

Central Administrative Tribunal, Jabalpur Bench, Jabalpur

Original Application No.374/2003

Bhopal, this the 22nd day of November, 2004

**Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri A.K.Bhatnagar Judicial Member**

Dr. Niranjana Singh
S/o Late Shri R.D.Singh
Aged about 54 years
Sr. Divisional Medical Officer,
D/o Sr. D.M.O. In-charge,
Health Unit, Habibgunj, Bhopal(M.P.)
R/o RE/RB-IV-11, Khajanchi Bag,
Railway Colony, Bhopal(M.P.)

Applicant

(By Advocate – Shri M.Sharma)

Versus

1. Union of India,
West Central Railway,
Jabalpur
Through it's General Manager,
2. Divisional Railway Manager,
West Central Railway,
Bhopal Division, Bhopal.
3. Divisional Railway Manager
(personnel) West Central Railway
Bhopal Division, Bhopal

Respondents

(By Advocate – Shri S.P.Sinha)

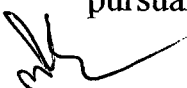
ORDER

By M.P.Singh, Vice Chairman –

By filing this OA the applicant has sought the following main reliefs :-

“ii) Quash and set aside the impugned orders dated 1.7.2002 and 21.8.2001 Annexure A-1 and A-2 respectively.

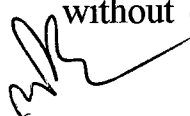
iii) Restrain the respondents from the recovery in pursuance to Annexure A-1 dated 1.7.2002



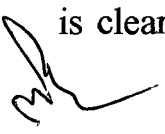
iv) Direct the respondents to refund Rs.1,01,109 with an interest @ 12% p.a. which they have already recovered in pursuance to annexure A-2 dated 21.8.2001."

2. The brief facts of the case are that the applicant was working as Senior D.M.O. at Itarsi and he was transferred from Itarsi to Jhansi vide order dated 12.7.1993 and joined at Jhansi on 9.9.2003. The applicant was having Government accommodation at Itarsi. He had applied for permission to retain the quarter at Itarsi on account of education of his son. Vide order dated 17.4.1995, the applicant ^{was} again ~~was~~ transferred back to Itarsi from Jhansi. After coming and joining at Itarsi he had applied for regularization of the said quarter which was retained by him during the period when he was posted at Jhansi. The applicant was again transferred from Itarsi to Bhopal vide order dated 7.3.2000. Thereafter, the applicant again applied for retention of the quarter at Itarsi on account of the sickness of his wife. The respondents had issued a show cause notice to the applicant for unauthorized occupation of quarter no.F-54 at Itarsi. The applicant promptly responded to the said notice vide his representation dated 29.3.2001. All of a sudden, the impugned order dated 21.8.2001 was passed by the respondents for recovery of Rs.1,01,009/- and they started recovering the said amount in equal instalment @ of Rs.10,000/- per month from the salary of the applicant on account of illegal occupation of quarter no.F-54 at Itarsi during the period from 29.7.2000 to 31.7.2001. After recovery of the aforesaid amount, the respondents have again issued the impugned order dated 1.7.2002 wherein they have proposed to recover Rs.4,73,223/- on account of illegal occupation of quarter no.F-54 at Itarsi from 6.11.1993 to 27.8.2000. Hence the applicant has filed this O.A.

3. The respondents in their reply have stated that the applicant had applied for permission to retain the quarter at Itarsi on 3.11.1993 without enclosing the required certificate of schooling of his son. He

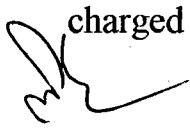


was transferred on 12.7.1993, while he applied on 3.11.1993. Since the applicant did not submit the required certificate, no permission was granted to retain the accommodation. The respondents have submitted that as per the extant rules, the permission to retain the accommodation is only granted from the date of transfer i.e. two months on normal rent; further six months or end of schooling session on double the licence fee on the ground of children's education on production of necessary certificate by school authorities. Beyond this limit, there is no rule to grant permission to retain the Railway quarter. They have also submitted that the applicant was transferred from Jhansi to Itarsi vide Annexure-A-6 and he resumed^{Charge} at Itarsi on 27.6.1995. The applicant resumed his duties at Itarsi after 12 months of his transfer. Hence even if he had applied for regularization of the said quarter, his case cannot be considered against the policy. According to them, a railway quarter is allowed to a railway employee on his application at his turn and according to availability of the railway quarter. They have also stated that the letter dated 22.9.2000 was received but the request of the applicant was not accepted as this was against the rules and policy. This letter was also not supported by any medical certificate of illness of the wife of the applicant. As the applicant was retaining the quarter unauthorizedly and other staff persons were in queue waiting for allotment of railway quarter, it was decided to start process for evicting the applicant through the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and claiming damage rent. Hence a letter dated 12.9.2001 (Annexure-A-11) was issued to the applicant. The applicant only after the receipt of the copy of the letter dated 12.9.2001 had submitted a copy of transfer certificate no.840 issued on 14.9.2001 along with his application. On bare perusal of the said transfer certificate it is revealed that the applicant's son was in school since 27.7.1993 to 30.6.1995, while the applicant was transferred vide letter dated 12.7.1993 i.e. prior to the joining of the school. Hence it is clear that his son was not in the school on the date of his transfer.



