

Central Administrative Tribunal
Principal Bench

OA No.3570/2015

Reserved on: 09.04.2018
Pronounced on: 12.04.2018

Hon'ble Mr. Uday Kumar Varma, Member (A)

Pramod Singh Parmar, Aged 50 years,
S/o Sh. Pyre Lal,
Working as SSE/P.Way,
Northern Railway,
Bahadurgarh, Delhi Division,
R/o Railway Quarter, Railway Colony,
Bahadurgarh (Hr.)

...Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

Union of India through

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway Delhi Division,
State Entry Road, New Delhi.
3. The Assistant Personal Officer (Bill)
Divisional Railway Manager's office
Northern Railway Delhi Division,
State Entry Road, New Delhi.
4. The Asstt. Divisional Engineer,
Northern Railway,
Panipat (Hr.)

...Respondents

(By Advocate: Sh. R.N. Singh)

O R D E R

The applicant has filed this Original Application under
Section 19 of the Administrative Tribunals Act, 1985
seeking to quash the impugned order dated 11.05.2015
(Annexure A-1) by virtue of which the respondents have

decided to recover penal rent of Rs.1,41,220/- from his pay by alleging unauthorized retention of Quarter No. E/103 at Panipat during the period from May, 2013 to April, 2014 without issuing any show cause notice, which is illegal, unjust, arbitrary and against the principles of natural justice.

2. Brief facts of the case are that the applicant is presently working as Senior Section Engineer/P-Way and posted at Northern Railway Station, Bahadurgarh. It is the contention of the applicant that while posted at Panipat in April, 2010, he was allotted quarter No.E-103. The applicant submits that in the year 2002 a new machine known as Track Relaying Train [TRT] was introduced for replacing the old track by new track. The applicant was posted on the TRT for renewal of the railway track w.e.f. 09.05.2013 as a temporary arrangement for a particular work. It is also contended that after completion of the assigned work, the applicant was re-transferred to Sub Division, Panipat at Railway Station, Safido on 09.05.2014 and was thereafter transferred to Bahadurgarh w.e.f. 16.12.2014 on regular transfer and since then he is posted there. Applicant further submits that as he was transferred temporarily for renewal of the track, it was not possible for him to vacate the railway quarter allotted to

him at Panipat as he was not regularly transferred. However, the ADEN, Panipat treated his temporary transfer as regular one and, therefore, declared the applicant in unauthorized occupation of the railway quarter NO.E-103 at Panipat and decided to recover penal rent amounting to Rs.1,41,220/-for the period w.e.f. May, 2013 to April, 2014 and the respondents no.3, even without issuing show cause notice and affording an opportunity of personal hearing to the applicant, started recovery of RS.15,000/- per month from the pay of the applicant commencing from August, 2015. The applicant further submits that there is no provision for vacation and/or cancellation of the quarter on temporary transfer and, therefore, the action of the respondents qua recovery of penal rent is totally illegal, arbitrary and against the rules. The applicant, in support of his contention, relied upon the decision of this Tribunal in an identical matter titled as ***R.D. Jaglan vs. Union of India*** [OA No.3001/2004 decided on 22.02.2005], which was allowed by directing the respondents to charge normal rent from the applicant therein and to either regularize the present accommodation in his name or on priority basis allot him an alternative accommodation of the same type and till then, the applicant shall be allowed to retrain the present accommodation.

3. The respondents have filed their counter reply denying the averments of the applicant made in the OA. They have firstly raised the question of maintainability on the ground that this case pertains to eviction from public premises and the law in this regard provides that any order passed by the authorized/competent authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 cannot be challenged before the Tribunal. The respondents further submitted that the transfer of the applicant was a regular transfer and the same cannot be construed to be temporary in nature. Therefore, it was the duty of the applicant to vacate the government quarter allotted to him at Panipat. The respondents submit that as the applicant has failed to do so, they have rightly commenced the recovery of penal rent for the period in question from the applicant and no fault can be fastened on the respondents in this regard.

4. Heard the learned counsel for the parties and perused the material on record as also the citations relied upon by the applicant.

5. At the time of oral hearing, learned counsel for the applicant vehemently argued that the nature of the transfer of the applicant to TRT amounted to be a temporary transfer and if it were a temporary transfer, there was no

necessity for the applicant to vacate the government accommodation allotted to him at Panipat. He further referred paragraph 1.1 of the Railway Board's order dated 15.01.1990, which reads as under:-

“1.1 Permanent Transfer

- (i) 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/rent. On request by the employees, on educational or sickness account, the period of retention of railway accommodation may be extended for a further period of 6 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 education ground only to cover the current academic session on payment of special licence fee.*
- (ii) Where the request made for retention of railway quarter is on grounds 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.*
- (iii) 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 (i) above will be subject to his production of the necessary certificates from the concerned school/college authorities.”*

He also drew my attention to paragraph 1.4 which stipulates that if an employee posted at a station in the electrified suburban area of a Railway may on transfer to another station in the same electrified sub-urban area may be permitted to retain the railway quarters at the former

station on payment of normal rent/flat rate of licence fee/rent provided:-

- (i) *The Railway Administration is satisfied and certifies that the concerned can conveniently commute from the former station to the new station for performance of duty without loss of efficiency; and*
- (ii) *The employee is not required to reside in an earmarked Railway quarter.*

6. The argument of the applicant in the light of the above Circular was that even if it was a permanent transfer, rules provide that he may be allowed to retain the government accommodation on the ground of children education which indeed was the case as far as the applicant is concerned. Lastly, the applicant referred to the decisions of this Tribunal in ***R.D. Jaglan***'s case (supra). Learned counsel for the applicant also placed before me orders of the Tribunal passed in ***Sunil Kumar vs. Union of India & Ors.*** [OA No.2786/2015 decided on 12.05.2017] and ***Mr. Himmat Singh Chauhan vs. Union of India & Ors.*** [OA No.3140/2016 decided on 18.12.2017] claiming that these orders deal with identical issue of adjudication.

