

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.260/00353 of 2017
Cuttack, this the 13th day of October, 2017

CORAM
HON'BLE MR. S.K. PATTNAIK, MEMBER (J)

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Milan Mukharjee@ Mukhopadhyay, aged about 73 years, S/O-Late Ashutosh Mukhopadhyay, retired OS-II under Dy. CE/Con./ECoR/BBS, permanent resident of At-Panchanan Tala Road, 105/38/2, Kolkata (MC), Kolkata, Paschim Putiari, West Bengal-700041

.....Applicant

By the Advocate(s)-M/s. N.R. Routray, T.K. Choudhury, S.K. Mohanty, Smt.J. Pradhan

-Versus-

Union of India, represented through

1. General Manager, East Coast Railway, E.Co. R Sadan, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
2. Chief Personnel Officer/East Coast Railway, E.Co. R Sadan, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
3. Senior Personnel Officer/Con./Co-ordn./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
4. Secretary, Railway Board, Rail Bhawan, New Delhi-110001.

.....Respondents

By the Advocate(s) - Mrs. S. Rajguru

ORDER

S.K. PATTNAIK, MEMBER (J)

The applicant a retired employee, has sought for a direction to the Respondents to return the recovered amount of Rs.1,62,475/- from DCRG towards penal rent for retention of quarters at Cuttack. Though the applicant had retired in 2004, he has claimed such relief in the light of the orders dated 20.05.2016 of this Tribunal passed in O.A. Nos.320 and 321 of 2015.

2. The applicant's case in short runs as follows.

There was shifting of Chief Administrative Officer (Coordination)'s Office from Garden Reach to Bhubaneswar in July 1993. The construction staff and officers working in Cuttack, Khurda and Visakhapatnam Chief Administrative Officer (Coordination)'s Office were transferred to Bhubaneswar in different

stages. The Chief Administrative Officer (Coordination)'s Office at Bhubaneswar is located at BDA Rental colony, Chandrasekharpur and the staff and officers who were in occupation of Railway Accommodations at Cuttack, Khurda and Visakhapatnam were compelled to retain their quarters at these places, as the residential accommodations at Chandrasekharpur were not readily available. The then S.E. Railway Authorities of Construction Organization allowed the applicant and others to retain the quarters at Cuttack. Respondent No.3 vide his letter dated 28.02.2000 requested the then CPO/S.E. Railway/Garden Reach for approval of Railway Board to retain the quarters on payment of normal rent. Even subsequently the Deputy CPO/Con/Bhubaneswar vide letter dated 04.06.2002 requested the then CPO/E.E. Railway/ Garden Reach to accord necessary post-facto approval of Railway Board for retaining the Railway quarters by the staff at Cuttack. Even the Desk Officer Estt. (Genl.) Railway Board vide his letter dated 14.08.2003 requested Respondent No.1 to furnish the complete details of the cases regarding retention of Railway Quarters at out station consequent upon the shifting of offices to Chandrasekharpur, Bhubaneswar. The then Deputy CPO vide his letter dated 23.09.2003 (Annexure-A/1 Series) furnished the statement showing the retention of Railway Quarters at Bhubaneswar. Respondent No.2 vide its letter dated 31.10.2007 requested the CPO/S.E. Railway to transmit the entire case file so that the reply to Railway Board can be furnished regarding regularization of retention of Railway Quarters by the staff of Construction Organization, Cuttack. Respondent No.2 vide its letter dated 24.04.2008 (Annexure-A/2) disclosed the reasons for retaining quarters by the staff at Cuttack. Even CPO/Bhubaneswar vide its letter dated 18.08.2008 (Annexure-A/3) categorically stated the reasons for seeking post-facto approval for regularization of retention of railway quarters by the staff of

Construction Organization, East Coast Railway, Chandrasekharpur, Bhubaneswar at previous place of posting. The Railway Board vide order dated 02.01.2009(Annexure-A/4) asked for certain clarifications from Respondent No.1. Finally Respondent No.1 vide its letter dated 30.01.2012 (Annexure-A/5) requested the Railway Board for necessary post-facto approval for retention of Railway quarters beyond the permissible period by the staffs of Construction Organization at Cuttack. The Railway Board vide its letter dated 05.03.2012, informed the Respondent No.2 regarding non receipt of parawise comment in respect of the representations. As a consequence thereof Respondent No.2 vide its letter dated 21.03.2012 requested Respondent No.3 to furnish parawise comment on the Railway Board's letter dated 02.01.2009. In turn Respondent No.3 vide its letter dated 30.04.2012 furnished the a detail parawise comments as sought for by the Railway Board in respect of regularization of Railway quarters retained by the staff of Construction Organization, East Coast Railway, Bhubaneswar at Cuttack. Thereafter, Respondent No.2 after receiving the parawise comments from Respondent No.3 submitted the reply as sought for by the Railway Board vide his letter dated 09.05.2012 (Annexure-A/6). The Railway Board after receiving the parawise comments further asked for certain more information vide its letter dated 16.07.2012. Again Respondent No.1 vide its DO letter dated 18.09.2012 (Annexure-A/7) requested the Railway Board for post-facto approval of retention of Railway Quarters beyond the permissible period by the staff of the Construction Organization. The Respondent No.1 categorically stated that in the mean time DCRG of a number of retired Railway Employees were held up, for which they requested an early decision to resolve the long pending issues. The Railway Board after receiving DO letter further asked for certain more information/clarification

