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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

Jodhpur Bench : Jodhpur.

ORIGINAL APPLICATION NO.228/2003 to 231/2003

Date of decision: 31-5-2004.

Bal Dev Singh and others .....Petitioners

Mr J K Mishra & Mr. B. Khan .....Advocate for the petitioners

Versus

Union of India and Others .....Respondents.

Mr.Vinit Mathur ..... Advocate for Respondents.

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member.
Hon'ble Mr. M K Misra, Administrative Member.

1. **Whether Reporters of local papers may be allowed to see the judgement?** No
2. **To be referred to the Reporter or not?** yes
3. **Whether their Lordships wish to see the fair copy of the Judgement?** yes
4. **Whether it needs to be circulated to other Benches of the Tribunal?** yes

Sd/-
(M.K. MISRA)
MEMBER(A)

Sd/-
(J.K. KAUSHIK)
MEMBER(J)

R - I/8
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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.

Original Application Nos. 228/2003 to 231/2003

Date of Decision: 31-5-2004.

The Hon'ble Mr. J K Kaushik, Judicial Member,

The Hon'ble Mr. M K Misra, Administrative Member.

Baldev Singh S/o shri Punja Ji r/o Railway Qr. No. L/82-A, Railway Colony, Abu Road, (Raj) at present employee on the post of Diesel Goods Driver Under Loco Foreman Abu Road, North Western Railway.

Applicant in O.A. No. 228/2003

Mukhtiyar Hussain Gouri, S/o late Shri Mohamad Hussain Gauri r/o Railway Qr. No. L/53/B, Railway Colony, Dobhigath, Abu Road (Raj) at present employee on the post of Diesel Goods Driver Under Loco Foreman Abu Road, North Western Railway.

Applicant In O.A. No. 229/2003

Bhim Singh S/o Shri Punna Bhai Ji, resident of Railway Qr. No. L/301/A, Railway Colony, Abu Road (Raj) at present employee on the post of Diesel Goods Driver Under Loco Foreman Abu Road, North Western Railway.

Applicant In O.A. No. 230/2003

Ram lal S/o shri Heera Lal Ji, resident of Railway Qr. No. L/78/A, Railway Colony, Abu Road (Raj) at present employee on the post of Diesel Goods Driver Under Loco Foreman Abu Road, North Western Railway.

Applicant In O.A. No. 231/2003

Mr. J.K. Mishra & B. Khan: Counsel for the applicants in all the four OAs.

VERSUS

1. Union of India through the General Manager, North Western Railway, Jaipur.

2. Divisional Railway Manager, North Western Railway, Ajmer Division Ajmer (Raj)

3. Divisional Personnel Officer, North Western Railway, Ajmer Division Ajmer (Raj)

4. Loco Foreman, Abu Road, North Western Railway, Abu Road,(Raj)

5. Senior Divisional Mechanical Engineer (D), North Western Railway, Ajmer Division, Abu Road, (Raj)

: Respondents.

_Mr. Vinit Mathur: Counsel for the respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member:

The above O.As have been filed under Sec.19 of the Administrative Tribunals Act, 1985. Since the issue involved and the reliefs claimed are being the same, they were heard together and are being disposed of by this common order.

2. The pleadings are complete. In view of the urgency of the matter we propose to decide the same at the admission stage. Accordingly, we have heard the learned counsel for the parties and perused the pleadings and records of the cases.

3. As far as the factual aspect of the matter is concerned we have taken the same from Mukhtiyar Hussain Gouri (O.A. No. 229/03). The applicant was initially appointed on the post of Khalasi and he enjoyed further promotions in due course and became Diesel Goods Driver on 16.01.2001. While working on the post of Diesel Assistant at

Abu Road, he was promoted and transferred to Gandhi Dham on promotion to the post of Goods Driver on ad-hoc basis vide order dated 13.11.97 (Annex. A/3) and his name finds a place at Sl. No. 46. The 4th respondent issued an order on 14.11.97, and the applicant was relieved on the same day. Thereafter he joined at Gandhi Dham. The 4th respondent issued another order on 25.11.97 whereby the order dated 13.11.97 (Annex. A/3) was kept in abeyance. On coming to know about this order, the applicant made a request to the respondents to send him back to Abu Road, since the very order of transfer and promotion had been kept in abeyance. But the request of the applicant was not considered and he continued at Gandhi Dham.

