

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.64 of 2016
Cuttack this the 8th day of December, 2017

CORAM:
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Adapa Kumari, aged about 41 years, W/o. A.Srinivas Rao, TR(Claims)/Commercial/E.Co.Rly./Talcher at present C/o. T.Kondala Rao, Quarter No.B/3 'C' Railway Colony, Kasibugga, Srikakulam District, PIN-532 222, Andhra Pradesh

...Applicant

By the Advocate(s)-M/s.N.R.Routray

S.Sarkar
U.Bhatt
J.Pradhan
T.K.Choudhury
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Sr.Divisional Pesonnel Office/E.Co.Rly/Khurda Road Division, At/PO-Jatni, Dist-Khurda
3. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.S.K. Nayak

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is the wife of one A.Srinivas Rao, a railway employee who is missing from his work place from 28.11.2010. He was working as T.R.(Claims)/Commercial in the East Coast Railway at Hindol Road. He had been allotted official quarters and the Railways vide order dated 27.11.2015(A/8) have

recovered Rs.59,761/- from the applicant towards damage rent for occupation of the quarters beyond the permissible time. The said order mentions that the damage rent is from 9.4.2013 to 28.9.2014 for a period of 17 months 20 days @ Rs.3382.72 per month. The applicant has challenged this order and prayed for the following reliefs in the O.A.

- i) To direct the Respondents to refund the damage rent of Rs.59,761/- recovered illegally vide order dated 27.11.2015 with 12% interest.
- ii) And to direct the Respondents to issue post retirement complementary pass in favour of the applicant.

2. The applicant has based her prayer on the following grounds.

- i) The applicant had filed O.A.No.655/13 for release of financial benefits such as DCRG, CGEGS, leave salary, pension etc. and this Tribunal vide order dated 20.9.2013 had directed the Respondent No.1 to consider her representation within a period of 60 days. The Respondent No.3 vide Office order dated 7.5.2014 communicated the approval of the competent authority, i.e., DRM, Khurda Road for retention of railway quarters in favour of the applicant from 9.4.2011 to 8.4.2013 on normal license fee on the ground of missing of her husband. It was also mentioned that retention of quarters beyond the permissible period will be treated as unauthorized retention and damage rent will be charged as per rules. The applicant had made further representation on 27.5.2014 praying for retention of the quarters with normal rent till the release of the financial benefits of her husband. The respondents in compliance of the orders of this Tribunal had issued PPO No.1231047214 in favour of the applicant dated 1.1.2015. The PPO mentions that the date of commencement of pension is with effect from 9.4.2011 and the DCRG amount

was Rs.3,66,175/- . However, since no amount was paid to her she filed O.A.No.239/15 for release of the financial benefits. This Tribunal vide its order dated 7.8.2015 had directed the respondents to serve a copy of the order in which an administrative decision was taken to recover the amount of Rs.1,83,954/- from the DCRG within a period of four weeks. In response to the order of this Tribunal, the impugned letter dated 27.11.2015 was issued to the applicant giving details of the recovery of Rs.1,83,954/- . In the said list the damage rent was calculated as Rs.59,761.38 for the period from 9.4.2013 to 28.9.2014.

ii) She had only submitted an application for retention of quarters with normal rent till the release of the financial benefits due to her. She vacated the quarters on 20.9.2014 although no proceeding was initiated against her for vacation of the quarters. She has cited the decision of this Tribunal in O.A.No.608 of 1994 passed on 6.6.1996 in the case of Ragunath PD Srivastav vs. Union of India as well as the order dated 24.1.2004 passed by this Tribunal in O.A.No.778/11 to argue that the amount recovered is illegal and the amount should refunded to her with 12% interest from the date of recovery till the date of actual payment.

3. The respondents in their reply filed on 25.9.2017 have contested the claim of the applicant on the ground that the applicant had not intimated the fact of missing of her husband to the railway authorities. She had only lodged an FIR with the OIC, Hindol Road P.S. regarding missing of her husband on 8.4.2011. On 2.10.2012 the Police issued a certificate stating that the missing person could not be traced out. On 23.7.2013, the applicant submitted an application to the General Manager, East Coast Railway for financial assistance as per rules. Meanwhile, since Shri A.Srinivas Rao remained on

unauthorized absence with effect from 28.11.2010, his case was taken up under the Railway Servants (Discipline and Appeal) Rules and he was removed from railway service with immediate effect by the Sr. Divisional Commercial Manager, Khurda Road vide punishment order dated 12.9.2013. However, on the order passed by this Tribunal in O.A.No.655/2013, directing the General Manager, East Coast Railways to consider the case of the applicant as raised in her representation dated 27.8.2013 and communicate the result thereof in a well-reasoned order. The entire case of Sri A.Srinivas Rao was reexamined by the O/O.DRM in the light of the relevant rules and the Additional DRM, East Coast Railway, Khurda Road vide his order dated 16.1.2014 treated the absence of A.Srinivas Rao as missing in terms of RBE No.159/91. He also annulled the earlier punishment order of removal dated 12.9.2013 subject to the condition that if the whereabouts of A.Srinivas Rao are traced out at a later date all the settlement benefits extended to his family would be withdrawn. The Respondents have enclosed the annulment order dated 16.9.2014 at R/5. Accordingly the applicant was directed to report to the Sr. Divisional personnel Officer, East Coast Railway for completing all formalities for family pension and other benefits. The applicant was allowed to retain quarters for a period of two years from 9.4.2011 to 8.4.2013 on a prayer made by her on 24.2.2014 vide letter

