

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Date of Decision: 16.11.1988.

Regn. No. O.A. 1784/87

Shri Anil Kumar ... Applicant.

vs.

Union of India & Ors. ... Respondents.

CORAM: Hon'ble Mr. B.C. Mathur, Vice-Chairman.

Shri B.S. Maine, Counsel for the applicant.

Shri S.N. Sikka, Counsel for the respondents.

Judgment.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against the refusal of the Divisional Engineer, Northern Railway, Ghaziabad to allot quarter No. 166-167 in favour of the applicant in spite of a decision having been taken by the Divisional Railway Manager.

2. The brief facts of the case are that the applicant was appointed on 2nd December, 1975 as Loco Cleaner at Tughlakabad and promoted as Fireman grade 'C', Fireman grade 'B' and again as Electrical Assistant in the grade of Rs. 950-1500 on 7.5.1984. The applicant worked at Tughlakabad from 1975 to 1983 and thereafter, he was transferred to Ghaziabad. His name was registered for allotment of type I quarter in essential category at Tughlakabad on 6.10.1978. The priority of the registration for allotment of quarter was transferred from Tughlakabad to Ghaziabad from the date of registration, namely, 6th October, 1978. The applicant's father was also a railway employee and was working as Carriage Fitter under Carriage and Wagon Superintendent, Ghaziabad. The applicant's father was involved in a criminal case in 1973 and was acquitted in

February, 1980. The applicant's father had been placed under suspension during the criminal proceedings but ultimately, the suspension period was treated as duty and full payment of pay and allowances was made to him. However, he had retired from service on 30.6.1977 on superannuation. According to the applicant, his father was allotted quarter No. 166-167 type II in Arya Nagar, Ghaziabad and the rent of the said quarter was deducted by the respondents from the settlement dues of the applicant's father upto July, 1981 but the gratuity has not been paid to him on the ground that he is in occupation of a railway accommodation. The applicant, whose turn for allotment of a type II quarter at Ghaziabad had already reached, requested the respondents to allot the very same quarter in his favour which was earlier allotted to his father and which is still in possession of the applicant's father. The applicant is eligible for allotment of type II quarter. The parents of the applicant also desire to continue in the same house where they have been living for the last 17 years. The Utter Railway Mazdoor Union, which is a recognised trade union of the Northern Railway, took up the case of the applicant for the allotment of the same house and placed its demand on the agenda of the P.N.M. meeting with the Divisional Railway Manager. In the PNM meeting held on 22-23 September, 1987, it was decided that quarter No. 166-167 belonging to the Carriage and Wagon Superintendent pool, Ghaziabad may be allotted in favour of the applicant provided the applicant was due as per priority and the S.E.F.O. (LR) would transfer one quarter of the same type from his pool to the C & W.S., Ghaziabad. The S.E.F.O. (LR) Ghaziabad and the Carriage and Wagon Superintendent had no objection for the change of quarter from one pool to the other. The said decision was communicated by the D.R.M., New Delhi to the Divisional Engineer, Ghaziabad only on 24.9.1987 (Annex. II to the Application). Thereafter, Senior Electrical Foreman (LR), Ghaziabad wrote to the Divisional Engineer Ghaziabad that the applicant was due on his turn for allotment of quarter and the Senior Electrical Foreman (LR) had no objection to

the change of quarter from one pool to the other. The Senior Electrical Foreman also stipulated that the applicant should take up the responsibility of paying all outstanding dues in respect of the said quarter (Annexure A-3 to the Application). The applicant states that he had undertaken to pay all the dues in respect of the said quarter. Similarly, C & W S, Ghaziabad, advised the Divisional Engineer that he had no objection to the change of quarter from one pool to the other (Annex. A-4). In spite of the fact that all the conditions laid down by the D.R.M. in the PNM meeting for allotment of quarter No. 166-167 in favour of the applicant have been complied with, the Divisional Engineer is not allotting the quarter in favour of the applicant and has threatened the applicant with eviction proceedings and his father has been served with a notice to vacate the said quarter immediately (Annex. V).

3. The applicant has emphasised that in accordance with the decision taken by respondent No. 1 and circulated under a letter dated 7.6.1984, it has been decided that the decisions taken in the PNM meeting and negotiations under PNM with any of the recognised Unions will be implemented forthwith (Annexure VI) and the refusal of the Divisional Engineer, Ghaziabad to allot the quarter in favour of the applicant is, therefore, malafide and arbitrary and against the decision of the PNM meeting.