4. The further case of the applicant is that by another order dated 26.05.2000 (Annex. A/5) he was promoted as Shunter and posted at Gandhi Dham. Thereafter vide yet another order dated 16.01.2001, he was promoted as Good Driver and posted at Gandhi Dham. After that vide order dated 25.01.2001(Annex. A/7) he was transferred back to Abu Road but no transfer or package allowance was given. Due to earthquake on 26.01.2001, in Gujarat, he was relieved only on 13.02.2001 and thereafter he joined at Abu Road. He submitted a representation on 06.06.2001, to the competent authority to regularise his quarter at Abu Road. An explanation was called from him by the 4th respondent vide letter 22.03.2002. The applicant again submitted a representation on 01.04.2002. But vide letter dated 05.04.2002 (Annex. A/11) the 4th respondent informed the applicant

that a sum of Rs. 2000/- would be deducted from April 2002, and onwards every month.

5. The applicant had no alternative except to approach this Bench of the Tribunal and filed O.A. No. 98/2002, wherein an interim order was passed not to recover damage rent from him. The O.A came to be disposed of vide order dated 17.02.2003 and the respondents were directed to examine the representation of the applicants afresh and take an appropriate decision in accordance with law. The applicant was allotted the accommodation at Abu Road on mutual basis. The 5th respondent issued a letter dated 08/10.07.2003, vide which huge amount was proposed to be recovered/deducted from the pay of the applicants. The second respondent vide letter dated 01.10.2003, ordered that a sum of Rs. 2,74,366/- is to be recovered from the applicant in this OA as damage rent and it is to be deducted from the salary of the applicant. The Original Application has been filed on diverse grounds in para 5 and its sub paras. We shall deal with the same in the later part of this order.

6. As far as the other applicants are concerned the amounts are specified in Annex. A.2 dated 01.10.2003. The other facts are almost identical/similar except the mutual exchange in the case of the applicant herein which is not there in other cases.

7. The respondents have filed an interim reply to the show cause notice issued for admission. It has been averred that the application

suffers from the bar of resjudicata since the same issue was considered by this Bench of the Tribunal in the earlier O.A filed by him. It is also averred that on promotion, all the applicants were relieved from Abu Road, to join duty at Gandhi Dham. The natural consequence of their joining at Gandhi Dham would be that they should vacate the quarters at Abu Road but the quarters were not vacated. 10 persons who were promoted and posted along with the applicants have vacated their quarters. The applicants neither vacated the quarters at Abu Road nor sought permission to retain the same. The next ground of defence of the respondents is that while working at Gandhi Dham, the applicants were granted promotion to the post of Shunters and posted at Gandhi Dham and subsequently they were also granted promotion as Goods Driver and posted at the same station. Thus the applicants have no right to retain the quarters at Abu Road. As far as the other persons who have not been so promoted and spared they were not to be given promotion. Therefore, their cases have no application to the cases of the applicants. In para 5 of the reply the rule position has been discussed. The rule position as regards the retention of quarters on transfer at the old station has been discussed. The respondents have prayed for the dismissal of the O.A.

