

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1618/1994

New Delhi, this 17th day of October, 1995

Hon'ble Shri B.K. Singh, Member(A)

(X)

1. Shri Devendra Kumar
s/o Dhani Ram.
Mobile Booking Clerk, Northern Railway
Aligarh Railway Station .. Applicant

By Shri B.S. Mainee, Advocate

versus

Union of India, through

1. The General Manager
Northern Railway
Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway, Allahabad
3. The Station Superintendent
Northern Railway, Aligarh .. Respondents

Shri H.K. Gangwani, Advocate

ORDER

This OA 1618/94 is directed against the order No.SS/MBC/Railway Quarter/94/1 dated 10.1.94 issued by the Station Superintendent, Aligarh (SS, Aligarh in short) which contains the order of the DRM, Allahabad for getting the unauthorised occupation by the applicant vacated.

2. Admittedly, the facts are that Shri Dhani Ram, while working at Aligarh, was allotted Railway quarter No.1618, Railway Colony, Aligarh. His son Shri Devendra Singh (applicant) was engaged as Mobile Booking Clerk (MBC) as daily rated staff and he worked for 75 days from 9.5.85 to 22.7.85.

3. On receipt of GM(P)/NDHB letter no.522.E157-II/VOC/EIC dated 20.2.90 Shri Devendra Kumar was re-engaged as MBC,

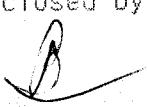
(Q)

Aligarh on 31.12.90 at the rate of Rs.2.25 per hour. On completion of 120 days working from the date of reengagement, he has been granted temporary status on 29.4.91 in the grade of Rs.975-1540. He has not been regularised till now and he is at present a casual staff.

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4. The SS, Aligarh has granted permission to share the accommodation in favour of the applicant with his father in the month of January, 1992 and HRA has not been paid to him from that month.

5. Shri Dhani Ram retired on 31.7.92 from railway service and the SS, Aligarh allotted the said quarter in favour of the applicant. Subsequently, when it was detected, the DRM issued order cancelling the allotment and directing the new SS, Aligarh to cancel the allotment since the pool accommodation under Allahabad division was under his control and he was the only competent authority to make allotment of quarter from out of that pool. It was further mentioned that the allotment was wrongly made by the SS, Aligarh and that too under the impression that the applicant was appointed on compassionate ground. Since he was not a compassionate appointee, he was not eligible for railway quarter on compassionate ground. In Allahabad Division, only the DRM is competent to allot railway quarter on out of turn basis and the order of the SS, Aligarh was without any jurisdiction. The applicant is still a casual staff and has not been regularised and as such not eligible for out of turn allotment of railway quarter as per GM/Engg/NDBH instructions contained in letter No.290-W/16/X/Qrs. dated 20.7.92, a copy of which has also been enclosed by the respondents.



(b)

6. In the light of these instructions and in the light of information received regarding allotment, SS, Aligarh was instructed on 6.1.94 for getting the quarter vacated by the applicant. Aggrieved by this, this OA has been filed seeking the relief that respondents be directed to regularise the quarter in favour of the applicant.

7. On notice, the respondents contested the relief prayed for by the applicant.

8. I have heard the learned counsel for the respondents.

8. The respondents have filed the full bench judgement given by Mr. Justice Mathur, Hon'ble Chairman in OA 2617/93 dated 29.5.95 in the case of Liakhat Ali Vs. UOI. It has been clearly laid down that casual temporary staff are not eligible for allotment of any railway quarter. In this judgement it has also been held that no ward of retired or retiring railwant servant who is sharing the accommodation with his father and has not been drawing HRA is eligible for allotment of quarter as of right. This was fairly conceded by the learned counsel for the applicant. However, he placed reliance on the observations of the Hon'ble Supreme Court in the case of T.N.Pavitran vs. State of A.P. ATR-1988-page 26 wherein it has been held that before the allotment is cancelled, a show cause notice is necessary and that the principles of natural justice is to be observed before the retiring person is thrown out of the quarter allotted to him.

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The same view has been followed by the Tribunal in the case of M.Venkaiah Vs. UOI atr 1989 Vol.II-page 23 wherein also it has been laid down that if on account of any order a civil servant is likely to be visited by evil consequences, due notice has to be given to him. The learned counsel for the respondents did not contest this proposition of law. He drew the court's attention to the various annexures to show that the application is pre-mature and no cause of action has arisen to the applicant. It is admitted that sharing of accommodation with his father was duly granted as per the annexures filed by him at a-5 to A-7. A-8 shows that he was allotted this quarter on compassionate ground treating him to be a compassionate appointee, which is not a fact. The compassionate appointee is one who joins service not on casual or temporary basis but on regular basis if his father dies in harness and the appointment is out of turn. The impugned order at Annexure A-1 is only cancellation of the allotment made by an incompetent authority and on wrong presumption. Cancellation is a routine matter and as held by the full bench that casual or temporary employee is not eligible for allotment of relevant quarter as a matter of right. That judgement is no doubt binding on this court. The respondents will follow the procedure laid down under section 190 of the Indian Railway Act or they should take recourse to the provisions of section 4 & 5 of the PPE Act, 1971 before evicting the applicant and if they propose to charge any penal rent, they should follow the provisions of section 7 of the PPE Act, 1971. Needless to say, the applicant can not be thrown out without following the

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provisions of Section 4 and 5 of the PPE Act, 1971 and damage rent/market rent/penal rent for unauthorised occupation can not be charged without taking recourse to the provisions of section 7 of the said act.

10. The application is dismissed as pre-mature but with the direction that the applicant will be given full opportunity to present his case before the Estate Officer as laid down under the provisions of section 4 and 5 of the said act or under section 190 of the Indian Railway Act and the respondents will pass a reasoned order after the oral submission is made by the applicant. With this direction, the OA is disposed of but without any order as to costs.


(B.K. Singh)
Member (A)

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