

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 14-05-04

OA 111/2003

K.M.Mahavar, Loco Foreman, r/o near Bharosa Soap Factory, Pooja Marg,
Dholabhata, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, North West Railway, Jaipur.
2. Divisional Rly Manager, North West Railway, Ajmer Division, Ajmer.
3. Sr.Divisional Personnel Officer, North West Railway, Ajmer Division, Ajmer.

... Respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant

... Mr.S.R.Chaurasia

For the Respondents

... Mr.S.S.Hasan

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985 has been filed against orders to stop House Rent Allowance (HRA) and recovery thereof because applicant has not occupied railway quarter ear-marked for his post namely Loco Foreman. The exact relief clause, as amended in course of the deliberation of this OA, reads as under :

- "a) It may kindly be declared that the so called earmarked quarter L/86 after its allotment to the ineligible employees and not allotted to the holder of the post of Loco Foreman when demanded by him does remain earmarked quarter now.
- b) That the respondents be directed to pay Rs.8965/- towards House Rent Allowance from Dec.2002 to April 2003 and admissible HRA every month thereafter.
- c) That the respondents are directed to stop initiation of disciplinary proceedings against the applicant by setting aside letter dated 10.2.2003 (Ann.A/3)."

2. Brief facts of the case, as mentioned in the application, are that applicant was posted at Ajmer in different capacities and was in occupation of railway quarter No.L/26 since 27.3.90. That railway quarter No.L/86 is earmarked for residence of Loco Foreman Ajmer and although applicant was posted as Loco Foreman from 20.7.96, he was not

asked to occupy this earmarked quarter and allowed to continue to live in quarter No.L/26. The said earmarked quarter was from time to time allowed to be occupied by persons not posted as Loco Foreman and the concept of earmarked quarter in this case has been diluted by the respondents themselves. From 1.1.2001 the applicant was posted as Loco Foreman vide order dated 18.12.2000 (Ann.A/10) but he was not allowed to occupy the earmarked quarter L/86, in which one Shri S.P.Sharma, Chief Loco Inspector (Fuel), Ajmer, was allowed to stay from 17.3.99 to 21.5.2001, and he vacated the same when he proceeded on voluntary retirement. However, vide letter dated 26.9.2001 (Ann.A/11) applicant was advised that quarter L/86 earmarked for his post is vacant since 21.5.2001 and that he should shift to the same by vacating quarter L/26. Due to the fact that he lived continuously in quarter L/26 for 13 years, he requested by his application dated 16.11.2001 (Ann.A/12) that he may be allowed to continue to live in quarter L/26, as per policy of the Railway under which if a railway employee continues to occupy some quarter for long time despite his posting in different capacities at the same station, he should not be compelled to shift another quarter. It is further stated that no order to the applicant allotting quarter L/86 nor cancelling allotment of quarter L/26 were issued by the respondents. That he entered into lengthy correspondence with the respondents over this subject but by letters dated 12.12.2001 and 27.12.2001 (Ann.A/14 & A/15) the respondents directed that applicant should have occupied earmarked quarter L/86 on assumption of charge of Loco Foreman, but even now he should occupy the same, failing which recovery of HRA for quarter L/86 from the date of assumption will be made and occupation of quarter L/26 will be treated as unauthorised. Applicant wrote many letters and in his letter dated 14.3.2002 (Ann.A/19), addressed to DRM Ajmer, requested that after examining the background in which many unauthorised persons have stayed in the earmarked quarter L/86 and the same has thus ceased to be earmarked, he may not be pressed to vacate quarter L/26 and occupy the earmarked quarter. In the meantime, on 27.6.2002, applicant

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vacated quarter L/26 and shifted to his private house recently bought by him for the purchase of which necessary sanction was obtained from the respondents and for which applicant was allowed HRA from June, 2002 as per rules. However, the respondents vide letter dated 23.9.2002 (Ann.A/1) arbitrarily ordered that HRA for the month of September, 2002 and onwards may not be paid to the applicant. Applicant represented vide letter dated 1.10.2002 (Ann.A/22) against this order. However, the respondents issued letter dated 28.11.2002 (Ann.A/23) threatening that if he does not occupy the earmarked quarter, HRA will not be paid to him and the HRA already paid will be recovered from his pay. The applicant protested against this vide letter dated 5.12.2002 (Ann.A/24) but of no avail. On the contrary, the respondents vide note dated 2.1.2003 (Ann.A/2) stopped the payment of HRA amounting to Rs.1793/- p.m. from salary of December, 2002. They also issued letter dated 10.2.2003 (Ann.A/3) ordering that if he does not occupy quarter L/86 within 15 days, disciplinary action will be taken against him. Hence this OA.