8. A detailed rejoinder has been filed countering the averments made in the reply. It has been clarified that the applicants were working on the post of Diesel Assistant at Abu Road and started to work as Goods Driver at Gandhi Dham right from 1997. Had there

been no misrepresentation of fact, the applicant would have been promotion at Abu Road as Shunter and Goods Driver. The applicants were granted regular promotion to the post of Shunter at Gandhi Dham, whereas their juniors were granted the said promotion on regular basis at Abu Road itself. Further the juniors who were not relieved from Abu Road, were granted regular promotion to the post of Shunter as well as Goods Driver at Abu Road itself. Accommodation allotted to the applicants at Abu Road, have not been cancelled and no proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, has ever been initiated. Further adhoc arrangement is required to be discontinued at the earliest but not later than eighteen months. But the applicants were continued on adhoc basis for a long time, which caused undue hardships to the applicant.

9. The learned counsel for the applicant has reiterated the pleadings and submitted that the applicants have been treated discriminately in as much as their juniors were continued at Abu Road under the garb of the order dated 13.11.97 was kept in abeyance but the applicants were transferred and retained at Gandhi Dham. The applicants submitted representations to bring them back to Abu Road. The applicants were also not paid any H.R.A and the normal rent was deducted from their salary. The applicants were not issued any notice till 22.03.2002. The respondents did not take any proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act 1971. Therefore the complete action is ab initio void since once a special act has been formulated to deal with Government Accommodation, no

further proceedings should have been initiated. He also submitted that the applicants have been brought back to Abu Road, and they are continuing in the same accommodation. But the respondents have not taken any action to regularise the retention of the accommodation at least after joining at Abu Road. He also submitted that there are number of cases where a person has been transferred, and was allowed to retain the Govt. accommodation and after joining back at the old station. i.e Abu Road itself. But such course of action has not been adopted in the instant case. The learned counsel was specifically asked to quote any specific example in this regard or to show as to whether any pleadings to this effect has been made in the OAs. He submitted that the applicants were not able to lay hand on such orders. But otherwise that was a fact.

10. The learned counsel for the applicants next contended that all the applicants were kept in a confused state of affairs and for the fault of the respondents they cannot be made to suffer. The whole episode has been created by the respondents themselves. In support of his contention he relied on the following judgements. **(i) N.C Sharma vs Union of India** [2004 (1) ATJ 481 Bom. H.C] (ii)**R.P. Mandap vs. UOI & ors.** [2001 (2) ATJ 600]

11. Per contra, the learned counsel for the respondents has reiterated the facts and grounds set out in the reply and has submitted that whatever be the reason the applicants had in fact moved to

Gandhi Dham and the same at least can be treated as transfer. They enjoyed two promotions at Gandhi Dham and they cannot complain of any arbitrariness attributable to the respondents. The law is set out in para 5 of the reply that if an employee is allotted Government accommodation, he has to vacate the same on his transfer after the normal period of retention as per the rules. The applicants have neither vacated the quarters nor sought any permission to retain the accommodation. He has next contended that as regards the allotment of the quarter/regularisation of the accommodation Abu Road, the respondents were not in a position to do the same since the same is not permitted by the rules in force. As regards of regularisation of accommodation in respect of others there is no pleading in the O.A to that effect and therefore he is not in a position to reply to the same. He has contended that the Railways have specific laws in regard to the charging of penal rent. When a specific query was made as to whether they gave any notice to the applicant, he replied that after due consideration of the reply, the order for charging the penal rent has been issued. He had also contended that specific instructions have been issued for levying the damage rent and otherwise also no notice is required to be given even for calculating the damage rent. He has also submitted that the order of transfer cum posting had to be kept in abeyance due to the administrative exigencies and the applicants cannot complain of or take advantage from the same. They have remained at Gandhi Dham for about four years and retained the quarters at Abu Road in an unauthorised manner. Therefore the O.A deserves to be dismissed.

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12. We have anxiously considered the rival submissions made on behalf of both parties. At the very outset we would like to consider as to whether the applicants were in unauthorised occupation of the Government accommodation at Abu Road. To appreciate this issue the relevant instructions of the Railway Board from para 5 of the reply is extracted below. It reads as under:

> " 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 two months on payment of normal rent or single flat rate of licence fee/rent. On request by the employee, on educational or sickness account, the period of retention of Railway accommodation may be extended for a further period of six 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 cover the academic session in which he was transferred on payment of special licence fee.
>
> Beyond the permitted/permissible limits, no further extension will be allowed on any grounds whatsoever. Therefore, no requests or representations on this score shall be entertained. For all occupations beyond the permitted period, immediate action should be taken to cancel the allotment, declare the occupation as unauthorised and initiate eviction proceedings charging damage rent for the over stay."