He deliberately created the controversy. Although the railway administration on the basis of documents submitted by the applicant on 8.10.2001 was chasing feasibility to grant post-facto sanction for the period of schooling session of the year 1993-94 but there being no rule to grant permission, the matter was dropped. Thus, there is no question to consider exemption from payment of damage rent for the period 1993-95 or regularization for the onward period. As per rules, the said quarter could not be regularized. Hence it was ordered to recover the damage rent since August, 2001 @ Rs.5528/- and recovery for period of 29.7.2000 to 31.7.2001 amounting to Rs.67941/- in the instalment of Rs.5522/- per month has already been made.

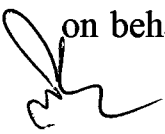
4. Heard the learned counsel of parties. The learned counsel for the applicant has stated that the applicant has been transferred from Itarsi to Jhansi. As his son was studying at Itarsi, he had applied for retention of the accommodation on the ground of education of his son. After the academic session, the son of the applicant was promoted to 12th class and since the applicant was transferred to Jhansi, which is in Uttar Pradesh, it was difficult to get admission in 12th class because of change of educational board. He contends that the Railway rules permit retention of railway quarter till the end of academic session by payment of licence fee at double the rate. As the applicant has been retransferred ^{back to} Itarsi from Jhansi and as the applicant was continuing in the railway quarter, he had asked for regularization of the said quarter. He had sent reminders, however, nothing was heard from the respondents and during his stay at Itarsi from 1995 to 2000 till he was transferred to Bhopal again normal licence fee was being charged from him. At the time of his transfer from Itarsi to Bhopal, the applicant has again made a request for retention of the said quarter on the ground of sickness of his wife. He has also stated that the respondents have, in such circumstances, permitted other railway servants to retain the railway quarter as per rules and have not charged the damage rents. He has stated that in view of these facts, the



damage rent should be charged from the applicant only after the academic session was over and till the applicant was retransferred and joined his duties in Itarsi in 1995.

5. On the other hand, the learned counsel for the respondents has stated that the applicant was transferred from Itarsi to Jhansi vide order dated 12.7.1993. As per the Transfer Certificate submitted by the applicant, his son was admitted in the school only on 27th July, 1993 i.e. after the orders of transfer were issued. Moreover, the applicant has not submitted the Transfer Certificate at the time of applying for retention of the railway quarter and has submitted the same only in 2001. He has also submitted that if the railway servant is transferred back within a period of 12 months to the same station, the accommodation which was retained by him at the old station can be regularized. However, in this case, the applicant had remained away on transfer to Jhansi for more than 12 months and, therefore, the same accommodation i.e. quarter no.F-54 at Itarsi, which was occupied by the applicant, could not have been regularized in his name. As per rules, the applicant was required to vacate the said railway quarter after coming back to Itarsi from Jhansi and he should have applied afresh for allotment of a railway quarter to him which has not been done in this case. On the other hand, the learned counsel for the applicant has stated that as the son of the applicant was admitted in the school on 27.7.1993 i.e. after his transfer but the applicant was relieved on 6th September, 1993 and joined at Jhansi on 9th September, 2004. As regards the regularization of the accommodation, the learned counsel has contended that the applicant being the in-charge of the hospital at Itarsi and the said railway quarter was earmarked for the in-charge of the hospital and, therefore, it could have been regularized in the name of the applicant.

6. We have given careful consideration to the arguments advanced on behalf of both the sides. The admitted facts of the case are that the



applicant was transferred from Itarsi to Jhansi vide order dated 12.7.1993 but actually the applicant joined his duties at Jhansi only on 9th September, 1993. He was transferred back to Itarsi from Jhansi vide order dated 17.4.1995 (Annexure-A-6) but actually he joined his duties at Itarsi on 27.6.1995. Thereafter, the applicant has again been transferred to Bhopal vide order dated 7.3.2000 (Annexure-A-8).

7. The questions for consideration are (i) whether the applicant could retain the Government accommodation, which was allotted to him at Itarsi while he was working as Sr.D.M.O., during the period from 12.7.1993 i.e. the date on which he was transferred to Jhansi, to 7.3.2000 when he was transferred to Bhopal; and (ii) whether the action of the respondents in charging the penal rent for the period from 6.11.1993 to 27.8.2000 amounting to Rs.4,73,223/- vide their order dated 1.7.2002; and from 29.7.2000 to 31.7.2001 amounting to Rs.67,941/- vide order dated 21.8.2001, is justifiable.