vide letter dated 15/19.11.2012. The Respondent No.2 after receiving the said letter from Railway Board requested to the then CAO/Con./ECoR vide its letter dated 06.12.2012 to comply with the clarification sought at an early date, so that the position of the case will be put up for appraisal of Respondent No.1 for sending a suitable reply to Railway Board. Even Respondent No.3 vide its letter dated 22.01.2013 further requested the Respondent No.2 for necessary action at his end. Thereafter Respondent No.2 vide its letter dated 31.01.2013 (Annexure-A/8) requested the Railway Board for post-facto approval for retention of Railway Quarters beyond permissible period by the staff of Construction Organization.

3. The grievance of the applicant is that he was a regular employee of Railway and retired from service w.e.f. 30.11.2004 on attaining the age of superannuation. The Railway Authorities issued PPO and paid his retiral dues except DCRG amount. In the Pension Payment Order a sum of Rs.1,62,475/- was recovered from his DCRG amount without assigning any reason.

4. The Respondents contested the case by filing a counter. According to the Respondents the factual backdrop was not disputed, but, according to them, an amount of Rs.1,62,475/- was recovered as damage rent from the DCRG of the applicant for the period of unauthorised retention of Railway Quarter at Cuttack from 18.09.1993 to 20.04.2001 in compliance to Audit Para and the recovery as effected is as per extant rule. Further case of the Respondents is that the request for post-facto sanction for permission of retention of quarters as proposed by East Coast Railway, is under active consideration by the Railway Board.

5. Before delving into the merit of the case it would be appropriate to mention at the outset that the whole claim of damage rent by the Railway is misconceived in as much as, when no order for damage rent has been passed, and

when the employee was not asked to vacate the quarter at a particular date, the claim of unauthorized occupation of quarters beyond the permissible period does not arise. So, when the employee was not asked to vacate the quarters at any point of time the question of recovering damage rent does not arise. One may not lose sight of the ground reality that, as there was no quarters allotted at Bhubaneswar the employee had to retain the quarters at Cuttack. Once an employee is allotted a quarter in new place of posting and asked to vacate the previously allotted quarters in the previous station, and only then if he does not vacate the quarters he is liable for damage rent. Here in the instant case the employee was never asked to vacate the quarters occupied by him at Cuttack and was never allotted a quarters at Bhubaneswar and as such he is not entitled to damage rent. Further more when the Department has been insisting on post-facto approval of the Railway Board time and again, the matter should have been sorted out in 1993-94, and for such laxity, an employee should not be saddled with penal rent/damage rent. Since the retention of the previously allotted quarters at Cuttack is never declared as illegal or unauthorised, the question of asking for damage rent is a misconception and nonest in the eye of law. Since the claim of damage rent has come as a bolt from the blue only after the retirement of the employee and that too without giving him any opportunity to vacate the quarters, the same is liable to be quashed in the interest of justice, equity and good conscience. Hence ordered.

6. The deduction of damage rent from DCRG to the tune of Rs. 1,62,475/- being illegal, arbitrary and without any basis the same be refunded forthwith to the applicant. If it is not refunded within one month from the date of receipt of this order, the Respondents shall be liable to pay interest @ 8.5 % per annum till the

date of actual refund of the recovered amount. Since it is a matter of illegal recovery and his right in this regard has been infringed, in approaching the judicial forum at a belated stage will not deprive him of getting his grievance redressed as justice not only to be done but must seem to have been done. No costs.

7. Before parting with this order, I would like to keep on record the sorry and gloomy state of affair of Railway Board in taking a prompt decision on such a small matter. The series of correspondences by the Respondents with queries and clarifications only add to the inefficiency of the Railway administration. Such a matter should have been sorted out soon after shifting of the new office to Bhubaneswar in 1993 itself without dragging it for more than two decades. Once the employees are not provided quarters in the new place of posting, the employer has a moral duty to permit the employees to retain the quarters allotted in the previous station because an employee cannot be thrown to the street. By regularising such occupation, the Railway Board is not doing any gratis rather discharging its moral and ethical duty towards its employees.

(S.K. PATTNAIK)
MEMBER(J)