

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR



O.A. No. 276
(and batches)

1999

DATE OF DECISION 11/05/2001

Narendra Prasad Mishra Petitioner

Mr. J.K. Kaushik Advocate for the Petitioner (s)

Versus

U.O.I. & Ors. Respondents

Mr. S.S. Vyas Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. A.P. Nagrath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Sd/-
(A.P.NAGRATH)
Admn.Member

Sd/-
(A.K.MISRA)
JUDL.Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR.

1. QA No.276/99 Date of order: 11/05/2001

Narendra Prasad Mishra son of Shri Manohar Lal Mishra, aged about 33 years, resident of Qtr. No. L-29 -S, SSP Type-I Loco Line Railway Colony, Abu Road, at present employed on the post of Artisan Khallasi, in the office of Diesel Shed Abu Road, Western Railway.

2. QA No.277/99

Udai Prakash Kaushik son of Shri Devki Nandan Kaushik, aged about 47 years, resident of Qtr. No. 496 B Mataghar Railway Colony, Abu Road, at present employed on the post of Diesel Mechanic.II, in the office of Diesel Shed Abu Road, Western Railway.

3. QA No.278/99

Naresh Kumar Parmar son of Shri Laxmi Narain Sharma, aged about 45 years, resident of Qts. No. M-79-D Modified Outdoor Dhobi Ghat Railway Colony, Abu Road, at present employed on the post of Diesel Mechanic.II, in the office of Diesel Shed Abu Road, Western Railway.

4. QA No.279/99

Ghanshyam Das son of Shri Ram Niwas Sharma, aged about 46 years, resident of Qtr. 351-A Type-A Mataghar Railway Colony, Abu Road, at present employed on the post of Diesel Mechanic.II, in the office of Diesel Shed Abu Road, Western Railway.

5. QA No.280/99

Vijay Kumar sexena son of Shri Mahaveer Prasad, aged about 49 years, resident of Qtr. EL/396-B Type B, Railway Colony Dhobi Ghat, Abu Road, at present employed on the post of MCF Diesel, in the office of Diesel Shed Abu Road, Western Railway.

....APPLICANTS

V S R S U S

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1. Union of India through General Manager,
Western Railway, Church Gate, Mumbai.
2. Divisional Railway Manager, Western Railway,
Ajmer Division, Ajmer.
3. Senior Section Engineer (Gen. Elect),
Western Railway, Diesel Shed, Abu Road.

....RESPONDENTS

Mr. J.K. Kaushik, counsel for the applicants.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

(per Hon'ble Mr. A.P. Nagrath)

The applicants in these QAs were working in Diesel Shed, Abu Road and they were transferred to Phulera after having been declared surplus at Abu Road. They all joined in January-February, 1997 at Phulera. They were permitted to retain Railway Quarters allotted to them at Abu Road for a period of two years. They are all aggrieved by the notice given to them placed at Annexure-A/1 of the respective case files by which they have been declared unauthorised occupants of the Railway Quarters at Abu Road and penal rent has been ordered to be recovered from them. Since they are similarly placed and aggrieved by similar order based on identical facts and relief sought being same, these QAs are being disposed of by a common order. All the applicants have made a prayer for declaring the impugned

order Annexure-A/1 dated 4.8.99 illegal and to quash the same. They have further sought directions to the respondents to regularise the said accommodation in their names, as they have all been posted back at Abu Road.

2. At the time of preliminary hearing for admission on 28.8.99, the impugned order at Annexure-A/1 dated 4.8.99 was stayed and that interim order continues.

3. Admitted facts are that the applicants were working in Diesel Shed, Abu Road and were declared surplus there. They were transferred to Phulera where they joined in January/February, 1997. They were all permitted to retain the Railway Quarters under their occupation at Abu Road for a period of two years. This two years period would have been over in January or February of the year 1999 depending on their respective date of release from Abu Road. Subsequently, there were certain developments and the control of Phulera Diesel Shed was transferred to Jaipur Division, and that of Chittorgarh to Ratlam Division. In order to implement the changes, the staff working at Abu Road, Phulera and Chittorgarh were asked to exercise option for the place where they wanted to be posted. The last date for option was 31.8.98. One Batch of the employees who had opted for Abu Road Diesel Shed, were ordered to be transferred to Abu Road vide letter dated 2.12.98. The applicants came to be posted back to Abu Road after the period of two years (for which they were allowed to retain accommodation at Abu Road), was over. The respondents sent notice to them for affecting recovery of the penal rent with effect from the date, this period of two years came to an end.

4. Applicant's case is that they had given their option in August, 1998 itself by which time the period

of two years was not over and that they were retained at Phulera only in the interest of administration. It was not in their hands to organize their release from Phulera and just because they were retained at Phulera in the interest of administration, this cannot result into any adverse consequences to them in respect of retaining the Railway Quarters at Abu Road.

5. On the other hand, respondent's plea is that rules permitted retaining railway quarters at station from where the employees has been transferred as surplus, for a maximum period of two years. In the cases, all those who had returned to Abu Road within two years, their railway quarters have been regularised. The respondent's contend that the applicants did not get their names registered for railway quarters at Phulera which is one of the essential conditions for considering the request for retention of the railway quarters at the earlier station of posting. While respondents admit that the applicants could come back to Abu Road only after their relieving arrangement had been at Phulera but that does not entitle them for regularisation of the quarter at Abu Road. The tetention of quarter is governed by definite set of rules. According to the respondents, the applicant's cases were referred to General Manager with the request that the retention period be extended, but respondent No.2 i.e. D.R.M. was advised to decide the matter on his own subject to compliance of conditions laid down in the letter dated 23.4.96. Respondent No.2 did not allow regularisation of the railway quarters in favour of the applicants, in view of the instructions contained in letter dated 23.4.96, as in terms of this letter, the period in excess of two years is to be treated as unauthorized.

