

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.853/94

NEW DELHI THIS \THE 17TH DAY OF AUGUST, 1994.

HON'BLE SHRI A.V. HARIDASAN, MEMBER (J)

Shri N.K. Metha,
S/o Shri Ved Parkash Metha,
Electric Foreman (Train Lighting)
Northern Railway,
Railway Station, New Delhi.

....Applicant

By Advocate : Shri B.S. Mainee

VERSUS

UNION OF INDIA, THROUGH

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Divl. Superintending Engineer (Estate)
Northern Railway,
D.R.M Office, State Entry Road,
New Delhi.Respondents

By Advocate : Shri R.L. Dhawan

JUDGEMENT (ORAL)

Hon'ble Shri A.V. Haridasan, Member (J)

In this application, filed under Section 19 of the Administrative Act, the applicant Shri N.K. Metha (Electric Foreman) Train loading Northern Railway, Railway station, New Delhi has assailed the order dated 22.02.94 passed by the Divisional Superintending Engineer (Estate) in the D.R.M's Office, Northern Railway, informing the applicant that the General Manager has after having the matter examined by the Competent Authority decided not to regularise the quarter No.1B-1, Railway Colony, Punjabi Bagh, Delhi in favour of the applicant on his retransfer and that

action would be taken against him for (a) Vacation of the premises under the provisions of Public Premises Eviction Act, 1971 (b) recovery of damage charges as per extant rules from his salary w.e.f 1.4.91 to the date of vacation. The factual background in which the application came to be filed is stated as follows:-

2. While the applicant was working as Electric Foreman, Shatabadi, New Delhi he was occupying quarter No.1B-1, Railway Colony, Punjabi Bagh, New Delhi and he was transferred from New Delhi to Jakhal vide order dated 23.07.90 (Annexure-1). He reported for duty at Jakhal on 30.7.90 and took over charge the charge on 30.08.90. And on his request he was allowed to retain the quarter in Delhi only upto 31.03.91 vide letter dated 21.2.91 of the competent authority (Annexure A-2). Thereafter, though he requested permission for further retention no reply was received by him. The applicant was ordered to be retransferred to Delhi by Order dated 25.07.91 but, owing to administrative reasons he could not be relieved. ~~But~~ on relief, he joined immediately at Delhi on 4.06.92. After he joined back in Delhi, he made a representation to D.R.M. Northern Railway, New Delhi for regularising the said quarter ~~against~~ in his name as his family was continuing ^{to reside} in the same quarter. The D.R.M. being satisfied that if the applicant had been relieved as per the order dated 25.07.91, he would have been able to join at Delhi Office within a year of his transfer out of Delhi and that the relief of the applicant was delayed only on account of the administrative reasons, he recommended to the General Manager that in the interest of service, it is just and proper that the quarter is regularised in favour of the applicant. It was also mentioned by the D.R.M. in the letter dated 14.012.93 that the penal rent has been recovered from

(9)

the applicant from April 91 to July 1991 the date of his retransfer to Delhi and that matter for regularising the period thereafter is being referred to the General Manager. The General Manager himself on receipt of the representation of the applicant called for details as to whether the retention of the applicant at Jakahal beyond 24.7.91 was really on administrative grounds or whether the ~~the~~ transfer of the applicant back to Delhi amounted to frequent transfer.

3. In response to this querry the Additional Divisional Railway Manager informed the General Manager, ^{that} the retention of the applicant at Jakahal beyond 25.02.91 though he was transferred back to Delhi was ~~based~~ on ~~the~~ administrative grounds and that transfer of the applicant to Delhi did not amount to frequent transfer. Even after getting this information the General manager has taken a decision that the applicant would not be entitled for the regularisation of quarter and that penal rent had to be recovered from him for his retention of the quarter beyond July, 1991. It is in this background that the applicant is challanging this order.

4. The application is resisted by the respondents who contend that in accordance with the rules regarding allotment and vacation of quarter, the Railway employee is liable to vacate the quarter on his transfer unless permission is granted by the competent authority to retain the quarter, that after the period of extenion is over, further ~~the~~ retention of the quarter becomes unauthorised, that as per extant rules regarding functioning of the Housing Committee and allotment of the quarters to Railway staff in Chapter 3 of the Rules, it is laid down that in case Railway servant is reposted within a period of one year to the station

from which he was transferred, he would be entitled to have his priority restored in the matter of allotment of the quarter, that as the applicant was reposted only beyond the period of one year, he is not entitled to the benefit under that provision, that as the applicant's occupation of the quarter beyond July, 1991 was unauthorised, he is liable to vacate the quarter and also to pay penal rent as mentioned in Annexure A-1 and that therefore as the impugned order has been passed perfectly in accordance with the rules, the applicant is not entitled to any relief.

