

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 03.09.2013

OA No. 252/2012 with MA No. 259/2013

Mr. Anupam Agarwal, counsel for applicant.
Mr. Amit Mathur, proxy counsel for
Mr. Kapil Mathur, counsel for respondent nos. 1 to 3.
None present for respondent nos. 4 & 5.

MA No. 259/2013

Heard learned counsel for the parties on the Misc. Application filed on behalf of the applicant praying for taking the document(s) on record.

Having considered the submissions made on behalf of the parties, the document(s) annexed along with the Misc. Application is taken on record subject to just and valid objections, if any, raised by the respondents at the time of hearing of the Original Application.

Accordingly, the Misc. Application is disposed of.

OA No. 252/2012

Heard learned counsel for the parties.

Original Application is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar

(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 252/2012

DATE OF ORDER: 03.09.2013

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Gulab Chand Gwala S/o Shri Chiranjee Lal Gwala, aged about 32 years, R/o Behind Sardar Thana, Ghosi Mohalla, Chhawani, Beawar. Presently working as Driver, Regional Institute of Education, Ajmer.

...Applicant

Mr. Anupam Agarwal, counsel for applicant.

VERSUS

1. Union of India through the Secretary, National Council for Research and Training, Shri Aurobindo Marg, New Delhi - 16.
2. The Principal, Regional Institute of Education, Captain D.B. Choudhary Marg, Pushkar Road, Ajmer.
3. The Administrative Officer, Regional Institute of Education, Captain D.B. Choudhary Marg, Pushkar Road, Ajmer.
4. Shri K.B. Rath, Principal, Regional Institute of Education, Captain D.B. Choudhary Marg, Pushkar Road, Ajmer.
5. Shri Ishwar Lal, Administrative Officer, Regional Institute of Education, Captain D.B. Choudhary Marg, Pushkar Road, Ajmer.

...Respondents

Mr. Amit Mathur, proxy counsel for
Mr. Kapil Mathur, counsel for respondent nos. 1 to 3.
None present for respondent nos. 4 & 5.

ORDER (ORAL)

The applicant has filed the present Original Application being aggrieved by the letter dated 30th March, 2012 and 23rd March, 2012 (Annexure A/1). Vide letter dated 23rd March, 2012, the applicant, who is a Staff Car Driver, was asked to stay in the campus of the Institute, failing which his House Rent Allowance would be stopped and disciplinary action may be taken against him for violation of these orders. Letter dated 30th March, 2012

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is a rejection order on the representation filed by the applicant on 28.03.2012 being aggrieved by the letter dated 23rd March, 2012.

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant is working as Driver with the respondents since January 2005. He has been discharging his duties without any complaint.

3. Learned counsel for the applicant further submitted that there are total three Drivers including the applicant working with the Institute. The services of all the three Drivers are interchangeable. The applicant has been asked to reside in the campus because of the malafide reasons on the part of the respondent nos. 2 & 3.

4. Learned counsel for the applicant also submitted that the respondents issued an advertisement on 19.02.2011 inviting the applications for various posts including three posts of Store Keeper Grade-II against which the applicant also applied. The selection was conducted wherein the applicant was declared unsuccessful. He, therefore, asked certain information under R.T.I. On being dissatisfied with the information so supplied, he referred first appeal to the respondent no. 2. When no satisfactory reply was received, he submitted a representation dated 22.03.2012 (Annexure A/3) through proper channel to the respondent no. 1.

5. Learned counsel for the applicant also submitted that the respondents, especially respondent no. 5, being annoyed by the

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representation (Annexure A/3) in connivance with the respondent No. 4 after taking due approval issued the letter dated 23.03.2012 asking the applicant to reside in the campus w.e.f. 01.04.2012, failing which appropriate disciplinary action will be taken against him with a further direction to stop the payment of House Rent Allowance (HRA).

6. Learned counsel for the applicant further submitted that the applicant immediately submitted a representation dated 28th March, 2012 (Annexure A/4). This representation has been rejected vide letter dated 30.03.2012 (Annexure A/1). While submitting the representation, the applicant has informed the respondents that vide letter dated 05.03.2009 (Annexure A/5) issued by the respondent no. 1, the post of Driver was not included in the list of Officers/Staff required to stay in the Institute campus compulsorily.

7. Learned counsel for the applicant further argued that in other Institutes also, the Drivers are not staying in the campus and are being paid HRA. To support his averments, he referred to Annexure A/10 filed along with M.A. No. 259/2013. He further submitted that since the letter dated 05.03.2009 does not include the post of Driver in the list of Officers/ Staff required to stay in the Institute campus compulsorily, therefore, the respondents cannot insist that the applicant should stay in the campus on the basis of the letter dated 04.05.2000.

