

I/8

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 29/2003

DATE OF DECISION: 27.08.2003

1. Laxmi Narayan s/o Shri Mool Chand, aged about 47 years, resident of Q.No. L/54/B Loco Colony, Hanumangarh.
2. Fallouddin s/o Badruddin aged about 49 years, resident of Q.No. 88 A, Railway Medical Colony, Hanumangarh Junction.
3. Ved Prakash s/o Bakhatawar Ram, aged about 52 years, resident of Q. No. 138 Double Story, Medical Colony, Hanumangarh.
4. Bhikham Chand S/o Sh. Ram Chandra, aged about 48 years, R/o Arjun Colony, H.No. 776, Street No. 3, Srigananagar.

Official Address: applicant number 1,3,4 are working on the post of Khalasi and number 2 is working on the post of Fitter, under Senior Electrical Engineer, Sri Ganganagar Railway Station, North-West Railway, Sri Ganganagar.

....APPLICANTS

V E R S U S

1. Union of India through the General Manager, North-West Railway, Jaipur.
2. The Divisional Railway Manager, North-West Railway, Bikaner Division, Bikaner
3. The Divisional Personnel Officer, North-West Railway, Bikaner Division, Bikaner
4. The Divisional Electrical Engineer, North-West Railway, Bikaner Division, Bikaner.
5. The Sr. Divisional Audit Officer, North-West Railway, Bikaner.

.....RESPONDENTS.

Mr. K.S. Gill

: Counsel for the applicants.

Mr. Manoj Bhandari

: Counsel for the respondents.

CORAM:

THE HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

I/P

ORDER**BY THE COURT:**

Shri Laxmi Narayan and three others have filed this Original Application assailing the order dated 14/18.12.01 (Annexure A/1).

2. The brief facts of the case necessary for adjudication of the controversy involved are that the applicants while working on the post of Khalasi and Fitter at Hanumangarh Railway Station respectively in Loco Shed, were declared surplus as a result of closure of Loco Shed. All of them were redeployed on their present post in the year 1994 and were posted at Sri Gangangar Railway Station. They were allotted/holding the Railway accommodation at Hanumangarh and were allowed to reside in the same. Normal rent was being charged from them. Certain communications have been referred to in the body of the pleadings. It has also been averred that there is acute shortage of the Govt. Quarters at Sri Gangangar and none of the applicants could be allotted with the Govt. accommodation at the new place of the posting i.e. Sri Ganganagar. Subsequently, an order has been passed on 14/18.12.2001 (Annexure A/1) vide which it was informed by the Senior Divisional Audit Officer to the concerned authorities that the accommodation occupied by the applicants was unauthorized and the damage rent was required to be charged from their salaries.
3. The Original Application has been filed on number of grounds. A basic ground which has been taken is that the Audit Officer is not a competent authority to issue the recovery orders and no recovery can be started on the basis of such audit objections. It has also been averred that there has been violation of principle of natural justice as well as the action of the respondents is hit by the doctrine of estoppel.
4. The respondents have filed a detailed reply to the Original Application and have contested the case. It has been submitted that all action has been initiated as per the Railway

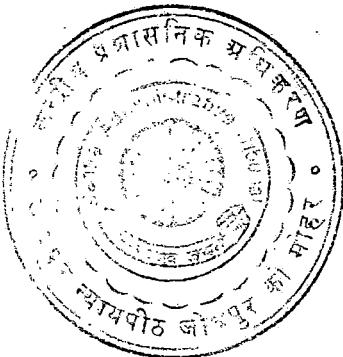


Dn

Board Circular dated 17.08.2001 (Annexure R/1) wherein it has been provided that one can be allowed to retain the Govt. accommodation in case of redeployment of surplus staff, on the old place, for a period of two years on payment of normal rent. The period of two years shall be counted from the date of transfer order of the employee. Other facts and grounds have been denied. It has also been submitted that the stay was granted by the General Manager but the order of General Manager cannot give any right to the applicants since he had no such power; the order being inconsistence to the circular of the Railway Board.

5. I have heard Mr. K.S. Gill the learned counsel for the applicant as well as Mr. Manoj Bhandari the leaned counsel for the respondents at a considerable length and have carefully perused the records of this case. Mr. K.S. Gill, the learned counsel for the applicant has reiterated the facts and grounds raised in the Original Application and has submitted that the Senior Audit Officer who has passed the impugned order was not competent authority to pass such order and the very impugned order is void ab initio and deserves to be quashed. It has also been submitted that the normal rent was being charged from applicants and there has been absolutely no communication to them in the matter and it is all of sudden that the impugned order has been passed. One cannot be taken up with surprise in as much as at least the principle of natural justice ought to have been followed. It is also submitted that certain recoveries towards penal/damage rent have already been made from the salary of the applicants.
6. On the contrary, Mr. Manoj Bhandari, the learned counsel for the respondents has argued that the Original Application is badly hit by the law of limitation as per Section 21 of the Administrative Tribunals Act in as much as the impugned order dated 14/18.12.2001 and the Original Application has been filed on 28.01.2003. The O.A. have not been filed by 18.12.2002 and thus there is a delay of more than one month in filing the O.A. He has next contended that the Railway Board Circular dated 17.08.2001 was issued and the same is

D



not under challenge. The complete action is being taken in pursuance of the said circular. The circular provides that the normal rent would be charged only for a period of two years from the date of issue of transfer order. It has also been argued that Annexure A/1 is only advice it has been issued by the Senior Audit Officer and the competent authority has not yet taken a final decision in the matter and therefore the O.A. is premature. Thus there is no illegality in the action of the respondents and the O.A. deserves to be dismissed.

7. Before advertiring the facts of this case, it would be necessary to deal with the preliminary issue regarding the objection of limitation. The matter related to the certain recoveries and the charging of the penal/damage rent and the recovery is to be done every month which inescapably gives rise to continuous cause of action, thus, there is no delay in filing of the O.A. as such preliminary objection stands repelled.



Now advertiring the merits of this case, the learned counsel for the respondents has fairly submitted that Annexure A/1 which has been issued by Senior Divisional Audit Officer, is not a final order issued by the competent authority and it is only a part of the audit note. But before the competent authority was to take a final decision in the matter, the applicant has invoked the jurisdiction of this Tribunal and filed the OA. Thus the very Original Application is premature. I find that the serious objection raised on behalf of the learned counsel for the applicant that the Senior Divisional Audit Officer was not competent to pass this order is met by the aforesaid submissions of the learned counsel for the respondents. Since the final order has not been passed in the matter, there remains nothing for adjudication before this Tribunal. However, as regards any recovery/deductions towards the penal/damage rent in pursuance with Annexure A/1, he has shown his ignorance but has submitted that such amount may be ordered to be refunded to the applicants.

9. In the premises, I am of the firm opinion that the very Original Application is premature and the same stands disposed of accordingly without going on merits. It shall be scarcely necessary to mention here that if any recovery towards penal/damage rent has been made in pursuance with the Annexure A/1 dated 14/18.12.2001 from the salary of the applicants, the same shall be refunded forthwith to the applicant. No order as to costs.

JK KAUSHIK
(J.K. KAUSHIK)
Judl. Member

Kumawat

Part II and III destroyed
in my presence on 26.3.09
under the supervision of
section officer () as per
order dated 13.12.09

Section officer (Record)

R/C
K. S. S. U.
15/9/03