4. The respondents in their reply have stated that the applicant has no locus standi to make a grievance on misrepresented facts as he has not disclosed in his application to the Tribunal that on the basis of his date of priority, the applicant had actually been allotted a type I quarter but he refused to accept the same on the ground that he wanted only specific quarter No. 166-167 at Ghaziabad. Quarter No. 166-167 was allotted to Shri Hans Raj, father of the applicant, who was facing a criminal trial in a murder case and was placed under suspension. The railway administration did not want to implicate him in additional proceedings when he was already facing criminal trial but Shri Hans Raj unauthorisedly took into his possession the adjoining quarter No. 167 which was, at no time, allotted to him. He has further compounded the offence by unauthorisedly grabbing the ^{and} railway land to put up unauthorised constructions of two rooms ^{and} a temple on the said land. Shri Hans Raj retired from railway service on 30.6.1977 and was entitled to hold on to the railway quarter for a maximum period of four months after the date of his retirement. Since the retention of the said quarter had never

been regularised by the railway administration nor any request to this effect was made at the relevant time by Shri Hans Raj, the allotment of the said quarter was cancelled from the name of Shri Hans Raj on the expiry of permissible period of four months after the date of his retirement on 30th June, 1977. Under the rules of allotment, a dependent son of a retiring railway employee would be eligible to be considered for allotment of a quarter in lieu of one allotted to the retiring father provided he had been employed by the railways prior to the retirement of his father and had been residing with his father for the last at least six months and had not been in receipt of any house rent allowance. The applicant was employed at Tughlakabad as a Loco Cleaner on 30.8.1977 and had been in receipt of H.R.A. all along. The applicant was transferred to Ghaziabad only on 2.5.1984 and his request had been registered for being considered for allotment of a residential accommodation on the basis of his own date of priority. He was accordingly allotted a type I quarter according to his own entitlement. Shri Hans Raj and all others who reside in the premises in question are in unauthorised occupation and liable to be forcibly evicted from the premises under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and an appeal against the orders of the Estate Officer can lie before the District Judge. It has also been stated by the respondents that the quarters in question are ear-marked for demolition and the space is further ear-marked for the use of the railways track expansion programme. The authorities have also not agreed to the regularisation of the premises in the name of the applicant as he is neither eligible nor entitled to type II quarter. The applicant was employed as Loco Cleaner at Tughlakabad with effect from 30.8.1977 and not 2.12.1975 as stated by the applicant. He was transferred to Ghaziabad on 2.5.1984. The only right of the applicant is to get residential quarter allotted according to his date of priority and the type of entitlement but the applicant cannot insist on getting any particular quarter which has to be left to the discretion of the competent authority, under the Rules. The respondents have stated that the issues in the present case are outside the jurisdiction of the Tribunal as the aforesaid quarter had been allotted to an employee of the railways who had since long retired from service on 30.6.1977. But he is somehow keeping the said quarter in his unauthorised occupation with paying rent or damages.

A

Dharmendra Singh

5. The learned counsel for the applicant has stated that the adjoining quarter No. 167 was allotted to the applicant's father on 3.8.1971 vide letter dated 3.8.1971 (Annex. X). This letter shows that the applicant's father was allotted quarters 66 A & B which have been re-numbered as 166-167. He has further stated that the applicant is entitled to type II quarter because he is in the grade of Rs. 950-1500 and although he was registered for type I quarter, the registration continues under the essential category but the type from I to II changes automatically according to the entitlement from time to time depending on pay. The applicant has also denied that he was drawing house rent allowance while staying in the joint family with his father and he became entitled to type II quarter in 1981. The main argument pleaded by the learned counsel for the applicant is that a decision taken in a PNM meeting can be changed only if the other Union objects to the same and a joint meeting of the two Unions is held at the level of the General Manager. No other meeting was held after the present meeting in which it was decided to allot the quarter to the applicant and, as such, the decision became final and irreversible.

