

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

Original Application No.96/2015
Dated this the 14th June, 2018

Date of Order : 14.06.2018

CORAM :

Hon'ble Sh. Jayesh V. Bhairavia, Member (Judicial)

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Manoj Kumar Singh S/o Shri Virendrapratap Rajnarayan Singh, aged 44 years, working as Fitter Gr.I, resident of Railway Quarter No. 908/E, Dahod-389154.**Applicant.**

[By Ms. S.S.Chaturvedi]

Versus

- 1) Union of India notice to be served through General Manager (E), Western Railway, Churchgate, Mumbai – 400 020.
- 2) Chief Works Manager, O/o CWM, Western Railway, Dahod-389154**Respondents**

[By Mr. A.L.Sharma]

O R D E R

BY THE COURT :

The applicant has, in this application filed under Section 19 of the Administrative Tribunals Act, 1985 prays for the following reliefs :

“8.1)Lordships be pleased to admit this petition. And be pleased to issue order quash and setting aside Order no. E/58/7/1 Part-I, Dated 30.10.2013, passed by Chief Works Manager as Annexure A/3 and order no. E/58/7/1 Part-II dated 26-09-2014 passed by Chief Works Manager as Annexure A/5.

And be pleased to direct the respondents to regularise the quarter no. 908/E, D Side, Dahod, Type-II and return the damage rent which was recovered with all consequential benefits.

8.2 The order for be call for the record.

8.3 Any other relief which the Hon'ble Tribunal deems fit.

8.4 Cost of suit be awarded.”

2. The facts in short in the instant O.A. are that applicant is posted as Fitter Gr.-I at Dahod. Applicant's father who retired on 31.7.2008 was allotted a Shearing Railway Quarter No. 908/E, D site Area vide Office Order dated 16.6.2008 (Annex.A/1). After the retirement of his father, the said quarter was allotted in the name of the applicant. On 25.10.2013, respondents issued an Office Order (Annex.A/2) to show cause, as the applicant has given his Quarter to one Mr. Bhupendra

Kumar, who was living with his family in the quarter allotted to him. Upon this, a representation reply dated 29.10.2013 was filed by the applicant explaining the fact that the said Mr. Bhupendra Kumar is visiting the quarter to look after his old aged grandfather. Being dis-satisfied with the representation, an order dated 30.10.2013 (Annex.A/3) was issued to vacate the quarter within 5 days failing which Damage Rent, Charges and Compensation will be recovered for not vacating the Quarter and Major penalty chargesheet will be issued. In reply to this notice, applicant sent a representation dated 6.11.2013 stating specifically that Mr. Bhupendra Kumar who has visited many times to the quarter is his real uncle as one of the male member is required to take care of applicant's grandfather who was aged 92 years. Consequently, on 26.09.2014 vide Annex. A/5, an order for recovering damage rent of Rs. 49,890/- for the period from 1.11.2003 to 31.8.2014 towards damage rent was passed. Applicant has again requested vide his representation dated 8.10.2014 to not to recover any damage rent. It is pleaded that respondents started recovery from October 2014 from applicant's salary. The applicant has relied upon a Railway Board's Order No. E(G) 92 QR 1-28 dated 21.12.1992 RBE No. 219/1992. Hence, the applicant has approached this Tribunal on 20.02.2015 claiming the aforesaid reliefs.

3. The respondents have filed their reply denying the stand taken by the applicant and submitted that on joint inspection by the Estate Supervisor, Dahod, Chief Staff & Welfare Inspector, Dahod and Constable, RPF, Dahod, on 24.10.2013 it was revealed that allottee of Quarter No. 908/E were not available in the premises and only one lady Smt. Poonam wife of Shri Bhupendra Singh working in Sahara Company, was available along with her father-in-law. Copy of Inquiry report is filed as Annex. R/1. Consequently, a show cause for sub letting the Railway Quarter and for initiating disciplinary proceedings was issued as the applicant has violated the Railway Service (Conduct) Rules. In the representation at Annex.R/2 dated 29.10.2013, the applicant never stated that he was staying in the Railway quarter with his grandfather. Hence, being dis-satisfied with his explanation, order cancelling the allotment of quarter was issued on 30.10.2013 (Annex.A/3). If the father of the applicant was staying with him, there was no reason for Mr. Bhupendra Singh to be present in the quarter to take care of applicant's grand father. In this way, he has violated the Railway Service (Conduct) Rules by subletting Railway accommodation to another person. Since the applicant did not vacate the Railway Quarter in spite of several notices, the competent authority ordered for recovery of damage rent on 26.09.2014.

4. The provisions regarding sharing are mentioned in para 2.1 of Revised Appendix H attached with Annex. A/9 stating that "there are unequivocal instructions that the quarters allotted to an employee is meant only for his/her bonafide use. He/She is not authorised to subject any part or whole of it to any other person, outsider or otherwise". As per such provision, sharing of a Railway Accommodation, permissible only to blood relations, viz., parents, children and their families, brother or sisters and their families: or any other person (with his/her family), who is Railway employee". Accordingly, the competent authority cancelled the allotment and after lapse of reasonable time to vacate the quarter, the retention was treated as "unauthorised" and therefore, recovery of damage rent was initiated. The respondents have prayed that the O.A. filed by the applicant be dismissed with costs.

