

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 137 of 2019

Date of order : 22.11.2019

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

V.Y.Naidu, aged about 69 years, S/o Late V.Pantayya, retired Senior clerk under Dy. CE/C/Design/BBS, resident of Sri Krishna Apartment, 3rd Floor, West Block, Plot No. 305, Visakhapatnam, PO-Yandad, Andhra Pradesh.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda-751017.
2. Chief Personnel Officer, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda-751017.
3. Chief Administrative Officer/Con./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.-Khurda-751017.
4. Deputy Chief Personnel Officer/Con./Co-ordn./ East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.-Khurda-751017.
5. Deputy Chief Engineer/Con./Design, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.-Khurda-751017.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Ms.S.Mohapatra, counsel

O R D E R (ORAL)

Per Mr.Gokul Chandra Pati, Member (A)

The present OA is filed by the applicant praying for the following reliefs :

- “(a) To quash the order of rejection dtd. 27.4.2015 under Ann.A/21;
(b) And to direct the respondents to refund the recovered amount of Rs.3,83,624/- from the DCRG with 12% interest from the date of recovery to till the date of actual payment.
And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.
And for which act of your kindness the applicant as in duty bound shall every pray.”

2. Learned counsel for the applicant submitted that similar OA No. 306/2018 has been already allowed by this Tribunal. He has stated that the facts and circumstances of OA No. 306/2018 are similar to this OA except for the fact that the applicant in this case was transferred from Bhubaneswar to Sambalpur during the period from 27.9.1994 to 1.8.1995. He submitted that for the period from 1990 till the retirement of the applicant on 30.6.2009, the penal rent has been charged for occupation of the quarter and Rs.3,83,624/-

has been recovered/withheld from the applicant's DCRG. He further submitted that the background of the case is explained in the letter issued by the zonal authorities to the Railway Board vide letter dated 24/28.4.2008 (Annexure A/6), in which it is stated as under :

“Generally in the construction organization, the staff and officers are shifted on account of exigency/availability of work at a particular area in administrative reason. IN this scenario, at a new place no habitable quarters were available to house the staff and in old station the quarters would have been vacant which would have incurred loss of revenue. On the contrary, it was beneficial of Railway, otherwise it would cost Railway heavily by way of going for leased/hired accommodation which was costlier at Bhubaneswar.”

3. Learned counsel for the applicant further submitted that the case of the applicant is squarely covered under the above letter, which was sent to Railway Board for post facto approval for retention of the Railway quarter beyond permissible period which was approved by the Railway Board subsequently. He further submitted that although other employees who were similarly placed have been refunded the withhold amount after the approval of the competent authority, the applicant has not been refunded the amount of Rs.3,83,624/-, which was deducted from the DCRG for retention of the quarter from 1990 till the date of his retirement on 30.6.2009.

4. Heard learned counsel for the respondents, who did not dispute the facts and submitted that the applicant would be liable to pay the penal rent of the quarter for the period from 27.9.1994 to 1.8.1995, when he was posted to Sambalpur with vacating the quarter in question. It was further submitted by learned counsel for the respondents that the authority will take action to refund the withheld amount of Rs.3,83,624/- after deducting the penal rent for the period from 27.9.1994 to 1.8.1995.

5. Learned counsel for the applicant in reply submitted that the applicant has not occupied any quarter during the period when he was posted in Sambalpur and he did not receive any HRA also. Hence, he argued that the entire withheld amount should be refunded to the applicant with interest as claimed.

6. The OA was filed with MA No. 188/2019 for condoning the delay in filing the OA which was considered and vide order dated 9.7.2019 by the Division Bench and the delay in filing the OA was condoned considering the fact that in similar case the employees were refunded the withheld amount similarly deducted on account of penal rent for occupying the quarter.

7. The submissions made by learned counsel for the applicant as well as the respondents and pleadings on record have been duly considered by me. As stated in para 5(b) of the OA and as indicated vide order dated 27.4.2015

(Annexure A/21), Rs.3,83,624/- was assessed as damage rent against occupation of the quarter from 18./9.1993 to 15.3.2010. While distinguishing the case of the applicant vis-à-vis the case of the other employees, it is stated in the counter as under :

“Moreover, the case of the applicants cited by the present applicant is different in nature hence not covered by the orders passed by the Hon’ble Tribunal in case of those applicants, Unlike the other applicants the present applicant was transferred from Bhubaneswar to Sambalpur w.e.f. 27.9.1994 and later transferred from Sambalpur to Bhubaneswar w.e.f. 1.8.95. But para 14 of the Annexure to RBE No. 8/90 dated 15.1.1990 clearly indicates, ‘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 2 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 educational ground only to recover the current academic session on payment of special licence fee.’”

This point has not been rebutted in the rejoinder with reference to specific rules/notifications. Hence, I am not able to agree with the submission of the learned counsel for the applicant that the applicant is not liable to pay the penal rent for retention of the quarter for the period from 27.9.1994 to 1.8.1995 as per the provisions of rules and guidelines of the Railway Board. But for rest of the period, the case of the applicant is similar to other applicants as mentioned in the OA which has not been rebutted in the counter.

8. In view of the factual circumstances as discussed above, the respondents are directed to release the amount withheld from the DCRG of the applicant, after recovering the rent/penal rent for retention of quarter for the period 27.9.1994 to 1.8.1995 as per the provisions of the rules, within a period of two months from the date of receipt of the copy of this order. Since the amount has been withheld from the DCRG even after approval of the Railway Board in respect of the proposal at Annexure A/6, the respondents are directed to also pay the interest on the amount which was withheld in excess of the penal rent recoverable from the applicant for the period from 27.9.1994 to 1.8.1995. The interest will be payable to the applicant at the rate applicable to the provident fund from 30.6.2009 till the date of actual disbursement to the applicant, within a period of two months and in case of failure to release the withheld amount as stated above along with interest, the respondents will be liable to pay the interest @ 12% as claimed in the OA for the above subject to recovery of the interest so paid from the officials found responsible for the delay as per the provisions of law.

9. The OA is accordingly disposed of. There will be no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath