

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 110/88

XXXXXX Application No.

DATE OF DECISION 21.12.1993

Shri D.R.Choudhari & Ors. Petitioner

Shri S.B.Kasar Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri J.G.Sawant Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.R.Kolhatkar, Member (A)

The Hon'ble ~~Smt.~~ Smt. Lakshmi Swaminathan, Member (J)

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 NO the Tribunal?

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

NS/

(12)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 110/88

Shri Dnyandeo Raoji Choudhari & Ors. ... Applicants

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (A) Shri M.R.Kolhatkar
Hon'ble Member (J) Smt.Lakshmi Swaminathan

Appearance

Shri S.B.Kasar
Advocate
for the Applicant

Shri J.G.Sawant
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 21.12.1993

(PER: M.R.Kolhatkar, Member (A)

This is a representative application from commercial staff of Central Railway, Bhusaval under Section 19 of the Administrative Tribunals Act.

2. The facts are as below - since 1979, when MSEB siding at Deepnagar was established, commercial staff used to commute between Bhusaval & Deepnagar by bus and was held entitled to Daily allowance and HRA as for Bhusaval which was then a 'C' class town. They were not initially held entitled to conveyance allowance on the ground that the distance between Bhusaval & Deepnagar was reckoned on "as the crow flies" basis at 7 k.m. but subsequently, on a certificate from State Govt. that the distance was 8.5 k.m. i.e. in excess of 8 k.m. the conveyance allowance also began to be paid. Payment of these allowances were stopped from February 1987 against which the commercial staff represented.

(B)

It appears that operating staff was not paid these allowances and the DRM considered that payments were made through error as the Headquarter of staff was Deepnagar and not Bhusaval. The staff made representations on 30.4.1987 and 2.6.1987 and they were formally informed about their Headquarter being Deepnagar on 1.9.1987. The position was discussed in a review meeting with Union on 27.11.1987 and formal communication was issued on 16.12.1987.

3. The reliefs sought by the applicant are as below :-

- "(1) It be declared that the impugned letter No. NSL/P/C/TA/Bills/MSEB Sdg. BSL dt. 16.12.87 issued by Senior Divl. Personnel Officer, C.Rly., Bhusaval, to Station Supdt., Bhusaval, is illegal, unlawful, void, vindictive, arbitrary, malicious and capricious and be quashed.
- (2) It be declared that the applicants are entitled to :-
 - (1) Daily Conveyance Allowance.
 - (2) Daily Travelling Allowance.
 - (3) House Rent Allowance.
- (3) That the respondents be ordered to pay the applicants the above allowances from the month of February, 1987, and continue to pay the allowance till they are working in the M.S.E.B. Siding, Bhusaval.
- (4) That the cost of this application be paid to the applicants by the respondents.
- (5) Any other reliefs the Honourable Tribunal deem just, equitable and legal be ordered in favour of the applicants."

4. The main contention of the applicants is that the Headquarters of the staff in question is Bhusaval Railway Station and not Deepnagar MSEB Siding. They rely on the authority of the Indian Railway Establishment Code Rule 234 (b) which reads as below :-

- "(b) The headquarters of any other railway servant are either the station which has been declared to be his headquarters by the authority competent to prescribe his headquarters for the purpose of travelling allowance, or in the absence of such declaration, the station where the records of his office are kept."

5. The learned advocate for the respondents has argued that the Station referred to in Rule 234 of IREC does not mean a "Railway Station" but it means a place of duty which has been identified as the Headquarter of a Railway servant. On a plain reading of Rule 234 we do not see how the Headquarters of a railway servant can only be a railway station and not "any station" in the sense of a place. In particular the term Station in Rule 234 cannot mean Railway Station alone. Shri Kasar next argued that alternatively it should be considered that Headquarter should be the place where the record of the office is kept as provided in Rule 234 (b). It is not denied that no record other than muster is kept at railway siding and that all other record like pay and leave record is kept at Bhusaval. In our view, however, this point regarding headquarters being dependent with reference to the place where the records are kept comes into play only in the absence of a station being declared as headquarters by a competent authority. It has not been contended that the head of the department or the Divisional Railway Manager, Bhusaval is such a competent authority. Our attention has also been invited to Rule 1623 of the Indian Railway Establishment Code which reads as follows :-

" 1623. The Head of Departments may define the limits of the sphere of duty of a railway servant."

In our view therefore the Divisional Railway Manager is competent to declare any station meaning place as the Headquarters of the Commercial staff working under his jurisdiction.

6. It has next been contended by the Advocate for the applicant by reference to a posting order dated 30.9.1982 (P.11) that the station of posting is shown as "MSEB Siding Bhusaval" & not Deep Nagar and hence it should be held that the Headquarters should be taken to be Bhusaval rather than Deepnagar. It is not disputed that MSEB Siding in fact is located at Deepnagar which is an unclassified township. We, therefore, do not find any substance in this contention.

7. It has been contended by the applicants that the various allowances were being paid to the employees in question from 1980 to 1987 and a sudden change brought about has caused hardship to the railway employees and that railway department has not taken any action against the staff who has made such wrong payment over a long period. In our view the basic question to consider is whether the competent authority has a power to declare a particular station or place as Headquarter and whether the same has been exercised in this particular case. In our view the power of the railway administration to declare a station or place as Headquarters also comprises the power to make changes and the power to correct past mistake and the action to clarify that staff with MSEB Siding ~~at~~ Deepnagar as the Headquarter were not entitled to the various allowances under rules, in our view, is not illegal.

8. It is contended that the TA/DA etc. paid to commercial staff is a charge on MSEB and hence the Railway Administration is not put to any financial burden. This argument cannot be accepted because both MSEB and Railways are public authorities and payment of TA/DA must be governed by rules, whoever pays the same.

9. The applicant has invited our attention to the letter from Commercial Department dated 23.3.1987 addressed to operational Department on the subject of railway quarters provided at Deepnagar for commercial staff with a request for asking the operational staff to vacate the quarters in favour of commercial staff. This inter-departmental correspondence, in our view, does not help the applicants. In fact, this could mean acquiescence by the applicants in the position that Deepnagar is their headquarters and they are entitled to have residential quarters at that place which they are not getting. The position is not disputed by the advocate for the respondents that to the extent the applicants are not provided railway quarters at their place of duty or Headquarter station they are entitled to NRA and if they apply, therefore, they will be paid the same as per applicable rules.

10. We are, however, constrained to observe that payments which were made for 7 years were suddenly stopped from February, 1987. A proper notice could be said to have been given only by the communication dated 16.12.1987 which refers to the discussion in review meeting dated 27.11.1987 with Secretary, CRMS Main Branch. Benefits earlier given cannot be stopped without proper intimation. Therefore, commercial staff should not be deprived of allowances till the period ending December, 1987. We, therefore, dispose of the application by passing following orders.

ORDER

Application is rejected as not being sustainable. However, Railway Administration is directed to make payment of the allowances to the commercial staff for the period February, 1987 to December, 1987. In the circumstances, we are not inclined to allow any interest. There should also be no recovery of payments made in the past. No order as to costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)