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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. No. CA 302/87

Date of decision: 10.9.87

Mehar Singh,
Khalasi,
Train Lighting
SSC Coaching
Delhi Main

... Applicant

(Ms. Asha Jain Madan ... Advocate for applicant)

vs.

1. Divisional Railway Manager,
Northern Railway, New Delhi.
2. Divisional Superintendent Engineer(I),
D.R.N. Office,
Northern Railway, New Delhi.
3. A.E.N.,
Northern Railway,
Shamli Distt. Meerut.
4. Inspector of Works,
Northern Railway, Baraut.
5. Jagdish, P.M.,
Working under P.M.I.
Baraut.

... Respondents

(Shri Raman Kapoor ... Advocate for respondents)

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Hon'ble Shri B.C. Mathur ... Vice Chairman

ORDER

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This is an application under Section 19 of the Administrative Tribunals Act, 1985, against impugned order no. W/-5/SMOL dated 30.1.87 passed by respondent no. 3 cancelling the allotment of quarter no. M-12 Type I in the name of the applicant. The brief facts as stated in the application are that the applicant has been working as a Khalasi in the Station Office, Electric Train Lighting at Delhi since 2.6.1979 and that he was staying in the quarter of one Shri Janak Raj being railway quarter no. 12-M, DSA, Shahdara, Delhi since May, 1986. After the transfer of Shri Janak Raj to Jammu Tawi, the applicant applied for the allotment of the said

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quarter in his own name on 23.10.86 to the IOW, Maintenance Office, Baraut, Northern Railway. This application was forwarded by the IOW to the Assistant Engineer, Shamli who vide order dated 1.1.87, allotted the said quarter to the applicant and directed necessary recovery of rent from the salary of the applicant. A sum of Rs. 150.00 for the month of January has already been recovered from the salary of the applicant vide orders at Annexure C to the application. Having got the allotment in his name on 1.1.87, the applicant left for his village on 2.1.87 to get his family to Delhi. When he returned on 8.1.87, he found that his lock had been broken open and that one Shri Jagdish - respondent no. 5 - working in the office of the PWI had occupied the house. The applicant reported the matter to the local police on 9.1.87 but the police informed him that respondent no. 5 had also produced an allotment certificate dated 14.1.87 before the police. As respondent no. 5 had also produced one allotment letter in his favour, the police refused to interfere in the matter and asked the applicant to seek relief from the department. Thereafter, the applicant applied on 15.1.87 to the DSE, Office of the Divisional Railway Manager, New Delhi for getting the quarters vacated by respondent no. 5. The applicant simultaneously on 16.1.87, filed another application before the Divisional Railway Manager to get the matter examined and get him the possession of Quarter No. M-12. The Electric Superintendent, Train Lighting Coaching, Delhi also confirmed the applicant's stand vide letter dated 22.1.87 (Annexure F), wherein he requested the DSE(I) Divisional Office, New Delhi to get the quarter vacated from Jagdish who was in unauthorised possession of the same. Instead of taking action against respondent no. 5 and getting the quarter vacated, respondent no. 4 cancelled the allotment in favour of the applicant on cooked up ground that the applicant had given wrong

declaration that the said quarter was in his possession at the time of the application. Against this order, the applicant has filed the present application before the Tribunal.

2. It is the case of the applicant that Shri Janak Raj who was living in Quarter no. M-12 DSA, Shahdara was his near relative and that he had been living with him in that house since May, 1986 after the applicant's father expired on 14.1.86 and that the house was allotted to him on 1.1.87 by the competent authority viz., Assistant Engineer, Electrical on out of turn basis. He has stated that the house in question was under the administrative control of the Inspector of Works and whenever a house was vacated or allotted, it was the IOW who would take possession of the houses and hand over the houses to the allottees. Firstly, there was no justification to cancel the allotment allotted to him by the competent authority and even if such an allotment had to be cancelled, he should have been given an opportunity before such cancellation. The order of cancellation is therefore arbitrary and malafide. In the cancellation order dated 30.1.87, issued by the Assistant Engineer, Shamli, it has been stated that the allotment in favour of the applicant is cancelled as he gave wrong declaration that the said quarter was in his occupation as intimated vide his application dated 23.10.86, whereas the quarter was not in his occupation.