No.P.Qr.Cell/29/2014 dated 7.5.2014. It was also communicated that the date of vacation should be completed on or before the last date of permission and retention of quarters beyond the permissible period will be treated as unauthorized occupation and damage rent will be charged as per rules. The applicant vacated the railway quarters on 29.9.2014. The applicant should have vacated the railway quarters immediately on completion of the permissible period, i.e., 8.4.2013. But she continued to occupy the same unauthorizedly till 28.9.2014 knowing fully well that the retention of the quarters beyond the permissible period will be treated as unauthorized retention and damage rent will be charged as per rules. Hence, the period from 9.4.2013 to 28.9.2014 has been treated as unauthorized retention of railway quarters and damage rent has been assessed at Rs.63,697/-. Out of this amount, Rs.59,761/- is towards damage rent and the normal rent from 20.1.2013 to 8.4.2013 is Rs.3594.12. Recovery of such damage rent is permissible as per rule 15 and 16 of the Railway Services (Pension) Rules, 1993. As per rule-8(d) of Rule-16 of RSPR 1993, any amount remaining unpaid after the adjustment made under clause-© may also be recovered without consent of the pensioner by the concerned Accounts Officer from the dearness relief of pensioner until full recovery of such dues has been made. It also permits the recovery of damage rent without resorting to Rule-

7 of Public Premises (Eviction of Unauthorized Occupants) Act.

The damage rent of Rs.59,761/- has been recovered from the DCRG on equal shares from the eligible family members including the applicant, her share being Rs. Rs.14,940/-. The Respondents have therefore submitted that there is no merit in the O.A. which should be dismissed.

4. In the rejoinder filed on 9.10.2017, the applicant has reiterated that she had filed an application dated 24.2.2014 requesting for retention of railway quarters for a period of two years. She received the financial benefits by way of provident fund after 6.5.2014 and she vacated the quarters on 29.9.2014. The daughter of the applicant has already been provided an employment in the railways. In view of RBE No.21/12 dated 16.2.2012 she can retain the quarters for three years from the date of missing of her husband.

5. The applicant in Para-8(ii) has prayed for a direction to the respondents to issue the post retirement complimentary pass in her favour. However, this prayer clause has not been pressed at any point of time in any of the pleadings nor a whisper was raised on this at the time of argument. Since multiple relief cannot be asked in the same O.A., the consideration of the O.A. on merit is restricted only to the prayer clause no.8(i) viz. recovery of the damage rent.

6. I have heard the learned counsels from both the sides and perused the documents submitted by them. The issue to be

decided in the present O.A. is whether the recovery of the damage rent to the extent of Rs.59,761/- is legally sustainable. The fact that the applicant stayed in that the quarters allotted to her husband upto 28.9.2014 is undisputable. Since her husband was missing with effect from 28.11.2010 obviously there was considerable uncertainty about the return of her husband. In normal course she was allowed to retain the quarters from 9.4.1011 to 8.4.2013 vide order dated 07.05.2014 issued by the O/o. DRM (Pers.). However, there is an inconsistency in this order inasmuch as she has been asked to vacate the quarters on or before the last date of permission which expired more than one year before the date of passing of the order. The applicant's case in the present O.A. is unusual because, there is always a lurking hope that the missing person will return and resume his work and get all the benefits. The benefit of the inconsistency in the order dated 7.5.2014 therefore can be given to her considering the unusual nature of the case. Although the applicant has enclosed the copy of RBE No.28/12 dated 16.2.2012 which relaxes the period of retention of railway quarters for the compassionate appointees in case of missing railway servants, the fact of the compassionate appointment of the daughter of the applicant is not supported by any document either by the applicant or by the respondents. This plea has been taken in the rejoinder. If at all a job has been offered to the daughter of the applicant and that too on compassionate

ground no date has been given either by the applicant or by the respondents on the offer of such appointment or the date of joining. I am of the considered view that the interest of justice will be better served if the applicant's retention of quarters upto the date of passing of the order of vacation on 7.5.2014 is regularized. The respondents are therefore directed to pass the necessary orders charging normal rent upto 7.5.2014 and to charge the damage rent only for the period from 8.5.2014 to 29.9.2014. The necessary orders to this effect may be passed within a period of eight weeks from the date of receipt of this order. Since the financial benefits have been apportioned between the four members of the missing railway employee, the damage rent also should be equally apportioned while recovering from the retirement benefits. Ordered accordingly.

7. The O.A. is disposed of as above. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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