6. In the counter, the respondents have raised the point that the decision taken in the PNM meeting was based on mis-representation but the details have not been stated. According to ~~Shri Mainee~~, the applicant is not in the picture. ^{See Dated in second} The decision was with the Union and the DRM cannot change a decision taken in a PNM meeting without taking the Union in confidence. The DRM took a unilateral decision illegally at the instance of the Divisional Engineer. The case of the applicant was thoroughly discussed in the PNM meeting, as is clear from the minutes of the meeting signed by the DRM at Annex. A-2 to the Application. The parents of the applicant have developed affinity to the quarter in which they have lived for a long time and they would vacate the same when the other quarters in the area are demolished. Shri S.N. Sikka, learned counsel for the respondents, has emphasised that regularisation of the allotment of house in the name of the applicant cannot be done as the applicant was not even in service when his father had retired. If the father of the applicant continues in unauthorised occupation and the allotment had been cancelled, the question of allotting the said quarter in the name of the applicant does not arise. Even otherwise, the applicant cannot get two type I quarters but even if quarters 66 A&B are treated

as one quarter, it was pointed out that the applicant's father had built a temple in the premises and put up unauthorised structures and has been using electricity and water without payment. Shri Sikka stated that it is not mandatory that the decisions taken in the PNM meeting cannot be changed by the DRM. These are only guidelines and are not covered under statutory rules.

7. The following points bear relevance in the present case:-

- (1) The applicant's father had retired on 30.6.1977 when the applicant was not in service.
- (2) A decision was taken in the PNM meeting to allot the quarter to the applicant by exchanging houses in the pools of Electrical Foreman and Carriage and Wagon Superintendent and they had agreed to do so. Can this decision be changed unilaterally ? If it is changed, whether this is a matter for the applicant to agitate or whether only the concerned Union can take up the matter with the Railway Administration ?
- (3) Allotment of the second house to the applicant's father appears to be clear. But according to Shri Sikka, it is a mystery as the original of Annexure X is not available in the records of the respondents.
- (4) If the applicant was registered for Type I quarter it may not be necessary to register again for a type II quarter as the category of house would change according to pay structure from time to time.
- (5) If the allotment of the house in favour of the applicant's father had already been cancelled by the Estates Officer after his retirement, can the Tribunal interfere in this matter at this stage ?
- (6) When the Railway Administration have stated that the house has outlived its life and they are due for demolition and the land is required for their own programme, should the Tribunal insist on the regularisation when alternative houses are available ?

8. The most relevant point to be considered is whether the applicant has a right to get the house allotted to his father regularised in his name on the basis of the decision taken in the PNM meeting when it has been brought out that he was not even in service when his father had retired. No railway employee has a right to insist on allotment of a particular house merely on the ground that the family had developed affinity with that particular house. As the father of the applicant had retired in 1977 when the applicant was not even in service, the question of regularisation of the house in the name of the applicant should not normally arise. Even if it is accepted that the applicant was in service at the time of retirement of his father, his appointment was at a different place, namely, Tughlakabad whereas his father was employed at Ghaziabad. The applicant was posted to Ghaziabad only in 1984 and should not normally be entitled to regularisation of the house allotted to his father who had retired in 1977. The decisions taken at the PNM meetings are matters between the Union and the Railway Administration and they should sort out the matter themselves. Shri Maine relied on the case of M.R. Nafdey Vs. Union of India, 1975 (2), SLR 110, where a case of the Supreme Court is cited, to say that Government can frame administrative rules to supplement the rules framed under Article 309 of the Constitution and as long as the administrative rules are not inconsistent with the rules framed under Article 309 of the Constitution, they would govern the conditions of service. The Supreme Court had observed "To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that we have imported the principles of natural justice of audi alteram partem into this area." The Supreme Court case related to a person who had been reverted by the Railways but, as mentioned above, in this case, the decisions in the PNM meetings are matters between the Union and the Railways only. Even though the applicant is directly affected by this decision, he was not a party in the PNM and hence, he cannot raise that plea directly. The house was allotted in the name of Shri Hans Raj, who is continuing to live therein without any authority and without paying rent or electricity or water charges for a long time. The Tribunal may, therefore, not interfere in the orders passed against Shri Hans Raj by the Estates Officer. It would have

been better for the respondents to give reasons for not implementing the decision of the PNM but, as stated above, this is a matter between the Railway Administration and the Union concerned. I do not think that the applicant has any right to get the allotment of the house which is occupied by his father. But the Administration may consider allotting him any other quarter at Ghaziabad where he is at present working, on the basis of his registration at Tughlakabad. In the circumstances, the application is rejected. There will be no order as to costs.


(B.C. Mathur) 16/11/88
Vice-Chairman.
16.11.1988.