13. Admittedly, the applicants have not sought permission for retention of the accommodation at Abu Road. But they continued to occupy the accommodation at Abu Road for the complete period when he had been at Gandhi Dham and also on coming back to Abu Road and the accommodation is still in their occupation.

14. Before proceeding further in the matter, we would like to deal with the authorities cited on behalf of the applicants. The case of **N.C.Sharma** (supra), was relating to recovery of amount of penal rent from DCRG amount. The recovery was held to be invalid for the reason that the same was neither admitted nor obvious dues within

the meaning of Rule 323 of Railway Pension Rules, 1950. But such is not the case here, thus the said authority is of no help to the applicants. The facts of other case of **R.P. Mondal (supra)** were also distinct from the instant case. In that case the Estate Officer, determined the penal rent but the mode of realising the amount of same was not as per Sec. 14 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. But in the instant case complete proceedings have been taken as per the procedure laid down by the Railway Board. Hence, the said decision is also of no help to the cases of the applicants.

15. Instead of adjudicating the matter in detail, we find that the same can be cut short since the issue involved in the instant cases is squarely covered on all fours in a judgement of the coordinating Bench of the Tribunal at Calcutta in the case of **Narayan Chandra Roy and ors vs.Union of India through the Genberal Manager and ors** [1998 (2) SLJ. CAT 324]. Paras 8, 15, 24, 25 & 26 are relevant which reads as under:

> 8. We have heard the learned counsel for both the parties and have gone through the documents produced. We find that both the petitions are rather of very cryptic text containing also as pat of the pleadings, citations of large number of case laws, without clearly bringing out the ratio decided therein making the contentions somewhat disorganised and confusing. However, from the texts of the petitions and from the arguments of Mr. Chattterjee, the learned counsel for the petitioners in both the cases, we find that the impugned actions of the respondents had been assailed on more or less similar grounds, which along with the counter contentions of the respondents can be broadly categorised as follows:
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> 1. Since the petitioners continued to occupy the quarter at their respective old stations (Andal in case of petitioner Anarayan Ch. Ray in Sitarampur in case of petitioner B.D. Pal) their continued occupation of the same cannot be treated as unauthorised as the petitioners had, for many years even after their transfer, been charged with only normal rent by the respondents.
> 2. During the said period of occupation of the quarters the petitioners had not been paid any HRA by authorities. Therefore, their occupation of the quarter at the old station cannot be treated as unauthorised one.

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3. Since with the transfer orders from the old stations i.e. Andal or Sitarampur, as the case may be, the petitioners had not been formally told to vacate the quarter at the old station and as the allotment of quarter at the old station had not been formally cancelled by the competent authority, their continued occupation of the same cannot be treated as unauthorised one.
4. Recovery of any amount in excess of normal licence fee is illegal as the petitioners had not been given any prior notice.
5. Such recovery is also illegal as the respondents have not followed the statutory provisions of Public Premises (Eviction of Unauthorised occupants) Act (PP Act for short) and the attempt of the respondents to recovery penal or damage rent by virtue of departmental instructions/circulars is illegal.
6. The respondents cannot recover the amount as damage rate or damage rate of rent of penal rent as no such terminology is available in the statutory rules or in the PP Act.
7. it would be impermissible to justify the action of the respondents by relying on the judgement of this Tribunal in the case of Shankar vs. UOI & ors. 1994 (26) ATJ 278 since in other judgments by various Benches of this Tribunal held contrary view viz. in the case J.K. Chatterjee vs. UOI as reported in 1995 (1) ATJ 229.
8. The judgement in the case Shankar (supra) is the solitary judgement of this type which has to be treated as judgement in per incuriam.
9. On the other hand the judgement of the other Bench of the Tribunal in J.K. Chatterjee case(supra) is binding inasmuch as the same has been upheld by the Hon'ble Supreme Court while considering an SLP filed by the railway respondents in that case and the SLP has been dismissed.