8. Learned counsel for the applicant further submitted that the respondents since inception never asked any of the Drivers to reside in the campus. Now, suddenly the respondents are

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insisting him after seven years of his appointment that he should stay in the campus on the basis of letter dated 04.05.2000, which is discriminatory and, thus, illegal. Therefore, the applicant should be allowed to continue as before and the directions issued by the respondents vide impugned order dated 23.03.2012 and 30.03.2012 may be quashed and set aside.

9. On the contrary, learned counsel for the respondents admitted that the applicant is working with the Institute as Staff Car Driver. He was asked to stay in the Headquarters orally on various occasions. The applicant is staying in Beawar, which is 60 K.M. away from his present place of posting. The respondents' institute is a residential one where more than 500 girls and boys are residing in different hostels. The institute is situated at the out skirt of city. The Police station, hospitals, water and electrical officers are too far away from the institute. In the event of sudden illness of students, in the odd hours in requirement of Police or any other such agency, in the case of power failure etc. services of the driver are required in emergent circumstances all the times. Up to 2007 there were two staff car drivers regularly available and both the drivers were residing near campus of the institutes and as per direction one of them was always available. However, since 2007 the applicant is the only car driver and, therefore, his presence in the campus is essential.

10. Learned counsel for the respondents further submitted that Shri Mohan Singh is a Bus Driver in the Institute. He is residing at Headquarters. Shri Nathu Lal is a casual labour and he cannot be forced to reside in the campus. The applicant is a Staff

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Car Driver and he has been rightly directed by the authority to stay in the campus.

11. Learned counsel for the respondents also submitted that the applicant is making false allegations against the authorities when he was declared unsuccessful in the selection of Store Keeper.

12. Learned counsel for the respondents further submitted that in the original order issued in the year 2000, the post of 'Driver' was included in the list of Officers / Staff, who were supposed to stay in the campus but in the letter dated 05.03.2009, inadvertently, the word 'Driver' has not been mentioned. The Principal of the College is competent to frame the guidelines and thereto he can ask the applicant to stay in the premises. He denied that there is any annoyance or malafide against the applicant.

13. Learned counsel for the respondents also submitted that the applicant is entitled for type-II quarter. At present, three type-II quarters are vacant, therefore, the applicant can be allotted a type-II quarter on his request. In fact, all the employees of the Institute are residing in the Headquarters except the applicant.

14. Learned counsel for the respondents further submitted that even if for the sake of arguments, it is accepted that the order dated 23.03.2012 has been issued due to the annoyance but even then it will not make any difference because he, being a Driver, can always be asked to stay in the campus to attend the

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emergency calls. Therefore, this Original Application has no merit and it should be dismissed with costs.

15. Heard the learned counsel for the parties and perused the documents available on record.

16. It is not disputed that the applicant has been working with the respondent-department since 12.01.2005. It is also admitted that since then the applicant has not been staying on the campus of the Institute. The respondents have not been able to show any documents by which the applicant was required to stay on the campus in pursuance to the guidelines issued vide order dated 04.05.2000 (attached with Annexure A/1). From the perusal of these guidelines, it is clear that 10 categories of the staff are required to compulsorily stay on the campus. The post of Driver is at Sl. No. 8 of these guidelines. The applicant was appointed in January, 2005 i.e. much later than the issuance of these guidelines. Learned counsel for the respondents could not clarify as to why the Drivers employed by the Institute were not asked to stay on the campus. Even in the written reply submitted by the respondents, it has been stated that upto 2007, there were two Staff Car Drivers regularly available and both the Drivers were residing near campus of the Institute. This statement shows that even these two drivers were not residing on the campus as was required in terms of the letter dated 04.05.2000.

17. The respondents have further stated in their written reply that since 2007, the applicant is the only Car Driver and, therefore, his presence in the campus is essential. It is

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surprising that even during the last 5 years, no written orders were given to the applicant to stay on the campus. It was for the first time that a written order was given to the applicant to stay on the campus on 23.03.2012. Incidentally, this is exactly one day after the applicant made certain allegations regarding recruitment of the post of Store Keeper vide his representation dated 22.03.2012 (Annexure A/3). Therefore, this gives credence to the averments made by the learned counsel for the applicant that the orders dated 23.03.2012 have been issued due to the annoyance of the respondent no. 5.

