

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Order dt-24-11-05

Copy of order may
be given to both the
Counsel

AS
13/12/05-

By
13/12/05
S.O. (J)

Order dated 24.11.05

I.S.Mohan Das and others have filed this O.A. being aggrieved by the order contained in Railway Board, New Delhi letter No.E (G) 2003 RN3-20 dtd.23.9.04 communicated to Res.No.1 by the letter even number dtd. 16.11.04.

The case in short is that the Res.No.1 had submitted a proposal for grant of permission by the Secretary (Estt.) for retention of quarters by officers and staff of Construction Organisation on deputation to Tamruk-Digha project vide his letter No. ECoR/Pers/ME/MSR/RB/Retention/Qtrs. dtd. 23.3.04. In the said letter it was submitted that the applicants were retained at T-D project on administrative exigency; that as they could not be released on due time they were compelled to retain the quarters at their old station; that they were permitted to retain the quarters upto 30.6.01, the applicant No.1 had to retain the quarters for two months 20 days, applicant No.2 for 9 months 22 days and applicant No.3 for 7 months on the ground; that they were transferred during the middle of academic session as a result of which they could not shift their children elsewhere.

It was further submitted that the proposal was made with the concurrence of FASCAO/- Con/BES and FASCAO/ECoR and with the approval of General Manager. However the Railway Board after considering the proposal, as

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	<p>stated earlier, advised the Res.No.1 ^{to} could take action for recovery of rent due from the applicants for "un-authorized retention of Railway accommodation beyond 30.6.01 on administrative interest."</p> <p>The Id.Counsel for the applicant repeatedly submitted that Res.No.1 having clearly certified that they were retained in the project ⁱⁿ on administrative interest and that they could not shift their children because the project work came to end in mid academic session, the order of recovery is illegal and arbitrary. Further, the General Manager having recommended the case of the applicant on administrative ground it is not clear from the order of the Railway Board contained in the letter dtd.23.8.04(Annexure-A/11) as to how they came to the conclusion that the applicants had retained the quarters un-authorizedly. The letter clearly exhibits non-application of mind and the order is truly arbitrary one, therefore, liable to be quashed.</p> <p>The Id.Sr.Counsel for the Respondents submitted that it is the Railway Board who has the power to authorize the retention of quarters beyond the completion of project work, and, therefore, Res.No.1 is duty bound to comply with the order.</p> <p>I have perused the letter dtd.23.8.04 issued by Joint Director Estt.(Genl.)Railway Board which reads as follows:</p> <p>"East Coast Railway's proposal for grant</p>

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of permission to retain Railway accommodation beyond 30.6.2000 in favour of S/Sri I.S.Mohan Das, XEN/E, R.K.Sinha, AXEN/C and B.K.Saha, SSE, who were posted on Tamluk-Digha Project, has been considered by the Board but has not been found feasible of acceptance. East Coast Railway are, therefore, advised to take action for recovery of rent due from the above staff for the unauthorised retention of Railway accommodation beyond 30.6.2000 under advise to Board."

From the above letter it is not clear as to the reasons which weighed with the Railway Board to come to the conclusion that the applicants have retained Railway accommodation without authority beyond 30.6.2000. As the General Manager under whose control the Tamluk-Digha new Rail link project was executed did find good reasons to permit the staff to retain the quarters beyond 30.6.2000, it is truly illogical to call that 'unauthorised retention'. The fact of the matter is ^{that} although the power to extend the retention of quarters beyond 30.6.2000 rested with the Railway Board ~~but~~ it was the Res.No.1 who had taken a decision in anticipation of approval of the Railway Board to allow the applicants to retain the quarters having regard to the welfare of the officers' families, as the transfer was made in the mid academic session. Whereas the General Manager has given full reasons for grant of permission for retention of quarters, the Railway Board's letter being devoid of reason cannot stand ~~in~~ the scrutiny of law.

As the Res.No.1 was also satisfied that the retention of the applicants in the

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Project work was done in the interest of administration and that it was a fact that due to mid academic session the applicants could not shift their families without jeopardising the academic career of their children, the retention of quarters by the applicants hardly be called un-authorized.

In view of the above facts and circumstances of the case, the Res.No.2 is directed to review his decision as communicated vide his letter dtd.23.8.04 having regard to the reasons given by Res.No.1 in support of his proposal for allowing the applicants the benefit of retention of quarters on normal rent.

The O.A. is, accordingly, disposed of with the above direction. No costs.


Vice-chairman