8. The respondents have already made a recovery of damage rent to the tune of Rs.1,01,109/- in pursuance of order dated 21.8.2001. The Tribunal vide order dated 23.6.2003 has stayed the recovery of Rs.4,73,223/- as damage rent in pursuance to the impugned order dated 1.7.2002.

9. As per the instructions issued by the Railway Board vide their letter dated 1.6.2001 (Annexure-R-1) for retention of railway quarter on transfer, deputation, retirement etc. is regulated as under :-

I. Permanent Transfer:

- (a) A Railway employee 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 two months on payment of normal rent or single flat rate of licence fee. On request by the employee, on educational or sickness account, the period of retention of railway accommodation may be extended for a further period of six months on payment of special licence



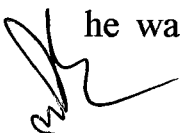
fee, i.e. double the flat rate of licence fee rent. Further extension beyond the aforesaid period may be granted on educational ground only, to cover the academic session in which he/she was transferred on payment of special licence fee.

Beyond the permitted/ permissible limit, however, no further extension will be allowed on any ground whatever. Therefore, no request of representation on this score shall be entertained. For all occupations beyond the permitted period immediate action should be taken to cancel the allotment, declare the occupation as unauthorized and initiate eviction proceedings, charging damage rent for the over stay.

- (b) Where the request made for retention of Railway quarter is on ground of sickness of self or a dependent member of the family of the railway employee, he will be required to produce the requisite Medical Certificate from the authorized Railway Medical Officer for the purpose.
- (c) In the event of transfer during the mid-school/college academic session, the permission to be granted by the competent authority for retention of railway accommodation in terms of item (a) above will be subject to his production of the necessary Certificates from the concerned school/college authority”.

As per para 29 of the reply submitted by the respondents, in case the employee is transferred back on the same station within 12 months, he could apply for regularization but in case transfer is beyond 12 months he has to apply for registration for allotment.

10. In this case, we find that the applicant was relieved on his transfer from Itarsi to Jhansi in September, 1993 i.e. in the mid-academic session 1993-94. He has, therefore, applied for retention of the railway quarter on the ground of education of his son. He has also submitted a certificate from the school authorities to this effect – although on a later date. The applicant has been retransferred from Jhansi to Itarsi in June, 1995 i.e. beyond the period of 12 months. But since he was continuing to retain the railway accommodation which he was occupying before going on transfer to Jhansi, he could have



been allotted the same house as such houses are earmarked for the incharge of the hospital. During the course of arguments, the learned counsel for the applicant has submitted that the applicant was incharge of the railway hospital at Itarsi. This fact has not been specifically controverted by the learned counsel for the respondents. When the applicant was transferred from Itarsi to Bhopal in March, 2000, he had also applied for retention of the railway accommodation on the ground of sickness of his wife. It is interesting to note that during all this period from 1993 to 2001 the respondents have been charging normal rent from the applicant and not paying the HRA to the applicant as he was occupying the railway accommodation. The respondent-railways have also not taken any action by initiating the eviction proceedings against the applicant during all these years.

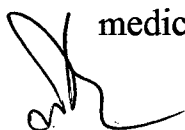
¶ In the conspectus of the aforesaid facts and circumstances of the case, and keeping in view the instructions contained in the Railway Board's letter dated 1.6.2001 (Annexure-R1) quoted above, we are of the considered view that the respondents be directed to regulate the period of retention of railway accommodation by the applicant from 6.11.1993 to 27.8.2000 as under –

(a) Till the end of academic session 1993-94, the period may be regulated in terms of para (a) of the aforesaid instructions dated 1.6.2001, as the applicant's son was ^{was} ~~schooling~~ ^{in school};

(b) from the end of academic session till 1995 as damage rent in terms of their policy;

© from 27.6.1995 to 7.3.2000 on normal rent as the applicant was posted during this period at Itarsi;

(d) from 7.3.2000 to 31.7.2001 in terms of the aforesaid instructions dated 1.6.2001 by considering the medical certificate submitted by the applicant from authorized medical attendant as provided in the above rules.



12. In the result, the O.A. is partly allowed, with the above directions. The respondents are directed to comply with the above directions and grant consequential benefits, if any, to the applicant within a period of three months from the date of communication of this order. No costs.

(A.K.Bhatnagar)
Judicial Member

(M.P.Singh)
Vice Chairman

पृष्ठान्तर्गत सं अ/नं. जयलपुर, दि.

प्रतिनिधि :-

- (1) सचिव, जयलपुर नगर पालिका, जयलपुर
- (2) आवेदन सं/अं. के काउंसल *Manoj Sharma Adv 238*
- (3) प्रत्यक्षी सं/अं. के काउंसल *S.P. Singh Adv 237*
- (4) ग्रामपाल, जयलपुर नगरपालिका
सूचना एवं आवश्यक कार्यवाही हेतु

उपस्थित

Issued
On 2.12.04
23