

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

Original Application No 050/00647/2017

Reserved on 16.03.2018

Pronounced on _ 21.03.2018

CORAM :

Hon'ble Shri Jayesh V. Bhairavia, Member (J)

-
1. Subodh Kumar Mishra, son of Shri Hardeo Mishra working as Junior Engineer/P.Way/E.C. Railway, Buxar under Danapur Division of East Central Railway.

.....Applicants

By Advocate : Shri Subodh Kumar Mishra, in person

VERSUS

1. Union of India through the General Manager, E.C. Railway, Hajipur, Pin-844101.
2. The Divisional Railway Manager, E.C. Railway, Danapur, P.O.- Khagaul, Patna-801105.
3. The Senior Divisional Personnel Officer, E.C. Railway, Danapur, P.O.- Khagaul, Patna-801105.
4. Senior Divisional Engineer/3, E.C Railway, Danapur, P.O.- Khagaul, Patna-801105.
5. Assistant Divisional Engineer, E.C. Railway, Buxar, Pin-802103.

....Respondents

By Advocate : Shri Kumar Sachin

ORDER

Per Jayesh V. Bhairavia, Member (J): In the present OA the applicant has sought reliefs as under :-

"[8.a] That Your Lordships may be pleased to order for payment of HRA from October 2013 to April 2016 when the HRA was not paid on false plea of occupation of service quarter.

[8.b] That the respondents be directed to refund total amount of quarter rent electricity charge, conservancy charge recovered during the period from October 2013 to April 2016 in spite of fact that the applicant was not handed over any quarter for occupation.

[8.c] That the order i.e Annexure A-7 and subsequently allotment to respondent no.6 may be directed as null and void in the interest of justice.

[8.d] That the respondents be directed to allot the quarter in question i.e Rly Qr.No. 10/CD in the name of the applicant as he stands senior to respondent no.6 for allotment of quarter."

2. In the present O.A, the applicant who is working as Junior Engineer (P.Way), E.C. Railway, Buxar, Bihar himself appeared as party in person and has submitted as under :-

- [i] The applicant was allotted a railway quarter vide order dated 11.09.2013. The allotted quarter was not worth to living or occupy as it was badly maintained and needs a lot of repair therefore, he did not occupied the same, however, the respondents had not paid his HRA and also deducted quarter rent and other charges from his salary. The applicant had submitted his representation to respondent no. 2 on 01.11.2013 (Annexure A/1 refers) and requested to get allotted quarter repaired and also requested to refund all his deducted amount towards quarter rent, electricity charges etc.
- [ii] The grievance of the applicant was not redressed therefore he had approached this Tribunal by filing OA bearing no. 524/2014 for the relief to get the allotted quarter repaired as well as refund of deducted amount. The said OA was disposed of vide order dated 15.10.2015 with a direction to the respondents to pass necessary order on the pending representation dated 01.11.2013 of the applicant. (Annexure A/2 refers).
- [iii] In response to order dated 15.10.2015 passed by this Tribunal, the applicant had submitted another representation dated 22.01.2016 stating that necessary order be passed on his pending representation as per the direction of this Tribunal. (Annexure A/3 refers).
- [iv] The applicant had received a letter dated 02.05.2016 issued by the respondents by which his willingness to surrender the quarter within three days so that further action would be taken as per the order of this Tribunal and deduction of rent for allotted quarter can be stopped. (Annexure A/4 refers). The applicant had received another letter dated 05.05.2016 issued by respondent no.5 by which it was informed to the applicant that the allotment of railway quarter no. 10/CD, type III vide allotment order dated 11.09.2013 has been cancelled w.e.f

05.05.2016 and instructed to vacate the same so that house rent can be paid. (Annexure A/5 refers).

[v] In response to communication dated 05.05.2016, the applicant had submitted his representation dated 23.05.2016 and explained that he had never been handed over the allotted quarter and therefore there is no question of vacating the same as per the instructions received vide letter dated 05.05.2016 and again he had requested to refund the recovered house rent since 2013 and further requested to handover the quarter to him after proper repair work. (Annexure A/6 refers).

[vi] Vide letter dated 09.06.2016, the respondents had informed the applicant to hand over the quarter allotted to him to another employee i.e Shri Mahendra Kumar Rajak. (Annexure A/7 refers). The applicant had submitted another representation dated 14.06.2016 to the DRM i.e respondent no.2 and requested him to redress his grievance against cancellation of allotment order as well as order for handing over the said quarter to another employee and also not to ignore his seniority for the purpose of receiving the residential quarter. (Annexure A/8 refers).

[vii] The applicant had submitted that thought applicant was not in occupation of any quarter and in spite of order passed by this Tribunal in earlier OA, contrary to it the respondent no. 5 had passed erroneous order for cancellation of allotment of quarter and the applicant has been deprived for applicable HRA, and erroneously deducted the quarter rent and other charges from his salary without providing accommodation/quarter to the applicant therefore, the applicant is entitled to receive amount of HRA as well as refund of deducted amount towards quarter rent and other ancillary charges as prayed the present OA.

