

Central Administrative Tribunal
Jodhpur Bench, Jodhpur

...

Date of Order : 17-02-2003

1.O.A. No. 98/2002
2.O.A. No. 99/2002
3.O.A. No. 100/2002
4.O.A. No. 101/2002

...

Mukhtiyar Hussain Gauri S/o Shri Mohamad Hussan Gauri, aged 47 years resident of Railway Quarter No. L/53/B Railway Colony, Dobigath, Abu Road, at present employed on the post of Diesel Goods Driver Under Loco Foreman, Abu Road, W/Rly.

.....Applicant in OA 98/2002

Bhim Singh S/o Shri Punna Bhai aged about 45 years, resident of Railway Quarter No. L/301/A Railway Colony, Abu Road, at present employed on the post of Diesel Goods Driver Under Loco Foreman, Abu Road, W/Rly.

.....Applicant in OA 99/2002

I Baldev Singh S/o Shri Punja Ji aged 40 years, resident of Railway Quarter No. L/82/A Railway Colony, Abu Road, at present employed on the post of Diesel Goods Driver under Loco Foreman, Abu Road; W/Rly.

.....Applicant in OA 100/2002

Ram Lal S/o Shri Hira Lal aged about 51 years, resident of Railway Quarter No. L/78/A Railway Colony, Abu Road, at present employed on the post of Diesel Goods Driver, Under Loco Foreman, Abu Road, W/Rly.

.....Applicant in OA 101/2002

versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.

3. Divisional Personnel Officer,
Western Railway, Ajmer Division, Ajmer.

4. Loco Foreman, Abu Road,
Western Railway, Abu Road.

5. Senior Divisional Mechanical Engineer,
Western Railway, Ajmer Division, Abu Road.

..... Respondents in all
the OAs.

.....

CORAM :

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

.....

Mr. B. Khan, Counsel for the applicants.
Mr. S. S. Vyas, Counsel for the respondents.

.....

ORDER

BY THE COURT :

Serv Shri Mukhtiyar Hussain Gauri, Bhim Singh, I
Baldev Singh and Ram Lal, have filed this O.A. under sec.
19 of the Administrative Tribunals Act, 1985. Since the
facts in issue and the relief(s) prayed for by all the
applicants are common, hence, I am disposing of all of
them by this common order.

2. The applicants have prayed that the order dated
12.4.2002 and 5.4.2002 at Annexures A/1 and A/2 ordering
charging of Damage Rent from them, may be declared illegal
and be quashed and the respondents may be directed to

.3.

regularise the ~~existing~~ accommodation/quarter prescribed for them and allow all consequential benefits including refund of damage rent, if any, made after adjusting the normal rent.

3. The material facts necessary for deciding the controversy are that applicants while working on the post of Diesel Assistant at Abu Road, were ordered to be promoted and transferred to Gandhidham on the posts of Goods Driver on ad hoc basis vide order dated 13.11.1997. The respondents issued an order dated 14.11.1997 for immediate compliance of the same and all the applicants were relieved to join at Gandhidham on 14.11.1997 itself. Subsequently, vide an order dated 25.11.1997, the aforesaid order dated 13.11.1997, was kept in abeyance.



4. The further case of the applicants is that since the very order was kept in abeyance, their request to send them back at Abu Road was ^{wrongly} denied. Thereafter, applicants were promoted to the post of Shunter vide order dated 26.5.2000. They were further promoted as Goods Driver by an order dated 16.1.2001 and were continued to work at Gandhidham. Subsequently, applicant No. 1 was transferred from Gandhidham to Abu Road on 25th January, 2001, however, rest of the applicants were transferred on 11th May 2001 and 1st of June, 2001 (applicant No.4). After joining at Abu Road, applicants submitted their individual representation on 6.6.2001 and 10.7.2001 to the respondent No.5 for regularising their respective quarter allotted at Abu Road. Instead of taking a decision on such representations, the subordinate authority called an explanation from them

with an annotation that the information should be in the knowledge of Chairman of Housing Committee. The further representation made by the applicants has also been turned down without passing a speaking order and rather, an order for making a deduction of Rs. 2,000/- from their pay of April month, has been passed. It is the contention of the applicants that the order does not contain any reason whatsoever.

5. It is the further case of the applicants that the persons junior to them, who were also transferred along with them out of Abu Road, have been continued at Abu Road since the order was kept in abeyance, however, no penal rent is being charged from them. The services of applicants were required at Gandhidham in the exigencies of administration and they could not be relieved from Gandhidham. They have been penalised for none of their fault or negligence but, for immediate compliance of the order, their quarter has not yet been regularised.