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal जोधपुर न्यायपीठ जोधपुर का मोहर

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15. Mr. C. Samadder, the learned counsel for the respondents has stressed that all the aforesaid issued hve also been dealt with recently by the Full Bench of this Tribunal at Allahabad in the case Ram Poojan vs. UOI, 1996 (1) ATJ 40 AS PRONOUNCED ON 22.2. 1996. The Full Bench has settled all the issues rejecting the contentions of the petitioner therein which were similar to those raised by the present petitioners. In Ram Poojan case, the petitioner, a railway employee had been transferred from Allahabad to Mirzapur and was not allotted any quarter at the new station, he continued to occupy the railway quarter at Allahabad. While deciding the case, the Full Bench held inter alia as follows:

(a) If a Railway employee on transfer, retirement or otherwise, does not vacate the railway quarter even after the expiry of permissible period, it is not necessary to issue any specific order cancelling the allotment of accommodation and further retention of railway quarter would be unauthorised and penal rent/damage rent can be levied by the authorities.

(b) Such penal rent/damage rent can be levied according to the rates prescribed from time to time in the Railway Board's circulars.
(c) It would be open to the railway authorities to make such recovery by deducting the same from his salary and for a this it is not necessary to resort to PP Act which is only an alternative procedure.
(d) Railway Board's Circulars are the general or special orders permitted to be issued under para 1711 IREM. Such circulars/letters supplement the provisions of para 1711 IREM and do not supplant them.

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24. Under the circumstances, we are of the view that objections raised by the petitioners in both the cases are not tenable and they are liable to be quashed. However, we find that in O.A 1224/95, the petitioner, Narayan Ch. Roy, vacated the quarter at the old station whereas in the other case i.e. OA 444/96, the petitioner B.D. Pal has not yet vacated the quarter at his old station and he has continued to occupy the same. We further find that in OA 1224/95 although the petitioner was transferred in the year 1975, the penal rent was first deducted from him only in 1992 for his unauthorised occupation. We feel that if the respondents had been active in time in the past to charge whatsoever penal rent or damage rate to be levied on this petitioner, the overall liability of the petitioner Narayan Ch. Roy would not have been so big, the respondents should, therefore, consider simultaneously to take action against the erring officials for the failure to deduct penal rent/damage rent from him in the past. However, in view of the big amount involved, by way of humanitarian gesture, the respondents should, in our view, consider waiving the penal rent/damage rent in part or in full in terms of the provisions of para 1719 of IREM, vol. II 1990 Edn. And since the General Manager does not have the competence to remit an amount for more than 3 months under specific categories, respondent No. 1 i.e. the G.M. E.Rly. shall obtain appropriate orders about such remission/waiver from the Railway Board by making a self contained reference along with a copy of this order under advice to the petitioner of O.A.1224/95. Further to the extent the Railway Board decides to waive the penal rent/damages concerning that petitioner of OA 1224/95, the same amount shall be refunded to the petitioner, if already recovered. Otherwise, a formal communication about the final action taken shall

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be made by the respondents to the petitioner within a month of the final order of the Railway Board.

25. Similar consideration regarding remission/waiver may be extended by the respondents in respect of the other petitioner B.D. Pal (OA 444/96) after he first vacates the quarter at the old station and makes and appeal to the General Manager seeking such relief on compassionate grounds.