5. The applicant in his rejoinder reiterated his stand and further stated that respondents have failed to produce any evidence regarding the fact that Shri Bhupendra Singh is working in Sahara India Company. He is applicant's real uncle. The applicant had prayed for conducting a re-inquiry. He has further submitted that the APO, Dahod and Welfare Inspector are biased and prejudiced with him and wrongly tried to impose the damage rent. Since he himself was residing, his case is not covered under the meaning of 'subletting'. He has further submitted that respondents have failed to give para wise reply and nothing has been said regarding the PAN Card and Leaving Certificate attached by him with the O.A. The applicant, therefore, prays that the damage rent recovered from him be refunded and further direct the respondents to regularise the quarter in his name.

6. Heard the learned counsel for both sides and perused the material placed on record.

7. It reveals from the material available on record that vide Office Order dated 16.06.2008 a Quarter No. 908/E, D Site, Dahod, Gujarat was allotted to applicant on sharing basis by considering the fact that the said Railway Quarter originally allotted to the father of applicant Shri Virendrapratap Singh, who was retired on 31.7.2008. Therefore, the application submitted by applicant herein, was accepted and the same Railway Quarter was allotted to him. It also reveals that since then the grandfather of the applicant is residing along with him. The respondents had inspected the said Railway quarter on 24.10.2013 in presence of the Estate Supervisor, Dahold along with other officials and, carried out a joint inspection of the said Railway Quarter at about 4.00-4.30 PM. During inspection, the inspection team had found that applicant was not present in the premises and, one lady namely Smt. Poonam w/o Shri Bhupendra Singh was available. In her statement, she admitted that Shri Bhupendra Singh is uncle of the applicant and father of applicant

is father in law of smt Smt. Poonam. It is further stated that the said Sh. Bhupendra Singh is working in Sahara India Company. During the course of inspection, wife of Sh. Bhupendra Singh had called her husband Shri Bhupendra Singh. It was admitted by Sh. Bhupendra Singh that he is uncle of applicant. On the basis of the said inspection report, very next day, i.e. on 25.10.2013, respondents issued a show cause to applicant calling upon to explain why he had sub-let the allotted quarter to Shri Bhupendra Singh as sub-let/sharing of the allotted quarter is contrary to the terms and conditions of allotment and violation of such allotment guidelines, invites a disciplinary action followed by cancellation of allotment. In response to the said show cause, applicant had submitted his reply on 29.10.2013 and explained that Sh. Bhupendra Kumar/Singh and his wife are his uncle and auntie and they came to visit grandfather aged 91 years because he is not keeping good health. On the date of inspection, he was on duty and, therefore, he was not present in the premises. Sh. Bhupendra Singh is son of my grandfather. He and his wife Smt. Poonam came to visit the quarter to look after applicant's grandfather. They are family members and in fact he has not sub-let the allotted quarter nor it has been given to any 3rd person on sharing basis. However, the respondents have not accepted the said explanation and, vide order dated 30.10.2013 (Annex.A/3) issued notice directing the applicant to vacate the Railway quarter within 5 days otherwise rent will be recovered on penal basis and disciplinary action will be taken against him. As against it, applicant had submitted his representation and requested the authority that at the time of inspection of his quarter his grandfather was available at the said premises. He was Ex Railway workman. On the request of applicant, his uncle came to visit the premises to look after his grandfather, therefore, applicant prayed to cancel the order dated 30.10.2013. Without considering the same, on 26.09.2014, respondents issued yet another order and directed that, if the applicant failed to vacate the Railway Quarter as per the directions contained under letter 30.10.2013, he will be made liable to pay Damage Rent for the period 01.11.2013 to 31.08.2014 amounting to Rs. 49,890/-. Against the said recovery order, applicant had submitted his representation dated 08.10.2014 and, again requested the authorities that the allegation levelled against him with regard to sub-letting/sharing in the allotted Railway quarter with a 3rd person named Shri Bhupendra Singh was not correct and, consequently prayed to withdraw/cancel the order dated 30.10.2013. However, respondents have not considered the same and recovery of Rs. 10,000/- per month from his monthly salary was initiated. It is also revealed that respondents had recovered the entire amount i.e. Rs. 49,890/- from the applicant.

8. From the above stated factual matrix, it is seen that respondents have neither carried out any thorough inquiry nor place any material on record to rebut the explanation made by the applicant. It is specifically the case of the applicant that on the date of inspection, his uncle and auntee had visited his house with a view to look after his grandfather and, even the statement of Smt. Poonam and Shri Bhupendra Singh also corroborate the said fact. It is noticed that there is no proof to establish the fact that applicant had sub-let his allotted Railway quarter to any outsider or 3rd person. In view of these facts, the impugned action of the respondents is found to be harsh and without any support of evidence and the respondent-department had come to a erroneous decision that Railway employee had been using his quarter un-authorisedly. In view of this, the impugned orders at Annexs. A/3 dated 30.10.2013 and A/5 dated 26.09.2014 deserve to be quashed and are accordingly quashed and set aside. Consequently, respondents are directed to refund the recovered amount of Damage Rent Rs. 49,890/- to the applicant with admissible interest of GPF, within three months from the date of receipt of a copy of this order. There is no order as to costs.

(Jayesh V. Bhairavia)
Member (J)