3. In the grounds it is mentioned that rules are not being applied uniformly by respondents in the matter of insistence of officers living in earmarked quarters as also unauthorised occupation of earmarked quarters has been allowed from time to time. In these circumstances, quarter L/86 ceases to be earmarked. Having given permission to purchase a private house and having permitted HRA during June, 2002 to November, 2002, during which period the applicant lived in his private house, they cannot legally stop payment of HRA from December, 2002. Therefore, the action of respondents is illegal. Also recovery of payment of HRA from salary is violative of principles of natural justice. Due to these reasons their action is against Articles 14 and 16 of the Constitution of India.

4. The respondents have submitted a detailed reply and asserted that Annexures A/1, A/2 & A/3 were issued because applicant was posted as Loco

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Foreman for which he is bound to stay in earmarked quarter. For this he was asked vide order dated 26.9.2001 (Ann.A/11), as the same had fallen vacant w.e.f. 21.5.2001, but the applicant did not comply. He was further intimated vide orders dated 12.12.2001 (Ann.A/14), 27.2.2001 (Ann.A/15) and 28.11.2002 (Ann.A/23) for occupying the earmarked quarter, but he did not comply. Then the respondents issued letter dated 2.1.2003 (Ann.A/2), by which HRA has been deducted from the salary of the applicant w.e.f. December, 2002 and onwards. While reacting to the reply to facts, it is reiterated that quarter L/86 is earmarked for the residence of holder of the post of Loco Foreman. That applicant was living in quarter L/26 when he was working as Loco Inspector but after his posting as Loco Foreman he is entitled and required to occupy earmarked quarter L/86, for which he was repeatedly informed. The allegation of permitting unauthorised occupation of earmarked quarter L/86 is stoutly denied and it is stated that when the earlier incumbent of the post of Loco Foreman vacated the earmarked quarter, applicant was rightly informed to occupy the same. It was in compliance of rule contained in Para 1714 of IREM Vol.II that the respondents have deducted HRA from the salary of the applicant from December, 2002 because he did not occupy the earmarked quarter. That Shri S.P.Sharma's occupation of earmarked quarter was not violative of rules because he was looking after the work of Loco Foreman and when he vacated the quarter the applicant was informed to come and occupy the same vide letter dated 26.9.2001 (Ann.A/11). That there is no such rule under which earmarked quarter gets de-earmarked just because person who is supposed to occupy it does not live in it for some time and for this reason the question of de-earmarking quarter L/86 does not arise. There is also no rule under which a person can continue to live in private house without permission and draw HRA even though a quarter is earmarked for the post on which he is working. Therefore, stoppage of HRA is justified. Even permitting him HRA from September to December, 2002 was not as per rules. While replying to the grounds, respondents have pleaded that there is no

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illegality or arbitrariness in their action of asking the applicant to move to the earmarked quarter and that as per Para 1714 of IREM Vol.II deduction and stoppage of HRA have been ordered. In view of these, the OA deserves to be dismissed.

5. Parties availed the opportunity of filing rejoinder and reply thereto. The applicant stuck to his grounds, denying the pleadings of the respondents in general and parawise particularly, while asserting that the necessity of staying in earmarked quarter is insisted upon only in relation to particular cases that too when it suits the respondents, no complaints of inefficiency or failure to discharge duties properly even while living in unearmarked or private house can be cited in the case of the applicant and that the quarter meant for Loco Foreman should be de-earmarked and no departmental inquiry should be initiated against the applicant. Also that recovery of HRA already paid is ultra vires of rules and natural justice. In a brief reply to rejoinder, the respondents have re-asserted their pleadings in the reply and have quoted rules to re-affirm their stand.

