

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O. A. No. 1749/97

New Delhi, this the 11<sup>th</sup> day of September, 1998

HON'BLE SHRI N. SAHU, MEMBER(A)

Shri Ved Prakash Pachauri,  
S/o Shri Shiv Ram Pachauri,  
R/o 205-B-3, Western Railway Colony,  
Tughalakabad, New Delhi.  
Now posted at  
as Grade-I Fitter,  
Western Railway Electrical Loco Shed,  
Tughalakabad, New Delhi.

....Applicant

(By Advocate: Shri K.K. Patel)

Versus

1. Union of India, through  
The General Manager,  
Western Railway,  
Church Gate, Mumbai.
  2. The D.R.M.,  
Kota Division,  
Kota Rajasthan.
  3. The Senior D.E.E./President,  
Housing Committee,  
Western Railway Loco Shed Electrical,  
Tughlakabad, New Delhi.
  4. The D.E.E./Chairman,  
Housing Committee,  
Western Railway Loco Shed Electrical,  
Tughlakabad, New Delhi.
- ....Respondents.

(By Advocate: Shri P.S. Mahendru)

O R D E R

BY HON'BLE SHRI N. SAHU, MEMBER(A)

The reliefs prayed for in this O.A. are as  
under:-

- (i) Call for the records such as Priority Register, out of turn allotment and break down staff register.
- (ii) Direct the respondents to consider allotment of railway quarter as per seniority/priority registered in priority register.

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- (iii) Direct the respondents to consider allotment of railway quarter as per his out of turn priority or by virtue of break down staff policy.
- (iv) Quash the order dated 1.7.97, 5.8.97, issuing notices for vacation of Quarter No.205/B-3, Railway Colony, TKD, New Delhi.
- (v) Quash the orders dated 16.7.97, 2.9.97, issuing chargesheet, suspension order respectively issued in pursuance of non vacation of Quarter No.205/B-3, Railway Colony, Tughlakabad, New Delhi.
- (vi) Direct to refund the HRA; illegally deducted from the salary of petitioner.
- (vii) Pass any such further order or orders as may deem fit and proper in the facts and circumstances of the present case.

2. Before we deal with the grievances, a few basic background facts are highlighted. The present official status of the applicant is no doubt Grade I Fitter posted at Western Railway Electrical Loco Shed, Tughlakabad, New Delhi but the appointment order dated 30.5.89 shows that the applicant was a welder. This aspect will be highlighted a little later as it is central to the resolution of the grievance in this OA.

3. The applicant was posted in Delhi in 1989 vide ticket no.471. Earlier he was an employee with respondent no.2 at Kota in the post of welder. He applied for residential accommodation on the date he joined as a welder (copy of the transfer order vide No.E/140/4/5 dated 7.6.89 - annexe A-3). It is important to mention that by annexure A-6, the senior DEE/TRS Electric Loco Shed, Tughlakabad, who is the Chairman of the Housing Committee, recommended the applicant's case for out of turn allotment of Railway Quarter meant for Class-III staff. The union representatives have also sent their recommendation in favour of the applicant. In the year

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1995, by an order dated 17.11.95, Quarter no.205-B-3 was allotted to one Shri Rajesh Modi who was also an employee of Western Railway. On the joint application of Shri Rajesh Modi and the applicant, sharing permission was given to them by an order dated 20.11.95. The applicant took possession on 10.12.95. From the date of sharing permission, HRA was deducted and half the rent for the quarter was also deducted from his salary. He mentions that he performed emergency repairs and maintenance work (annexure A-25), for which a commendation was given to him by annexure A-26. The grievance of the applicant is that his seniority from the date of registration was ignored and others, junior to him, were allotted accommodation. Shri Rajesh Modi had been transferred from Delhi and he submitted his vacation report on 23.6.97. The applicant expected the said accommodation, which he was sharing, to be confirmed in his favour but this did not materialise. His grievance in this OA is against the impugned order passed by the respondents for vacation of the quarter allotted to Shri Rajesh Modi and shared by him and against the chargesheet and suspension order issued to him for not vacating the quarter. His grievance is that the following employees had been allotted the quarter who were junior to him :-

<u>Name</u>	<u>Working as</u>	<u>Year of Joining</u>
1. Charan Lal	ELF	1990
2. Trilok Nath Sharma	ELF	1990
3. D.S.Malik	ELF	1990
4. Vinay Saxena	ELC	1990

(Electric Chargeman)

(Though he had not registered his name for railway qtr.)