7. The respondents, in their oral arguments, on the contrary, refuted and rebutted the arguments of the applicant. First of all, they stated that the OA itself is not maintainable on the ground that this case pertains to eviction from public premises and the law in this regard

provides that any order passed by the authorized/competent authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 cannot be challenged before the Tribunal. Learned counsel for the respondents referred to the transfer order, which is at page 29 of the paper book, to state that this transfer was a regular transfer and there is no indication by virtue of which the same can be construed to be a temporary transfer. He also referred to paragraph 10.1 of the Railway Board's Master Circular dated 20.04.2007 with regard to allocation and retention of government accommodation by government servant and argued that there is a provision for retention of the house for some period on transfer of railway employee and the same will happen only when an application is made to this effect. He further argued that in the instant case, the applicant has moved no application or request to the concerned authorities for retention of the house and, therefore, the authorities never allowed the applicant to retain the government accommodation which was against the rules and rightly the respondents have imposed the penal rent under the rules upon the applicant.

8. I have carefully considered the arguments placed before me from both the sides and have perused the record. It is difficult to agree with the arguments of the applicant

that his transfer from SSE/P-Way/PNP/Incharge to SSE/P-Way/TRT/NDLS can be deemed to be a temporary transfer primarily because the transfer order itself is very explicit and there is nothing in this order which even remotely indicates or suggests that this transfer is a temporary one. Therefore, the plea of the applicant that this transfer may be deemed as temporary and he should have been allowed to retain the house is without any basis and cannot be accepted. It may also be noted that the applicant had earlier moved the Tribunal seeking cancellation of the transfer order to TRT which was dismissed by the Tribunal and apparently, the case of the applicant was not that it was a temporary transfer.

9. Now, with regard to his other argument that even if the transfer was a regular transfer, under the rules he was entitled to retain the house at least for some period on normal rent and for further period at more than the normal rent on specific ground of health or children education, the applicant himself admits that he has made no application for retention of the house to any authority whatsoever. His explanation is that he always considered his transfer to be a temporary transfer and, therefore, he did not feel the necessity of applying for retention of the house. This argument is also not credible and cannot be accepted for

the same reason that the transfer order itself does not, in any way, indicate that it could be treated as a temporary transfer and such an assumption on the part of the applicant does not condone or justify the lapse on his part in not making a proper application in time for retention before the competent authority at an appropriate time.

10. Coming to the decisions relied upon by the applicant, I am of the view that the facts and circumstances of the case in **Sunil Kumar** (supra) are a little different. In this OA, the Tribunal has essentially held that since the transfer had taken place within the same electrified suburban area of Northern Railway, the applicant was entitled for retention of the quarter at Sonapat. Therefore, the ground for giving relief in this case was that retention of the house within the same electrified suburban area of Northern Railway, which is permissible under the rules. I have also seen that the applicant has not taken any such ground in the instant OA nor has he, in his representation dated 14.09.2015, sought protection under this provision of rules.

11. The facts and circumstances of the decision in **R.D. Jaglan's** (supra), relied upon by the applicant, in my view, are also different for the reason that the applicant therein

was admittedly allowed to retain the accommodation for a maximum period upto 31.03.2004 on the ground of academic session of his children whereas in the instant case, there is neither such a recommendation in favour of the applicant nor did he make any application for retention of quarter on his transfer to TRT. The fact of the matter is that the applicant did not approach the respondents at all for retention of the railway quarter when he was transferred to TRT and wrote them a letter only when penal rent was imposed on him. Thus, the facts and circumstance are clearly distinguishable.

12. Learned counsel for the applicant also placed before me the order of the Tribunal in **Mr. Himmat Singh Chauhan** (supra) which has held that the matter with regard to eviction of government servant from government accommodation can be heard and decided by the Tribunal. I have considered this judgment. However, the fact in this case is that no order passed by any authority described under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 has been impugned and, therefore, the objection raised by the respondent that the Tribunal does not have the jurisdiction to hear this case is completely baseless and, therefore, the same is rejected.

13. Given the nature of the case, I am of the considered opinion that the transfer order of the applicant is not a temporary transfer and admittedly the applicant has not even moved an application for retention of the same. Therefore, I find no fault on the part of the respondents to recover penal rent from the applicant for unauthorized occupation of the government accommodation by the applicant from May, 2013 to April, 2014. Accordingly, the instant OA is dismissed being misconceived and bereft of merit. No costs.

(Uday Kumar Varma)
Member (A)

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