5. I have gone through the pleadings and documents and I have heard Shri B.S. Maine, Counsel for the applicant and also Shri R.L. Dhawan, Counsel for the respondents. The undisputed facts are that the applicant was transferred out of Delhi to Jakahal on 25.7.90 and that he actually joined Jakahal on 1.08.90 that he was ordered to be retransferred by order dated 25.07.91. It is further beyond dispute that the applicant joined back at Delhi only on 4.06.92. (A copy of this letter dated 20.08.93 is at Annexure A-9) because of administrative reasons which required the applicant's presence at Jakahal. As contended by the learned counsel for the applicant, under these circumstances as the applicant was disabled from giving effect to the transfer and reposting within a period of one year from the date of his transfer to Jakahal, because of administrative reasons. It is unjust to deny him the benefit of priority of the request of the applicant for regularisation of the quarter in his name. Since the applicant had been allowed to retain quarter upto 31.03.91 as the applicant had requested for further retention according to the counsel for the applicant, the stand taken by the respondents that the retention of the quarter by the applicant is unauthorised is not correct. Shri Maine, Counsel for the applicant argued that in the interest of justice and in the back drop of the fact that the relief of the applicant on retransfer was delayed because of administrative reasons, it is necessary that a direction is given to the respondents to regularise the quarter in the name of the applicant from the date when he was ordered to be retransferred.

6. The learned counsel for the respondents on the other hand argued that whether it was administrative reasons or for reasons attributable to the applicant what is relevant is whether applicant has been reposted at Delhi

within a period of one year or not for the purpose of applicability of the rules regarding allotment and regularisation of quarter. If the reposting is beyond the period of one year the employee will not be entitled to have his priority restored according to the rules. I am unable to agree with this proposition. The paragraph-1 of Chapter 3 of rules regarding function of the Housing Committee and allotment of quarter to railway staff read as follows:-

"The staff, who are reposted at the same station within 12 months, will be restored the priority which they had before their transfer, and if they were already housed, should be placed above those who are in the waiting list in the same category on the basis of which they were allotted a quarter prior to their transfer."

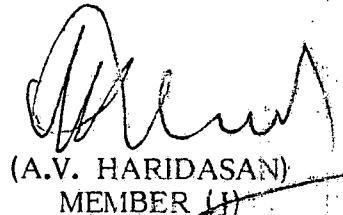
Now, going by the relevant rules Shri RL Dhawan, counsel for the respondents can be said to be technically correct. The applicant had been retransferred within 12 months but he could not give effect to the transfer till 4.06.92. Can it be reasonably said that this delay in joining at Delhi would deprive the applicant of the benefit which he would have had, had he been allowed to come to Delhi immediately on his transfer by order dated 25.07.91? The answer according to me must be in the negative. If he was relieved from Jakahal he would have immediately joined at Delhi. He could not do so only for administrative reasons, he was not relieved from Jakahal. Retaining the applicant at Jakahal against his interest for a period beyond 12 months from the date of transfer order, I am of the considered view that it is absolutely unjust to say that on account of over-stay at Jakahal he would not be entitled to the benefit. Therefore, the view taken by the General Manager that the applicant is not entitled to have priority restored does not stand to reason. The General Manager, before taking this decision had made enquiries as to why the applicant was detained at Jakahal after 25.07.91, whether it was on administrative grounds or not or was it a case of frequent transfer. The official concerned informed the General Manager that due to administrative reasons the applicant had to be retained at Jakahal beyond 25.07.91. But unfortunately it appears that this aspect has not been taken into consideration by the General Manager in turning down the applicant's request to regularise the quarter in his favour. Addl. Divl. Rly. Manager after considering all the aspects of the case had made a very reasonable and just proposal for regularisation of the quarter in the name

of applicant from 1.08.90 onwards. I am of the considered view that the General Manager should have acceded to the request of the applicant for regularisation as proposed by the Addl.Divl.Rly. Manager.

8. It has come out in the pleadings and documents on record that the penal rent from 1.04.91 to July 91 had already been released from the applicant and that thereafter only normal rent is being collected from the applicant. This is in accordance with the view taken by the Addl.Divl.Rly. Manager that as the applicant's retention at, Jakahal beyond July 91 was on Administrative grounds, in fairness, he should not be put to a disadvantage.

9. In the conspectus of the facts and circumstances of the case, I am of the view that the impugned order at Annexure A-1 is unsustainable in the peculiar circumstances of the case. Therefore, the above order is quashed and the respondents are directed to regularise the quarter No.1-B-1, Railway Colony, Punjbi Bagh, New Delhi in favour of the applicant from 25.07.91 - the date on which he was transferred to New Delhi.

10. There is no order as to costs.



(A.V. HARIDASAN)
MEMBER (H)

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