

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~TX~~ No.133 of 1995

Decided on:03.01.1996

Shri Devesh TiwariApplicant(s)

(By Shri C.L. Narasimham Advocate)

Versus

Union of India & AnotherRespondent (s)

(By Shri V.K. Rao Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR. MEMBER (A)

1. Whether to be referred to the Reporter ^{Yes} or not?
2. Whether to be circulated to the other Benches of the Tribunal?

h
(K. MUTHUKUMAR)
MEMBER (A)

(76)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 133 of 1995

New Delhi this the 3rd day of January, 1996

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

Shri Devesh Tiwari
S/o Shri U.K. Tiwari
Scientist 'B'
PPS Division,
Central Road Research Institute,
Mathura Road,
New Delhi.

...Applicant

By Advocate Shri C.L. Narasimham

VERSUS

1. Council of Scientific & Industrial
Research Through Director-General,
Council of Scientific & Industrial
Research,
Anusandhan Bhawan,
Rafi Marg,
New Delhi-110 001.
2. The Director,
Central Road Research Institute,
Mathura Road,
New Delhi-110 020. ...Respondents

By Advocate Shri V.K. Rao

ORDER

The applicant, who is a Scientist Group 'B' in the Central Road Research Institute ('CRRI') has filed this application against the orders of respondent No.2 dated 22.07.1994 and 03.10.1994 informing the applicant of the cancellation of the allotment of the hostel accommodation and also directing him to vacate the said accommodation within one month from the date of this order and rejecting his representation against the impugned order dated 22.07.94. and informing him that he would be charged

h

penal rent at the rate of Rs.1250/- per month alongwith Rs.50/- per month on account of furnishing and other facilities being provided to the applicant for his unauthorised stay.

2. The brief facts in the case are that by the order dated 7.6.1994, the applicant was informed that he had unauthorisedly removed the Exhaust Fan Motor (EFM for short) of Desert Cooler of Room No.6 and fitted the same in the Desert Cooler in his room No.21 which was under repair without any intimation to the HLS/Caretaker or without the permission of the competent authority and he was asked to show cause against cancellation of his allotment. On his explanation not being found to be satisfactory, the said impugned order dated 22.7.1994 was served on him informing him of the cancellation of the quarter and directing him to vacate the said hostel accommodation within a period of one month from the date of that order. On subsequent representation against this order, the respondents informed him by the O.M. dated 12.08.1994 that his representation had been reconsidered but he was informed that it would not be possible to accede to his request as there was no substance in his representation and as such, he was informed of the decision taken already by the OM of even number dated 22.7.1994 and he was again directed to vacate the said accommodation within the stipulated period, i.e., on or before 22.08.1994, failing which he would be charged penal licence fee and possibly disciplinary proceedings would be instituted against him. His request for placing the matter before the Grievance Committee was not accepted by the

respondents. Aggrieved by this, the applicant has approached this Tribunal with a prayer that the impugned orders dated 22.7.94 and 3.10.94 should be quashed and recovery of excess licence fee should be directed to be refunded to him. By an interim order passed on this application on 18.01.1995, the operation of the impugned order was stayed and the pleadings were exchanged and the matter was finally heard.

3. The applicant has alleged that the cancellation of the allotment was based purely on misconception of the facts and without establishing the charge in accordance with due process of law and he was also not given any opportunity to examine the evidence and refute the same. He also alleges that the action of the respondents is arbitrary in that they have reached the finding of guilt on the part of the applicant without any evidence and without giving a speaking order. The applicant further alleges that the respondents have not placed the matter before the Grievance Committee which clearly demonstrates their vindictive nature in dealing with the applicant and he has been given a stereo-typed reply. The cancellation of such an accommodation is alleged to be arbitrary, prejudicial and malicious and the Director General of the C.S.I.R. and the Governing Body, C.S.I.R. in spite of his repeated representations, have not looked into his grievance and his representation in an objective manner and he has been wrongly denied the facilities. The applicant also alleges that the respondents have denied him the House Rent Allowance

although he has been allotted a guest house accommodation which cannot be considered strictly to be an accommodation and he was only sharing a bed in a hostel room meant for two persons.

4. The respondents have strongly contested the claims and the allegations of the applicant. They have averred that the allotment of the hostel accommodation has been made to the applicant purely on temporary basis in accordance with the rules governing such allotment and is subject to the terms and conditions of the CSIR Rules in this behalf. The respondents have also averred that the allotment was made on double sharing basis and could be cancelled by the competent authority for reasons of indiscipline. The misconduct on the part of the applicant in removing the motor of the fan of the desert cooler from Room No.6 and fitting it to the desert cooler in his room was duly investigated with the help of HLS. The matter was also reexamined on his representation and the comment was sought from the HLS and his controlling officer and from their comments, it was clearly evident that the applicant himself or with the help of some other persons had got the fan motor removed from Room No.6 and got it fitted in the desert cooler in Room No.21 or got the two desert coolers changed. In the light of this, it was felt that the applicant had clearly violated the terms and conditions of allotment. As per the allotment rules, the tampering with fittings and fixtures was strictly prohibited and for the breach of these rules and because of his improper conduct, the allotment was

cancelled and he was directed to vacate the said accommodation. It is also pointed out in the averments made by the respondents that the matter does not come within the purview of the local Greivances Committee and the decision was taken after full investigation in the matter and after obtaining the satatements of the concerned officials. In view of this, the respondents contend that the application is misconceived and is, therefore, untenable. The act of removal of fan motor and getting it fitted in his desert cooler was improper and in violation of the norms of allotment and, therefore, the cancellation was valid. The respondents further aver that in view of the hostel accommodation given to the applicant, he was not entitled to the grant of HRA as hostel accommodation is also a type of residence provided under the rules for allotment of residential accommodation for single officers.