26. Both the petitions are disposed of in the light of our directions as at para 24 above."

16. The aforesaid decision contains two types of situation. In one case, the accommodation at the old station was vacated subsequently and in the other case the accommodation at the old station continued, whereas in the instant case, the applicants continued to occupy the accommodation. Before proceeding further one more point to be considered is that when some persons who also remained in similar situation i.e. posted out but did not vacate the accommodation at Abu Road and on their coming back to Abu Road, their accommodation has been regularised from the date they came back. We find that the applicants have not been able to furnish complete details and there is no pleading in this regard. As the complete material regarding the allotment and regularisation of the accommodation would be available with the respondents and the same can even now be considered at there end. We can only hope and trust that the applicants would be given similar treatment as has been done to others in similar situation i.e. enjoyed the regularisation of accommodation on coming back to Abu Road the applicants shall also be given similar treatment.

17. Since all the issues are covered in the afore said case of **Narayan Chandra Roy and others** (supra), we have no hesitation in following the same decision and applying the ratio to the instant cases subject to our above observation.

18. We dispose of the OA Nos 228/2003, 229/2003,230/2003 and 231/2003 as under:

(i)The respondents are directed to consider the regularisation of the Railway quarters held by them from the dates they have joined back in 2001 at Abu Road on transfer from Gandhi Dham, in case any such practice is in vigue or any accommodation has been so regularised in case of any other employees. In case the accommodation is regularised the normal rules for charging normal rent shall be applicable or otherwise the same shall also be dealt with as per para (ii) below.

(ii) The respondents are directed to regulate the relief as per para 24 and 25 of **Narayan Chandra Roy and others** case (Supra – reproduced in para 15 above.

(iii) The order shall be complied with within a period of four months from the date of receipt of a copy of this order.

(iv) No Costs.

Sd/-
(M.K. MISRA)
MEMBER(A)

Sd/-
(J.K. KAUSHIK)
MEMBER(J)

Jsv.

Part II and III destroyed in my presence on 24/10/13 under the supervision of Section Officer (J) as per order dated 18/10/13
Section officer (Record) 24.10.13

प्रमाणित सही प्रतिलिपि
अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

II/1

D-433/03
08-10-03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

ADDITIONAL BENCH AT JODHPUR

ORIGINAL APPLICATION NO.:- 229 /2003.

APPLICANT:-	V/s	RESPONDENTS :-
Mukhtiyar Hussain Gouri		Union of India & ors.

DATE OF EVENTS

DATE	ANNEXURE	PARTICULARS
08/10.7.2003.	A/1	Letter vide which a huge amount is proposed to be recovered / deducted from pay of applicants.
01.10.2003	A/2	Recovery letter dt. 1.10.2003 stating therein that no representation had been made by applicant.
14.11.1997	A/3	The 4th respondent issued the letter/order-dated 14.11.1997 for immediate compliance. And he was relived on same day.
25.11.1997	A/4	The 4th respondent issued order-dated 25.11.1997 by which the earlier order dated 13.11.1997/14.11.1997 Annexure-A/3 was kept in abeyance.
26.05.2000	A/5	That another order of promotion to the post of Shunter was issued.
16.01.2001	A/6	Applicant further promoted to the post of Goods Driver.
25.01.2001	A/7	The applicant was transferred from Gandhi Dham to Abu Road.

06.06.2001	A/8	The applicant submitted a representation on dated 06.06.2001 to the 5th respondent.
22.03.2002	A/9	Explanation was called from applicant.
01.04.2002	A/10	The representation of applicant.
05.04.2002	A/11	Recovery letter.
12.04.2002	A/12	Recovery letter.
10.11.1998	A/13	Representations by applicant.
29.06.2000	A/14	Representations by applicant.
29.04.2000	A/15	Representations by applicant.
19.07.2003	A/16	Representations by applicant.

Dated :

Place : Jodhpur

(J.K. Mishra / B.K. Kayamkhani) Advocates
Counsels for the Applicant

Date of Presentation 8-10-03
on Receipt by Post By hand
Presented by Shri B. Khan, Adv.
Office to report on Today

08/10/03
REGISTRAR
C.A.T. JODHPUR