

Central Administrative Tribunal - Hyderabad

Ch. Diwakar vs The General Manager (Rep. Union Of ... on 28 March, 2007

Bench: B Ray

ORDER Bharati Ray, Member (J)

1. Heard Ms. Rachana Ld. Counsel representing Mr. S. Rama Krishna Rao, Ld. counsel appearing for the applicant and Mr. D. Madhava Rao, Ld. Counsel for the respondents.

2. Since I heard Mr. D. Madhava Rao, Ld. Counsel for the respondents on the earlier occasion, the matter was kept as part heard. On 07.3.2007, Ms. Rachana, Ld. Counsel representing counsel for the applicant sought for adjournment, which was allowed. Again on 12.3.2007, none appeared for the applicant and counsel for the respondents brought the record as directed by the Tribunal earlier. On 21.3.2007, Counsel for the respondents produced the record for perusal of the Tribunal, Tribunal heard Ms. Rachana, Ld. Counsel representing counsel for the applicant and Mr. Madhavarao, Ld. Counsel for the respondents and posted the matter to next date under the caption of Part Heard on 22.3.2007. On 22.3.2007, the Tribunal again heard the Ld. Counsel for both the parties and posted the matter on 28.3.2007 under the caption of part heard and counsel for the respondents was directed to produce the record once again. That is how the matter has come today under the caption of 'part heard'.

3. The matter was passed over at the request of Ms. Rachana, Ld. Counsel representing counsel for the applicant. Mr. Ramakrishna Rao, Ld. Counsel for the applicant was not present even on revised call. Ms. Rachana, Ld. Counsel representing counsel for the applicant produced before me the instructions, which were relied upon by Mr. Ramakrishna Rao, Ld. Counsel for the applicant on the earlier date in regard to transfer and the damage rent charged by the respondents.

4. It is the case of the applicant that he was initially appointed as Asst. Station Master in scale of Rs. 4500-7000/- through Railway Recruitment Board (RRB) and the applicant joined as such on 17.8.1998 in South Central Railway. The 6th Respondent issued the general circular vide Memo No. B/P699/TA/98-99 dated 24.11.1998 inviting volunteers to serve in Territorial Army. The applicant had volunteered to serve in Territorial Army and he was called for embodiment for the period from 05.06.2002 to 16.06.2002. But, in the meantime, transfer orders were issued to the applicant transferring him Bhimavaram Junction to Bhimavaram Town Station vide order dated 03.06.2002 by the 6th Respondent. The applicant submits that the distance between the two places is hardly 1 = Kms. The applicant has contended that he was relieved by the competent authority to undergo training in Territorial Army w.e.f. 05.06.2002. It is also seen from the material papers and Annexure-A/V, which is annexed at page 21 of the O.A. that applicant submitted a representation on 11.06.2002 to the 5th Respondent requesting for permission to retain the same quarters. In alternative, he had also requested to transfer one Type-II quarters from Mechanical Pool to Bhimavaram Town Traffic Pool. From Annexure-R/3 to the counter reply filed by the respondents, I find that by Office Order No. QUARTERS/161/2002 dated 12.8.2002, the 6th respondent permitted the applicant to retain the Railway quarters No14-B at his former station BVRM for a period of 2 months from 22.6.2002 to 21.8.2002 on payment of flat rate licence fee and on transfer account. It is mentioned therein that the applicant was relieved from BVRM on 21.6.2002 and It is categorically

mentioned in the said order as under:

He should vacate the quarters on expiry of the period of permission. If he fails to vacate the quarters on expiry of the period of permission, he will be treated as unauthorised occupants and damage rent will be recovered at the rate of Rs. 37/- per Sq. Mts of plinth areas for B-Class cities and Rs. 3/- per Sq. mts of plinth area for CClass cities and he is not entitled for HRA from the date of expiry of the permission.