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5. Bali Singh Meena ELF
  6. Nath Ram Chaudhary ELF

(He had been allotted quarter prior to the date of joining at Tughlakabad)

7. Vijay Kumar P. ELF
8. Kripa Shankar Yadav ELF
9. Kartar Singh ELF
10. Omprakash Meena ELF
11. Satish Kumar Dixit ELF
12. R.C.Saxena ELF

4. His further grievance is that the employees allotted accommodation on out of turn basis exceeded the quota reserved for such category. The applicant had submitted a petition for including his name in the list of breakdown staff. He also claimed out of turn allotment under the Head "Medical & Territorial Army".

5. The respondents state that the quota rules were not violated. They asserted that not a single quarter has been allotted on out of turn basis in excess of the quota reserved for such allotment. They have filed a statement showing the details of out of turn allotment at annexure R-1. They have also filed a statement showing out of turn allotment of Type-II quarters against the reserved quota for Tughlakabad Shed, Delhi as on 30.9.97 (annexure R-2). They denied the applicant any right for out of turn allotment of accommodation on the ground that he did not belong to that category. They have held that as there is no post of welder in the cadre of Tughlakabad Shed, the applicant cannot claim the allotment as Welder-III. He was initially in the post of Electric Fitter Grade III: he took two promotions and had become Electric Fitter Grade I.

According to the respondents, Electric Fitter Gr.I does not come under "essential category" for out of turn allotment. On the ground that as he is working as Electric Fitter Gr.I his name could not be included in the breakdown staff on the basis of his claim as a welder. The pool-wise position of distribution of type II quarters at Tughlakabad as on 30.9.97 was exhibited at annexure R-3. Respondents distinguished the facts in OA-466/90 cited by the applicant in justification of their claim on the ground that that OA dealt with 16 newly built quarters. According to the respondents, in the seniority list of type II quarters, the name of the applicant is at serial no.37 and there are still 24 persons above him who are awaiting allotment.

6. With regard to the claim of applicant relating to HRA, the respondents submitted that they did not make any payment of HRA to the applicant and deducted only half the rent and as he was sharing railway accommodation, he was not entitled to HRA. The respondents questioned the right of the applicant to amend the OA and also held that the O.A. is hit by Rule 10 of CAT (Procedure) Rules, 1987.

7. Though the plea was entered to the effect that O.A. is barred by Section 20 of the A.T. Act, as the impugned orders relate to the year 1997 and as right to allotment of quarter is a perennial cause, the moment there is a vacancy in the quarter, a cause of action arises. This ground of limitation raised by the respondents, is rejected. The plea stating that the amended O.A. is hit by Rule 10 of CAT (Procedure) Rules has been rightly taken by the respondents. It was pointed out to the applicant's counsel at the time of hearing that para 8 refers to two

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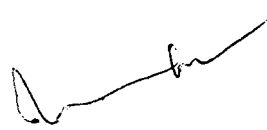
sets of reliefs: one relating to allotment of railway quarter as per seniority in the priority register and considering his claim for out of turn allotment; the other set of relief relates to issuing notice for vacation of quarter and issuing chargesheet and suspension order. The residuary ground relates to refund of HRA. I had already indicated in the course of hearing that grounds no.4 and 5 is a different relief and is hit by Rule 10 of CAT (Procedure) Rules. Accordingly I would hold that reliefs 4 and 5 cannot be considered in this O.A. and are accordingly dismissed. If so advised, the applicant can file a separate O.A. for this purpose.

