

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

9

New Delhi, this the 12th day of October, 1995.

OA No. 2220 of 1994

Sher Singh,
R/O C-17 L, Rly, Colony,
Lajpat Nagar, New Delhi-24. Applicant.
(through Mr D.P.Avinashi, Advocate).

vs.

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. C. S. T. E.,
Northern Railway
Baroda House,
New Delhi.
3. Divl. Superintending Engineer/Estate
DLI Division, Railway Divisional
Manager Office, Northern Railway Chamsfort
Road, New Delhi. Respondents.

(through Mr R.L.Dhawan, Advocate).

Order

(delivered by Hon'ble Mr B.K. Singh, Member (A))

This O.A.No.2220/94 is directed against
order No.159-EO/14/Changes/LPNR/94 dated 1.9.1994.

The admitted facts are that the applicant
was allotted the Government accommodation No.C-39/F,
Railway Colony, Lajpat Nagar, New Delhi. The
Inspection Team found that instead of the applicant
some Bedhi Singh Rana was in occupation of that quarter
and the applicant was asked to show cause within 10 days
as to why he should not be evicted from the quarter.
The applicant replied to the above-said notice on
25.7.1994 and denied the allegations. The reply is
marked as Annexure F enclosed with the O.A. and a
photo-copy of the ration card is enclosed as Annexure-G.

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10

He had applied for exchange of quarter, which had been recommended but the same was cancelled in the light of the sub-letting of the quarter already allotted to him.

The reliefs sought are to quash and set aside the impugned order dated 1.9.1994 and to direct the respondents not to dispossess the applicant from the premises No.C-39/F, Railway Colony, Lajpat Nagar, New Delhi and to charge the normal licence fee.

Heard the learned counsel for the parties and perused the record of the case.

The learned counsel for the applicant argued that the order of Respondent No.3 dated 1.9.1994 is against the principles of natural justice since the applicant was not granted an opportunity to state his case. The charge of sub letting also has not been proved against him and there is no documentary evidence to show that he had sub-let the quarter allotted to him by the railways. He relied on the judgment in OA No.436/92 delivered by Hon'ble Mr J.P.Sharma, Member(J), in which it was held that sub letting involves some kind of consideration which has to be established by the respondents. A copy of this judgment is also enclosed as Annexure J to the O.A.

The learned counsel for the respondents Shri R.L.Dhawan submitted that eviction proceedings against the applicant have been started before the Estate Officer, i.e. D.S.E. based in the D.R.M's office, New Delhi. He relied on Full Bench ruling of this Hon'ble Tribunal in case of Rasila Ram and others vs. Union of India and others (CAT) Vol.I page 346 wherein

11

it was held that when eviction proceedings are started before the Estate Officer an aggrieved party has to place full facts before the Estate Officer

He stated that in the surprise check conducted on 23.3.1994 it was found that he had fully sub-let the said quarter. A copy of this report has been enclosed with the counter-reply as Annexure R-1. The said check was conducted by IOW in presence of one representative from each of the two recognised unions and their signatures are appearing on the Site Check Report (Annexure R-1). He vehemently argued that during the course of surprise check conducted on 23.3.1994 it was clearly found that the quarter allotted to the applicant was fully sub let to Shri Bedhi Singh Rana. It was further mentioned that in his application dated 5.4.1994 (Annexure D) enclosed with the O.A., the applicant had intentionally suppressed the material facts that in the surprise check conducted at his quarter on 23.3.1994, it was found that his quarter was fully sub let to an outsider. The show-cause notice, therefore, has been correctly served upon the applicant in terms of departmental rules enclosed with the counter-reply as Annexure R-2. It was further argued that change of accommodation from C-39/F to C-17/L was cancelled as he had suppressed material facts that on 23.3.1994 when a surprise check was conducted at his railway quarter it was found that quarter was fully sub let to an outsider. In the light of the aforesaid circumstances, the change of accommodation was cancelled and the applicant was directed to vacate the railway quarter in terms of departmental instructions which are enclosed

12

with the counter-reply as Annexure R-1. He further argued that the present application is pre-mature since the eviction proceedings have already been started under the PPE Act, 1971 before the Estate Officer. For railway authorities recourse to Sections 4 and 5 of the PPE Act is only an alternative procedure since they are competent to take recourse to Sections 138 and Section 190 of the Indian Railways Act in which DSE has been declared as the Estate Officer and by taking recourse to Section 190 he can evict a railway employee but he is required to serve a show-cause notice and the aggrieved party has to submit the show-cause contesting the case. Before eviction orders are passed, the railway authorities have either to approach ^{the} Metropolitan Magistrate ^{has the} Railway Magistrate, who ^{has the} first class Judicial powers or a Judicial Magistrate 1st Class and obtain their orders. The applicant is directed to contest the case before the Estate Officer and to state full facts before him and the Estate Officer is directed to give full opportunity to the applicant to state his case before taking recourse to Section 190 of the Indian Railways Act or Section 4 and 5 of the P.P.E. Act, 1971.

With the aforesaid observations, the application is disposed of ^B but without any order as to costs.

^B
(B.K. Singh)
Member (A)

/sds/