5. The applicant submitted a representation on 16.12.2002 to the 5th Respondent requesting him to continue to stay in the same quarters as a privilege of T.A Personnel, or at least, permit him to retain till that academic year in view of his children education without any penal rent. He has also requested the 5th respondent to instruct the Personnel Branch not to recover the penal rent from the applicant. It appears from the order of Sr. DPO/BZA, which is enclosed as Annexure-A-XI to the O.A. at page 27 that the applicant submitted another representation on 28.3.2003 and by the said letter dated 07.07.2003, the 6th respondent advised the S.M./BVRT that applicant should vacate the quarters and register his name for allotment of quarters at BVRT if any quarters in the respective pool available at BVRM, then his case could be considered for allotment of Railway Quarters as per his turn. I have also gone through the records produced by the Ld. Counsel for the respondents and I find that in the said representation dated 28.3.2003 (Supra) the applicant requested to allow him to retain headquarters till the academic year in view of his children's education and also to instruct the personal branch not to recover the damage rent from the pay of the applicant. That being the position, I find that the applicant has not submitted any representation to the concerned authority to permit him to retain the said quarters before expiry of the time granted by the Sr. Divisional Personnel Officer vide its letter dated 12.8.2002 It is also seen that after expiry of the permissible period, the applicant submitted his representation in December, 2003 and March 2003. On the earlier occasion, Mr. Ramakrishna Rao, Ld. Counsel for the applicant has argued that since the transfer is within 1 = Kms away and in the same station, the vacation of quarters is not necessary and for that no permission also is required. Therefore, he was asked to produce the relevant rule in support of his contention. Accordingly, when the matter was called for today, Ms. Rachana Ld. Counsel representing counsel for the applicant produced before me the Circular No. R.B.E. No. 12/93 and has drawn my attention to para 8.4 of the said circular, which reads as under:

8.4 An employee posted at a station in the electrified suburban area of a Railway may on transfer to another station in the same electrified suburban 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:

(a) the Railway administration is satisfied and certified that the concerned employee can conveniently commute from the former station to the new station for performance of duty without loss of efficiency; and

(b) the employee is not required to reside in an earmarked Railway quarter.

6. However, after hearing was almost over, Mr. S. Ramakrishna Rao, Ld. Counsel for the applicant attended the court and again drawn my attention to the said para 8.4 of the said Circular. A perusal

of the said circular, would show that a permission is required to be obtained from the concerned authority for further retention of the quarter, if the employee is posted at the same station within the same electrified suburban area of railways and if such permission is sought for, and the Railway administration finds that the two conditions therein are fulfilled, the Railway administration may grant permission to retain the said quarters. Therefore, I do not want to go with the contention of the Ld. Counsel for the applicant that no permission is required to be sought for retaining the same quarters if an employee is transferred to 1 = Kms. away from his earlier place of posting. In my view, the said circular relied upon by the counsel for the applicant does not help the applicant in any way.

7. Therefore, the fact remains that he sought permission for retaining the same quarters and he was permitted to retain the same quarter for the period from 22.6.2002 to 21.8.2002 on payment of licence fee by the senior Divisional Personal Officer Vijawada, 6th Respondent herein, vide its letter dated 12.8.2003 (R/3). It is also mentioned that if the applicant fails to vacate the quarters on expiry of the period granted, he will be treated as un-authorised occupants and damage rent will be recovered at the rate of Rs. 37/- per Sq. Mts of plinth areas for B-Class cities and Rs. 3/- per Sq. mts of plinth area for CClass cities and he is not entitled for HRA from the date of expiry of the permission. As mentioned above, I do not find any such representation submitted by the applicant requesting for extension of the period to retain the quarters before the expiry of time permitted by 6th respondents vide its letter 28.8.022. Therefore, in terms of the said letter dated 12.08.2002, the applicant became the un-authorised occupant of the said quarters. Therefore, the respondents have started recovering the damage rent from the applicant as mentioned in the said letter. The Ld. Counsel for the respondents placed reliance on the Full Bench Judgment of the Central Administrative Tribunal in the case of Ram Poojan v. UOI and Anr. Reported in 1996 (34) ATC at page 434 which is annexed as Annexure RVIII to the reply, wherein it has been held that further retention of the accommodation after the expiry of permissible/permitted period of retention, would be deemed to be un-authorised occupant. No specific order cancelling allotment is necessary and penal rent can be recovered from salary without resorting to proceedings under Public Premises (Eviction of Un-authorised Occupants) Act, 1971. Therefore, the further retention of accommodation after the expiry of permissible period of retention would be treated as unauthorised occupation.

8. In view of the above facts and circumstances and rule position, I find nothing wrong in the action of the respondents. Therefore, the applicant is not entitled to get the relief as prayed for by him in this O.A. and the O.A being devoid of merit is dismissed accordingly. However, there shall be no order as to costs.