6. Heard, the learned counsel for the parties and

perused the written statements and the relevant departmental decisions and instructions as Annexed.

7. Learned counsel for the applicants stated that, the applicants had given their option in August, 1998 which was well within the period of two years and after that the applicants were waiting for their release from Phulera any time. It was for this reason, he contended that they did not consider it necessary to apply for accommodation at Phulera. He also referred to respondent's letter dated July, 1999 (Annexure-A/6) wherein D.R.M. Ajmer had recommended to the General Manager to permit retention of the Railway Quarters at Abu Road even beyond two years on payment of normal licence fee.

8. Learned counsel for the respondents referred to the letter dated 23.4.96 (Annexure-R/6) which lays down instructions for retention of railway quarters by the surplus staff redeployed at another station. He submitted that the period of two years could be extended, if the staff considered had applied for accommodation at the new station of posting. But the applicants failed to apply for accommodation at Phulera as such he maintained that they have no claim for having the quarters regularised in their names at Abu Road, on their return. He contended that retention of the quarters by the applicants was unauthorised and they are liable to pay penal rent.

9. We have given our anxious consideration to the rival contentions. We do not find that the Divisional Authorities, initially, after considering all the facts and circumstances, recommended to General Manager to permit retention of railway quarter at Abu Road beyond two years but when the decision was left to D.R.M. himself, he turned down the request of the applicants for such regularisation, on the stated ground that this decision was in terms

of instructions contained in General Manager, Western Railway's letter dated 23.4.96. This letter in para (b) states that normal retention at new station will be permitted for a maximum period of two years.

Para 'c' which is material for the purpose of this case is reproduced below:-

"(c) Notwithstanding the above, individual representation received from such staff for further retention of Qtr. may be considered subject to-

- (i) Where there is no demand at the old station where employee seekly further extention.
- (ii) Staff concerned have applied for accommodation at the new station of posting.
- (iii) No permission for further extention will be granted where the employee has not made an application at the new station on the presumption that he will be continue to be allowed to retain Qtr. at the old station.
- (iv) In case of such surplus staff registered above are transferred out, division should examine the possibility of giving them Qtr. on out of turn basis to enable to shift the family and release the Qtr. at the earlier station, especially where there is great demand/waiting list at the erstwhile station."

We find this letter has been issued in continuation of letter dated 9.11.92, copy of this letter has been made available to us by the learned counsel for respondents.

Reading of these two letters i.e. dated 9.11.92 and 23.4.96 we find that the situation occurring in the instant cases is not covered by these instructions. However, rules and instructions have to be read so as to make a harmonious construction. We find that for considering further extention where the employee has made an application registering for the residential accommodation at the new station, the possibility of giving them out of turn allotment is also

required to be considered. Where there is no demand at the old station, the employees could seek further extention. In view of the circumstances of this case, it would not be reasonable to expect as a rational human response that when it has been made known to the employees that they are likely to go back to their previous place of posting (where they were retaining railway quarter), they would take steps to vacate the accommodation, or that they would consider it necessary to apply for accommodation at new place i.e. Phulera in this case. It was obvious that D.R.M. had duly appreciated these circumstances when the Division recommended the case to General Manager for sanction beyond two years but when it came to taking the decision himself, he decided to reject the request of the applicants which to us appears rather intriguing. It is not denied that the option had been given by 31.8.98 i.e. period well within two years. It would, in our view, be unreasonable/expect that the staff likely to come back would apply for accommodation at the new station. Delay in their release from Phulera was certainly not in the hands of the applicants themselves. It is difficult to appreciate that employees having their families staying in the quarters would take steps to vacate the accommodation, when they have already been informed that there are likely to come back to the same place in the near future. Any time taken after 31.8.98 was not in their hands and this cannot be held as a factor against them while taking a decision on their request for retention of railway accommodation at Abu Road. This case does not revolve around any statutory provisions and is within the confines of departmental instructions. What is required to be seen in judicial scrutiny is whether the authority taking a decision, had acted logically and in a rational manner. We have come to a conclusion that in this case, the decision taken by D.R.M. does not appeal to

reason and is also not in harmony with the objectives behind the departmental instructions.

10. In view of this background, we are of the view that the prayer made in these QAs is liable to be accepted.

11. We, therefore, allow these QAs and direct the respondents to treat the period of retention of the railway quarter at Abu Road for the period beyond two years as authorized for which only the normal licence fee is chargeable. We also hold that the applicants are entitled to have their respective railway quarters regularised in their favour in continuation of this permission from the date they reported at Abu Road.

No order as to costs.

Sd/-
(A.P.NAGRATH)
Admn. Member

Sd/-
(A.K.MISRA)
JUDL. Member

धर्माधिकारी रही प्रतिलिपि
15/5/2001
अनुभाग अधिकारी (धर्माधिकारी)
केन्द्रीय गवर्नरेज़ रेलवे
कोपूर

Part II and III destroyed
in my presence on 24/5/07
under supervision of
sec. officer as per
order dated 19/5/07

Section officer (Record) 2
Signature

Received
Dr. B. A. M.
18/5/2001

R. C.
Dr. B. A. M.
18/5/2001