5. I have heard the learned counsel for the parties and have carefully perused the records. The respondents have also produced the departmental record containing the report of the officials concerned with the hostel accommodation and the other statements recorded in the investigation done by the respondents. These departmental records were also perused.

6. Admittedly, the hostel accommodation is one of the approved type of residential accommodation provided to single officers in terms of rules for allotment of residential accommodation to the staff employed under the respondents in their Laboratories,

and the allotment of bachelor accommodation of a single bed in a single room on sharing on temporary basis, to the applicant, is not in doubt. That the accommodation is liable to be cancelled for any breach of rules or any misconduct on the part of the applicant in relation to the occupation of the accommodation is also not in dispute.

7. The controversy is mainly about the cancellation of the allotment without establishing the charge of misconduct and about the nature of the order directing him to vacate the premises without making it a speaking order. The allegation is also about the conclusion of the respondents on the basis of a preconceived and presumed ground of his alleged misconduct of having unauthorisedly removed the exhaust fan motor from room No.6 and fitting the same in his desert cooler in his room without any approval. When his reply to the show cause notice was received, the CS(PED) had recorded the following remarks:-

" Received on 04.07.94.

Shri D. Tewari had come to my office towards end of May, 1994 and intimated me that the Desert Cooler in his room was not working as the fan motor had burnt out. He was wanting that I should instruct HLS to provide him with another Desert Cooler. I had intimated him that since Desert Cooler is not an entitlement as part of bachelor accommodation, I cannot order a replacement. However, if a spare cooler is available, he may request HLS at his own level for replacement. The events that followed are reported by HLS as per his report of 31.5.1994.

Sd/-
CS (PED)".

8. The applicant's contention is that between 18.5.1994 to 13.6.94 the exhaust fan motor in the desert cooler in his room was removed for repair. On 13.6.1994 when the desert cooler was repaired and installed back, there was no Exhaust Fan Motor (EFM) in his desert cooler and when the electrician visited his room for fitting the repaired EFM on 13.6.1994, he did not find any other EFM fitted in his desert cooler and, therefore, contends that there was no substance in the allegation that he had removed the EFM from the desert cooler in room No.21 and installed it in his desert cooler. He also contends that in the show cause notice or in the subsequent letter no date of the incident when he had allegedly removed the EFM from room No.6, has been mentioned. In view of this, he states that all these allegations are without any substance. I find from the departmental records that the matter was investigated. It is true that in the matter of this nature, the detailed enquiry, as contemplated under the CCS (CCA) Rules, 1965 is not necessary as the person involved has given the statements to the Head of the Department to arrive at a decision. The Chairman, HLS, who was the officer-in-charge of the Hostel Committee had made detailed statement and had made the following comments:-

"(i) The fan motor in Desert Cooler in room No.21 occupied by the applicant was removed by the workshop persons around 31.5.1994 for immediate repairs.

(ii) When Shri Tewari met me around May ending he requested for replacement of the desert cooler. On 31.5.1994 while room No.6 was being prepared for the guest, it was noticed that the desert cooler was not working and it was found that the fan motor was missing. It was stated to be a case of theft. The guest in room No.6 stayed from 31.5.1994 to 03.06.1994 without facility of desert cooler. The HLS had discussion with the applicant who reportedly admitted replacement of desert cooler and, therefore, the reported theft case of the fan motor was not pressed and the desert cooler from room No.21 was repaired by the workshop person on 13.6.1994 and reinstalled on that day. On checking room No.6 on 13.6.1994 not only was the desert cooler found to be intact but also in working condition. No job card for any repair for desert cooler for room No.6 was given during the period 31.5.1994 to 13.6.1994.

(iii) On 31.5.1994 when the fan motor of Room No.21 was sent for repairs, fan motor of room No.6 was found missing and on 13.6.1994 when the repaired fan motor was installed, suddenly the fan motor of room No.6 also appeared.


9. From the above, Chairman, HLS, pointed out that after the fan motor of desert cooler of room No.21 was removed for repairs, the cooler as a whole could have been lifted to room No.6 and swapped with cooler of room No.21. Before installation of the repaired fan motor on 13.6.1994, the cooler apparently was again swapped."

10. Considering the background of the entire matter in its proper prospective and also the background of the discussion the applicant had with HLS, it was reasonable for the respondents to presume that this removal and swapping of the desert cooler should have been done by the applicant. During the arguments, the learned counsel for the applicant states that since the applicant was sharing the accommodation it was possible that the other allottee in the same room could have done this instead of the applicant. In a note recorded on 10.08.1994, it was noted that the applicant was the occupant in room No.21 single bed, occupying two beds room. In any case, the applicant has not made an averment or has furnished any details of such sharing the accommodation. This is only an administrative investigation and in a case of this nature all possible investigation and recording of statements from concerned officials have been made by the respondents before they arrived at a decision to ask the applicant to vacate the premises after giving him due notice. The applicant has not alleged any mala fide against any of the officials. His grievance is that he was not given a hearing. It is recorded that the applicant had refused to give his statement and, therefore, his evidence is not available. The applicant has no vested right to this accommodation. On the basis of the available evidence recorded by independent people, who do not seem to have any grievance, prejudice or bias against the applicant, it cannot be said that investigation has been done in a

mala fide manner just to harass the applicant and ensure his vacation of the accommodation. The applicant's representation had been duly considered more than once by the respondents and after taking into account the statements of independent officials connected with the administration of the hostel, a decision had been arrived at by the respondents.

11. Taking all these facts into account, I am of the considered view that it cannot be said that the respondents have acted in an arbitrary manner in directing the applicant to vacate the hostel accommodation.

12. In the conspectus of the above discussion, I find that the application has no merit and is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

RKS