3. The respondents have filed their written statement and denied the correctness of the contention stated by the applicant. The L/c for respondents further submitted as under :-

- [i] The learned standing counsel Mr. Kumar Sachin submitted that after the order passed by this Tribunal, the allotment order of quarter dated 11.09.2013 was cancelled by the respondents vide order dated 05.05.2016, pursuant to the said order, by another order dated 09.06.2016 the payment of house rent allowance (HRA) was started in favour of the applicant w.e.f. May 2016. To substantiate this submission the respondents has relied upon the Pay Slip for the month of May 2016 and November 2017 of the applicant. (Annexure R/1 series refers).
- [ii] It is further submitted on behalf of the respondents that to ascertain the factual position of the applicant's allegation/claim with regard to non-occupation of the allotted quarter, a joined inspection was conducted and from the report dated 26.06.2016, it was found that the said quarter was very much in the occupation of the applicant. (Annexure R/2 refers). It is further submitted that the applicant himself had promised to the staff of the respondents that he will vacate the quarter on 27.06.2016 but he did not vacate it or even not vacated for couple of months therefore the concerned authority vide letter dated 26.09.2016 issued instructions for getting the house/quarter vacated from the illegal and unauthorised possession from the applicant. (Annexure R/3 refers). Thereafter the applicant at last vacated the said quarter only on 17.12.2016 which is evident from the communication of the respondents dated 18.12.2016. (Annexure R/4 refers).
- [iii] It is further submitted by the respondents that applicant had occupied the railway accommodation for the period from October 2013 till April 2016 and therefore for the said period the applicant cannot claim HRA. So far the allegation of deduction of Quarter rent and other charges are concerned the same have already been justified by the this Tribunal in its order dated 15.10.2015 passed in OA 524/2014 whereby this Tribunal has observed that "*I did not notice anything wrong in deducting house rent and stopping house rent allowance after*

allotment of a departmental quarter." Therefore it is submitted that the applicant is not entitled for any relief as sought for.

6. Heard the parties and perused the records.

7. It reveals from the records that the earlier OA no. 524/2014 filed by the applicant herein was disposed of on 15th October 2015 with following observation and direction :-

".....Maintenance of the quarter is the responsibility of the respondents, but simultaneously, once a quarter is allotted, the employee cannot escape from paying rent from a colourable pretext that quarter is not habitable. If the quarter is not habitable and the authority is not affecting necessary repair and it is not possible on his part to occupy his quarter, in that event, he is at liberty to surrender the quarter. Only after surrendering the quarter, he is not liable to pay rent for the allotted quarter and simultaneously eligible for getting house rent allowance for occupation of quarter. I did not notice anything in the deducting house rent or stopping House Rent Allowance after allotment of a departmental quarter."

"Hence, the OA is disposed of with the observation that the respondent no.2 shall pass a necessary order on the representation of applicant dated 01.11.2013, if not already passed in regards to non-repair and non-habitable condition of the quarter. The exercise be completed preferably within a period of 15 days. If no action is taken by the DRM within October, the applicant shall be at liberty to surrender the quarter before 31 October 2015 so that no house rent can be deducted for the month of November 2015 and simultaneously he will be eligible for house rent allowance from November 2015 onwards."

8. It can be seen that Though, this Tribunal has categorically observed that if the respondent no.2 not pass necessary order on the pending representation of the applicant within a period of 15 days and if no action is taken by DRM within October with regard to non-repair and non-habitable of the quarter the applicant shall be at liberty to surrender the quarter before 31.10.2015. However, the applicant continued to submit representation to the respondents authority for repairing of the allotted quarter and also continued to demand refund of quarter rent without surrendering the allotted quarter. In spite of liberty granted by this Tribunal the applicant himself chosen not to surrender the government quarter and

continued to occupy the same. Therefore, he cannot escape from liability to pay quarter rent and other charges for the said paid of occupation.

It is also noticed that the accommodation/quarter allotted to the applicant by the respondents vide order dated 11.09.2013 has been ordered to be cancelled vide order dated 05.05.2016 and pursuance to it the respondents has started making payment of HRA of the applicant w.e.f May 2016 as per order dated 09.06.2016 passed by the competent authority. In spite of notice issued to the applicant he did not vacate the allotted quarter after the allotment was cancelled and only on 17.12.2016 the applicant had handed over the keys of the said allotted quarter. The applicant had neither surrender the allotted quarter on or before 31.10.2015 nor vacated the said quarter after the cancellation of the allotment. Therefore, the submission of the applicant that he did not occupy the allotted quarter and not liable to pay quarter rent cannot be sustained. The applicant was very much aware about the findings and order passed in his earlier OA as well as also aware about his responsibility to pay the quarter rent till he occupied the government quarter. The respondents are correct in their submission that the applicant has occupied the allotted quarter from October 2013 to April 2016 and for the said period the quarter rent, electric charges, conservancy charges were correctly deducted from the salary of the applicant and applicant cannot be said to be eligible to claim any refund. The applicant also cannot claim HRA for the said period till he occupied the allotted quarter.

9. In view of what is stated hereinabove, the applicant is not entitled for any relief therefore the present O.A deserves to be dismissed accordingly O.A is dismissed with no order as to costs.

(Jayesh V. Bhairavia)

Member (Judl)

mks