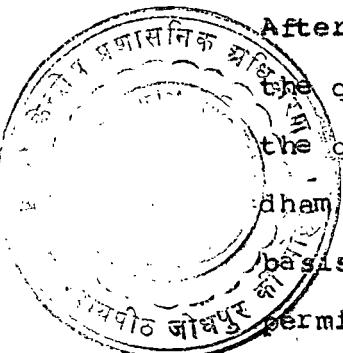
6. The O.A. has been filed on multiple grounds which I do not feel necessary to mention for the reason that the matters are being remanded to the authorities as mentioned in this order in the succeeding paras.

7. The respondents have contested the matters and have filed separate replies in the O.As. The defence set-out in the reply is that applicants have been holding the Railway Quarter at Abu Road un-authorisedly without

.5.

without due permission since November 1997 and the respondents are entitled to recover the damage rent as per rules in vogue. The applicants have not mentioned the names of the persons who are said to be junior to them. They were promoted on ad hoc basis against the available vacancies. The accommodation at Abu Road could be permitted only for two months at normal rent on request of an employee and the period of retention of a quarter could be extended further for six months on special license fee and thereafter, extension could be allowed on an educational ground or due to sickness.

8. The applicants have been further promoted on regular basis as Goods Driver vide an order dated 16.1.2001.


After receiving promotions, applicants' did not vacate the quarter and have been illegally and un-lawfully holding the quarter. The applicants got two promotions at Gandhidham and came back to Abu Road on their own request on the basis of name noting policy and they did not pray for any permission to retain such quarters at the transferred place else their request for regularisation of the quarter at the old station could be considered as per rules. But, in the cases in hand, about 42 months have been passed, thus, they are required to pay penal rent. The representation made by the applicants has been considered on the basis of facts and circumstances. The Original Applications, therefore, deserves to be dismissed.

9. A rejoinder to reply has also been filed on behalf of the applicants more or less reiterating the facts and grounds raised in the respective O.A. It has been submitted

that the Circular of the Railway Board dated 19.1.1993 applies to the regular transfers and not to the instant cases.

10. I have heard the learned counsel for the parties and carefully perused the records and pleadings of the case.

11. The learned counsel for the applicants has laid stress and has submitted that the impugned order Annex A/1 is a non speaking order and that too has not been passed by a competent authority. A perusal of this order reveals that it has been passed by the Loco Foreman and indicated that it is as per the orders of the Divisional Railway Manager, Ajmer. On the other hand, the representation was required to be addressed to the Chairman, Housing Committee, as per communication dated 22.3.2002 (Annex A/9) and the representations were so addressed. His further contention is that the competent authority has not applied its mind.

12. On the contrary, the learned counsel for respondents has strenuously submitted that the representation has been considered even by a much higher authority who is the overall In-charge of the Division and that is the Divisional Railway Manager, thus, there is no infirmity in passing the impugned order in question.

13. I have considered the submissions of learned counsel for both the parties. A perusal of Annex A/1 would ex facie reveals that it is deficient of the requisite details and also does not indicate whether all the points

.7.

raised in the representation have been considered in as much as it does not show as to how much is the penal rent or damage rent and in how many instalments the same is to be recovered besides the other multiple contentions raised in the representations. As regards the competence of the authority to decide the matter, it is true that the Divisional Railway Manager is a higher authority than the one to whom the representation was addressed, but, the authority who is competent one is required to examine the matter and pass an appropriate order. The impugned order does not disclose that it is the decision of the Divisional Railway Manager and is based on the comments of respondent No. 5. The order is silent on this aspect. In this view of the matter, the interest of justice would be met if the matter is remanded to the competent authority for taking a decision in the matter afresh by examining all the contentions raised in the representation made by the applicants.

14. In the result, the Original Applications are allowed and the impugned order at Annex. A/1 dated 12.4.2002 and Annex.A/2 dated 5.4.2002, are quashed. The Respondent No. 5 is directed to examine the representation of the applicants afresh and take an appropriate decision in accordance with law and dispose of the matters by passing a speaking order which may be communicated to the applicants.

The outcome of the decision shall abide charging of damage rent and till the decision is taken, no damage rent shall be deducted from the salary of the applicants. The representation of the applicants shall be decided within four

months from the date of receipt of a certified copy of this order. No orders as to costs.

Malawat
19/02/03
कर्तव्य प्रभारी कर्तव्य प्रभारी
कर्तव्य प्रभारी कर्तव्य प्रभारी

Sd/-
(J.K.Kaushik)
Member (J)

R/C copy
as 19/2/63

R/C
receipt
25/2/63

Part II and III destroyed
in my presence on 14-5-68
under the supervision of
section officer () as per
order dated 5/2/68

N.G.D.S.
Section officer (Record)