6. Parties were heard at length. There was no disagreement over the facts but learned counsel for the applicant insisted that in view of following circumstances insistence on his moving to earmarked quarter is wrong; firstly, there is rule and tradition that a person who is living in a particular quarter for many years should not be moved out even to earmarked quarter to save inconvenience to him and members of his family, specially when he is able to cope with the rigour of his job without inviting any complaint from superiors or public as also when the private accommodation is purchased with the permission of the competent authority. Secondly, this earmarked quarter can hardly be considered as earmarked when a large number of officers other than those posted as Loco Foreman have occupied it for long spells and, therefore, the same should be de-earmarked for this reason alone. Thirdly, initiating recovery of

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HRA and threatening departmental action for not moving to earmarked quarter are pressure tactics and against norms of natural justice which the respondents are not supposed exercise against their employees. Lastly, the recovery of HRA from September to December, the period when he lived in his private house in the capacity of Loco Foreman, is wrong because it has been given by the respondents after application of relevant rules and not due to any misrepresentation by the applicant.

7. On the other hand, the learned counsel for the respondents argued that certain posts have earmarked quarters attached to them because of nature of duties and by insisting to not stay in such a quarter inspite of repeated orders, the applicant is attracting implications of disobedience under Conduct Rules, due to which respondents are justified in telling him that if he did not comply the orders, departmental action will be initiated against him. To support this, he drew our attention to a decision of coordinate Bench in OA 2684/93, Liaquat Ali & Ors. v. Union of India & Ors., (1995) 31 ATC (FB) 544. He clarified that earlier occupants of the earmarked quarter were discharging duties of Loco Foreman and the department ordered the applicant to move to the earmarked quarter only when he was posted as Loco Foreman. The HRA granted to him was by mistake, which the respondents are justified in correcting. Also that, stoppage of HRA and recovery thereof was ordered after giving full opportunity to explain, due to which allegation of violation of natural justice is not justified. The permission to purchase private house has no relevance in the matter. There was some argument about the dates from which recovery of HRA could be ordered and it was conceded by the learned counsel for the respondents that it should be from September, 2002 onwards, when applicant was first asked to move to the earmarked quarter, even though the same became vacant in May, 2002. There was no dispute or discussion over the Licence Fee. Learned counsel for the respondents also justified recovery of Licence Fee of Quarter L/86 during the period applicant defied orders for moving into the earmarked quarter. It was

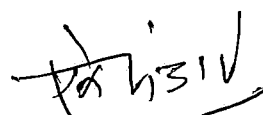
concluded that in view of these facts the applicant is not justified in making prayer as per the relief clause and the OA deserves to be dismissed with costs.

8. After giving careful consideration to the pleadings, we feel that the action of the respondents in insisting on the applicant moving to the earmarked quarter attached to the post of Loco Foreman from September, 2002 onwards is perfectly legal. In this connection, we would like to quote the principle evolved in decision of the coordinate Bench in case of Liaquat Ali (supra), the relevant portion of which reads as under :

"It is the interest of the administration and not the interest of the employee. Certain employees work on sensitive posts. Their services may be required at any hour of the day or the night. It is in the interest of the railway administration that such employees reside near to the place of work. Proximity to the place of work serves not only the interest of the Railway Administration but also of the consumers of the railway services namely the public. In other words, in allotment of railway quarters to the appropriate persons, public interest is also involved. Public interest will be better served if those working on sensitive posts stay near to their place of work and such railway servants can better be appreciated by the railway administration than by courts or tribunals. It is, therefore, in the public interest that allotment of railway quarter should remain in the hands of the Railway authorities and it should not be usurped by the Court or Tribunals."


In view of this, we would not like to interfere in the matter of de-earmarking of quarter L/86. In these circumstances, the respondents are justified in seeking compliance of orders that applicant should move to the earmarked quarter and non-compliance of this order rightly attracts the provisions of Conduct Rules. Therefore, their warning to applicant that non-compliance of orders would attract departmental action is justified. The respondents are also justified in recovering HRA which was paid by mistake from September, 2002 onwards because this action is covered by the extant rules contained in Para 1714 of IREM Vol.II.

9. In view of the above, the OA is dismissed with no order as to costs.



(A.K.BHANDARI)

MEMBER (A)



(M.L.CHAUHAN)

MEMBER (J)