

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 569 of 1998

Jabalpur, this the 4th day of April 2003.

Hon'ble Mr. R.K. Upadhyaya - Member (Admnv.)
Hon'ble Mr. A.K. Bhatnagar - Member (Judicial)

Mukesh Kumar Badraiya
S/o Shri B.C. Badraiya,
aged 38 years,
Goods Guard, New Katni.
Resident of C/o Lucky General
Stores, "Sai Kripa",
Main Market,
New Katni, Katni.

APPLICANT

(By Advocate - Shri V. Tripathi)

VERSUS

1. Union of India
through the Secretary,
Ministry of Railways,
Railway Board,
New Delhi.
2. The Divisional Railway Manager,
Central Railway,
Jabalpur.
3. R.K. Soni, resident of
RB-II-76/C,
New Katni Junction, Distt.
Katni (M.P.)

RESPONDENTS

(By Advocate - Shri. S.P. Sinha)

ORDER

By R.K. Upadhyaya, Member (Admnv.) -

The applicant has made a request for setting aside the charge-sheet (Annexure-A-8) and also setting aside order at Annexure-A-1 cancelling the allotment of quarter of the applicant, and further for a direction that the applicant was not liable to pay any damage rent.

2. It is stated that the applicant was working as Goods Guard and was allotted a railway quarter no. RB II/76/C at New Katni, as per allotment order with effect from 1.6.1992. Subsequently he had requested



that one Shri R.K.Soni, Goods Guard, New Kathi be allowed to share the accommodation along with him. The learned counsel of the applicant invited attention to order dated 6.1.1997 (Annexure-A-2) by which the applicant was allowed permission to take Shri R.K.Soni as co-sharer of the accommodation, on certain terms. It is claimed by the applicant that when a notice as per Annexure-A-1 was received on 7.5.1997, the applicant vacated the said accommodation, as per his letter dated 20.11.1997 (Annexure-IA/2). It has been explained that the order of cancellation of allotment as per Annexure-A-1 received on 7.5.1997 is based on some report of a surprise inspection team in which the applicant was not found. Therefore, the charge-sheet dated 7.10.1997 (Annexure-A-8) for subletting the accommodation to Shri R.K.Soni was issued. The learned counsel stated that in spite of the applicant having vacated the subject accommodation on 20.11.1997, the respondents have issued another order dated 3.12.1997 (Annexure-A-3) by which Shri R.K.Soni has been given permission to reside along with the applicant up to 31.12.1997. The learned counsel stated that when the charge-sheet has been dropped by the respondents by order dated 17.12.1997 (Annexure-IA/1) the very basis of show cause notice of sub-letting no longer survives. It was also urged by the learned counsel of the applicant that Shri R.K.Soni is also a railway employee and if he has been permitted to stay in the accommodation, it is not for the applicant to get the accommodation vacated from Shri R.K.Soni.

3. The learned counsel of the respondents invited attention to the fact that the applicant himself had applied for permission to allow Shri R.K.Soni to share the accommodation along with himself. This permission was granted to the applicant as per order dated 6.1.1997 (Annexure-A-2) on certain conditions. The first condition was that the applicant will be liable to pay the lease

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rent as per rules. It was also stated that the applicant will be liable to get the residence vacated if he was transferred from that place and only the applicant and the co-sharer should actually be in possession of the accommodation. In the first instance this permission was granted up to 31.5.1997. The learned counsel of respondents further stated that the original permission for co-sharing was granted up to 31.5.1997, therefore, the letter issued on 3.12.1997 only gives further extension up to 31.12.1997 as prayed by the applicant. It was also pointed out by the learned counsel of respondents that the alleged letter dated 20.11.1997 (Annexure-IA/2) claiming to be a letter vacating the accommodation, cannot be treated as a letter of vacation. It was the duty of the applicant to get the co-sharer evicted and hand over the possession of the allotted quarter. Since he had not done so, it cannot be treated that the applicant has vacated the quarter on 20.11.1997. It is also pointed out that when the inspection team visited the quarter before 31.5.1997, only Shri R.K.Soni was found to be in possession. This was clearly against the terms of order allowing Shri R.K.Soni to be taken as co-sharer of the applicant. He also pointed out that there was not an iota of the evidence to show that the applicant was actually staying in the quarter allotted to him, at least from the time when he took Shri R.K.Soni as co-sharer or in any case before the date of inspection of the quarter by the surprise inspection team. He also pointed out that the letter filed by the applicant from some Booking Clerk stating that the applicant was being given information about his duties, to prove that the applicant was staying in the railway accommodation is only an after-thought. It was, therefore, urged that the applicant should be treated as having not used the quarter for himself and, therefore, liable to pay penal rent from the date when he stopped using the said accommodation.

4. We have heard the learned counsel of parties and have perused the material available on record.

5. There is no dispute that the railway quarter bearing no. RB II/76/C at New Katni was allotted to the applicant. There is nothing on record to show as to what time the applicant stopped staying in this accommodation but it is inferred that he must have done so by the time the surprise inspection team visited his railway quarter and found that only Shri R.K.Soni was residing in that accommodation. After the inspection of the surprise inspection team, the show cause notice has been served on the applicant on 7.5.1997 (Annexure-A-1). The letter dated 20.11.1997 (Annexure-IA-2) can only be treated as a request of the applicant to allot the said accommodation to Shri R.K.Soni. It cannot be treated as having been vacated because the house was never vacated and handed over to the Railway authorities as per standing instructions on the subject. The claim of the learned counsel of the applicant that disciplinary proceedings having been dropped, therefore, the applicant cannot be charged penal rent for the same offence is also not acceptable. The charge as per the charge-sheet was that the applicant had sub-letted the said accommodation to Shri R.K.Soni. However, Shri R.K.Soni was permitted to live in the said accommodation as co-sharer as per orders of the respondents. Therefore, the charge-sheet was rightly cancelled but that will not make the applicant not liable for penal rent if he was not himself using the accommodation which was allotted to him for his use. He also cannot be allowed to claim that he is not responsible for over-stay or any other activity of Shri R.K.Soni, who was allowed as co-sharer. In our opinion, the applicant was entirely accountable and responsible so far the accommodation is concerned in view of the fact that it was allotted to him. Permission to keep

Shri R.K.Soni as co-sharer was at his instance on certain terms. If the applicant stopped using this accommodation for his residence, he is liable to pay penal rent. However, it will be for the respondents as to from what date this penal rent should be charged. It has to be gathered from the evidence to be produced by the applicant regarding his non-use of the quarter for his residence.

6. For the reasons given above, we do not find any merit in this O.A. and dismiss the same without any order as to costs.

(A.K.Bhatnagar)
Member (Judicial)

(R.K.Upadhyaya)
Member (Admnv.)

rkv.

पूर्णांकन सं. ओ/न्या..... जबलपुर, दि.
 प्रतिलिपि आन्दोलन
 (1) रात्रिव, उत्तर भारत के लोगों की जाति जबलपुर
 (2) आवेदन की जाति जबलपुर
 (3) प्रत्यर्थी की जाति जबलपुर
 (4) ग्रामपाल, कोंडांग जबलपुर
 नम्बर १०५

Received
on 9.4.03
by [Signature]