8. With regard to other grievances, the main question at issue is whether the applicant can come under the eligibility criteria relating to out of turn allotment. Id. counsel for applicant Shri K.K.Patel stated that the applicant worked as a welder in the previous Station at Kota and the transfer order dated 7.6.89 describes his transfer to the post of a welder. A copy of the transfer order was also annexed to the amended O.A. in this regard. Besides that, the standard form of Memo of Charge for imposing minor penalty describes the applicant as a welder grade III and working in General Section. Again another notice dated 8.11.89 also describes him as a welder. The inquiry notice dated 19.6.90 repeats the same designation of the applicant. Under the rules, officers/officials shall be offered flats strictly in their turn according to the date of registration in the waiting list for different grades except those who are entitled to out of turn allotment as they are classified under the Head "Essential Category". Such essential category officers shall be considered for out of turn allotment of transit

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accommodation. Under the rules, requests of staff for out of turn allotment of quarter are to be scrutinised by the Housing Committee and its recommendations unanimously shall be considered by the competent authority. In the applicant's case, the applicant applied as welder gr.III and the Housing Committee recommended his case also as a welder grade III.

9. We find that in the seniority list of type II quarters, the applicant's name is at serial no.37, his date of registration is 9.6.89. He is not registered as a welder. We have to see that the allotment of quarters on out of turn basis is not for the benefit of individuals but for the benefit of the organisation. Out of turn allotment, for instance, is given to the break down staff to facilitate the railways to draw on their services when there is a need at any time during day or night. It is for this purpose that they are given out of turn allotment so that their availability on hand is ensured. The applicant did not work at all as a welder and worked only as Electric Fitter by now for a period of 10 years and Electric Fitter admittedly is not a post which comes under the "essential category". He cannot claim for out of turn allotment only on the ground that he was a welder at Kota and the transfer order issued to him was as a welder. The out of turn allotment is linked with actual duty performed by an employee in the respective cadre. Therefore, there is no merit in the contention that because the applicant was transferred from Kota to Tughlakabad as a welder, he can be considered for out of turn allotment.



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10. I am however satisfied that certain allegations made by the applicant have not been effectively controverted by the respondents. The applicant had mentioned several irregularities in the allotment of accommodation. It is stated that the following officials have been allotted quarters although their names have not appeared in the statement showing details of out of turn allotment as on 30.9.97:-

<u>Name</u>	<u>Quarter No.</u>
1. Jit Mal Meena	- 206-A3
2. Puran Chand	- 206-C2
3. Itwari Lal	- 204-A1
4. Deepak Kanojia	- 201-B2

11. The applicant also submitted that he had also applied under the Head "Medical Quota" showing the illness of his wife. The respondents say that this claim is not substantiated. I, however, find that the applicant had furnished a number of medical reports annexed with the O.A. from pages 54 to 91. This is a case which should compel the attention of the respondents to consider the case of the applicant under the head "medical category". They should not have considered his juniors before considering his case. Annexure A-26 shows that the applicant, during the accident of Loco No.23266, was recruited for special repairs and maintenance. He had performed his duty with full devotion. He was given a commendation letter by the D.R.M., Kota. He performed this job when he was in the grade of electric fitter at Tughlakabad. He filed a representation on 14.9.94 endorsed by his superiors of the Loco Shed. He gave his document as a welder. He mentioned



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his services for the period of work in the break down loco for which he earned commendation. This representation also has not been considered.

12. I would direct that keeping in view his work as a welder and his transfer order as a welder and also in view of the services of the applicant in the accidental loco, he shall be considered as eligible for out of turn allotment under the category of "break down staff". Respondents shall consider this and pass an order about his eligibility within a period of 8 weeks from the date of receipt of a copy of this order. In doing so, I direct respondent no.2, the Divisional Railway Manager, Kota Division, Kota to examine all cases of irregularity mentioned above. While doing justice to the applicant, it is not the intention of this court to unsettle the allotments already made or where they are due in accordance with law. But now that we have directed the applicant's case to be considered under the category of break down staff and medical category, if there is any junior to the applicant provided with residential accommodation in these categories, the applicant shall also be considered for allotment under these categories.

13. O.A. is allowed to this extent. No costs.

*N. Sahu*  
( N. SAHU ) 11/9/98  
MEMBER(A)

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