased but when audit objection was raised respondents were compelled to make the move for revovering damage rent.

Admittedly the applicant was allotted with a railway quater to leave with his family. It was the respondent authority who realised the rent from the applicant and applicant paid the usual rent. There is no dispute that prior to issuance of the notice dated 26.7.1996 the applicant was not intimated that the use and occupation of the quarter in question was unauthorised and therefore he ws not liable to pay the damage rent which is of penal nature. Mr. M. Chanda, learned counsel for the applicant assiling the aforesaid action firstly submitted that said action of the respondents

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is arbitrary and violative of principles of natural justice. Mr. Chanda further submitted that in the instant case the quarter was allotted to the applicant on payment usual rent and after acceptance of the said rent by the respondent authority, the respondents should not come around and ask for the penal rent after realising the regular rent. Mr. Chanda further submitted the applicant was never informed that his occupation was unauthorised while in service. Mr. Chanda learned counsel in support of his contention referred to a decision of the Central Administrative Tribunal delivered by the Cuttak Bench in the case of Pramtha Kumar Mishra Vs. Union of India & Ors. in O.A. No. 404 of 1994 disposed of on 20.5.1996 reported in Swamy's Case Law Digest of Government Servants' Cases Volum XII, 1996(2), 631. Mr. S. Sarma, on behalf of Mr. B.K.Sharma, learned Standing Counsel for the Railways submitted that on his transfer automatically the allotted quarter became unauthorised.

It is difficult to accept the contention of the respondents that occupation of the applicant was unauthorised on the basis of the materials on record. The applicant was allotted the quarter and he continued to stay in the quarter on paying the usual rent and the respondent authority realised the rent from the applicant. Therefore it cannot be said that the occupation of the applicant was unauthorised. It has also been stated at the bar that the applicant has already vacated the said quarter.

On consideration of all the aspects of the matter I am of the view that the impugned order dated 26.7.1996 is unsustainable in law and accordingly the same is set aside and quashed.

The application is allowed to the extent indicated above. There shall however, no order as to costs.


(D.N.CHOWDHURY)
Vice-Chairman