18. However, the basic question here is 'whether a Staff Car Driver can be asked to stay on the campus compulsorily. According to the letter dated 04.05.2000, the Drivers are required to stay on the campus compulsorily but in the circular dated 05.03.2009, the word 'Driver' is not mentioned. According to the respondents, the word 'Driver' has been excluded inadvertently in the letter dated 05.03.2009 (Annexure A/5). He further submitted that the Principal of the College is competent to frame guidelines and thereto he can ask the applicant to stay in the premises. Learned counsel for the applicant submitted that the respondent nos. 2 & 3 cannot interpret the circular dated 05.03.2009. From the perusal of circular dated 04.05.2000 and circular dated 05.03.2009, it appears that the post of Driver and Attendant of Guest House have been excluded from the category of staff, which are required to compulsory stay on the campus. I agree with the averments of the learned counsel for the applicant that the respondents cannot interpret the circular dated 05.03.2009 that these two categories of staff have been inadvertently excluded in

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this letter. Therefore, respondent no. 2 is at liberty to seek a clarification from the respondent no. 1 i.e. the Secretary, National Council for Research and Training, New Delhi and till then the applicant should not be forced to stay on the campus.

19. Now with regard to the question of payment of HRA is concerned, this controversy has already been settled by this Bench of the Tribunal in the case of **Dr. R.K. Das & Ors. vs. Union of India & Ors.** (OA No. 80/2004) decided on 17.09.2004 and in the case of **Pokher Mal Tanwar vs. Union of India & Ors.** (OA No. 261/2004) decided on 17.09.2004.

20. While deciding the case of **Pokher Mal Tanwar vs. Union of India & Ors.** (OA No. 261/2004), this Bench of the Tribunal followed the ratio decided in the case of **Dr. R.K. Das & Ors. vs. Union of India & Ors.** (OA No. 80/2004). Therefore, I am relying on the findings of this Tribunal given in the case of **Dr. R.K. Das & Ors. vs. Union of India & Ors.** (supra). In para 6 of order dated 17.09.2004 in the case of **Dr. R.K. Das & Ors. vs. Union of India & Ors.** (supra), this Bench of the Tribunal has held as under: -

"6. At this stage, I wish to make it clear that it was not the intention of this Tribunal that the Govt. accommodation/quarters which have been constructed by the Govt. by spending huge public funds and for convenience of the employees should remain unoccupied. Undoubtedly, such accommodation cannot be allowed to remain unoccupied and the Govt. employees cannot take stand that they are not willing to occupy the same as they are either living in rented houses or in their own houses or houses constructed by their relation. The respondents cannot be shouldered with double liability of construction and maintain the quarters as well as pay the HRA. This is the rational of the provisions of para 4 of the said Govt. OM dated 27.11.65. Thus, the Govt. employees have either to accept the accommodation which has been offered to them or forfeit the HRA but before forfeiting the HRA, the respondents are equally bound to follow its own

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instructions and act reasonably. Under Rules/Govt. instructions, the HRA can be forfeited only in the manner stipulated in para 4(b)(i) of the OM dated 27.11.65.
....."

The relevant para 4(b)(i) of the OM dated 27.11.1965 states as under:

"4. The grant of House Rent Allowance shall be subject to the following conditions: -

(b)(i) The allowance shall not be admissible to those who occupy accommodation provided by Government or those to whom accommodation has been offered by Government but who have refused it. In the latter case, the allowance will not be admissible for the period for which a Government servant is debarred from further allotment of Government accommodation under the allotment rules applicable to him."

21. The ratio decided by this Bench of the Tribunal in the case of **Dr. R.K. Das & Ors. vs. Union of India & Ors.** (supra) is squarely applicable in the present case. In the instant case, the accommodation is available on the campus. It cannot be allowed to remain unoccupied for the convenience of the Govt. employees. The Govt. employees cannot take stand that they are not willing to occupy the same as they are either living in rented houses or in their own houses or houses constructed by their relation. The respondents cannot be shouldered with double liability of construction and maintenance of the quarters as well as pay the HRA.

22. In the instant case, the respondents have submitted that the applicant is entitled for type-II quarter. At present, three type-II quarters are vacant; therefore, the applicant can be allotted type-II quarter on his request. In these circumstances, the applicant should be offered an accommodation on the campus according to his entitlement and if he refuses to accept

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the same, then his HRA can be stopped according to the provision of law. But it is made clear again that this exercise will have to be done by the respondents in respect of all the Drivers of the Institute and they cannot follow the policy of pick and choose.

23. With these observations, the Original Application is disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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