3. In the counter reply filed on behalf of respondents 1 to 4, it has been stated that the applicant was not staying with Shri Janak Raj who had been allotted railway quarter M-12 at Shahdara and that after his transfer to Jammu Tawi, he handed over the quarter on 30.12.86 to the representative of the department, viz., Shri Sanmukh Singh. It has been further stated that even if the applicant ever

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stayed with Shri Janak Raj, it would have been only as a guest of the allottee and that Shri Janak Raj handed over vacant possession of the quarter to the department on 30.12.86. The respondents admit that by inadvertence, the quarter was allotted to the applicant on 1.1.87 based on his false declaration. But when the mistake was found out, the applicant was not allowed to occupy the quarter and the allotment letter was cancelled on 30.1.87. It has been further stated that the amount of Rs. 150.00 deducted from the salary of the applicant on the basis of the order dated 1.1.87 was also done on the basis of wrong declaration of the applicant. The quarter in question was in fact allotted to respondent no. 5 on vacation by Shri Janak Raj. The allotment to Shri Jagdish was according to rules and on merit and as the allotment to the applicant was based on misrepresentation by the applicant, it was rightly cancelled.

4. The respondents have filed three letters. One is the allotment letter by the Assistant Engineer in favour of respondent no. 5 allotting him quarter no. 12 on 27.12.86 on vacation by Shri Janak Raj, Mechanic. Another is a letter from Shri Janak Raj, Motor Mechanic who was in occupation of the quarter concerned till his transfer to Jammu Tawi. In this letter addressed in Hindi to "Karya Nireekshak", Northern Railway, Baraut, he has written that due to his transfer to Jammu Tawi, he requested for his house being taken ^{possession by the authorities} away and also mentioned that there are various fittings in the house. There is a noting on the same letter by respondent no. 5 that he has taken over the house with all the fittings intact. This noting is dated 30.12.86. The third letter dated 30.7.86 is from Shri Sanmukh Singh stating that the said quarter has been vacated by Shri Janak Raj, Mechanic on 30.12.86 and that

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the same has been handed over to Shri Jagdish, PWM on the same date. Apparently, 30.7.86 is a mistake because it is dated 30.12.86 and this is confirmed by the date given below the signature of Shri Sanmukh Singh.

5. The learned advocate for the applicant has stressed the point that these letters are all created later on to justify occupation of the house by respondent no. 5 and to deny the applicant his rights in a most arbitrary and malafide way. It has been stated that Shri Sanmukh Singh was a PWI and he had no authority to give possession of the house to anyone as this was the work of the IOW. It has also been stated that the letter dated 27.12.86 allotting the house to Shri Jagdish, PWM, by the Assistant Engineer bears a number which relates to the files of PWI and not IOW. It was, however, conceded that Shri Sanmukh Singh was working under the IOW.

6. The point to be considered is whether the applicant had been allotted a house properly and having got the allotment on 1.1.87, whether it could be cancelled without giving him an opportunity specially, as the rent had been recovered from his salary for the month of January. It is also to be examined how when the house had already been allotted by the Assistant Engineer to respondent no. 5 on 27.12.86, could be allotted again to the applicant 4 days later on an out of turn basis. According to the respondents, Shri Janak Raj vacated the house on 30.12.86, whereas according to the applicant, Shri Janak Raj had gone to Jammu much earlier and that he was actually living in the house even when Shri Janak Raj was living there. Shri Janak Raj was transferred to Jammu Tawi in June and he had actually shifted to Jammu.

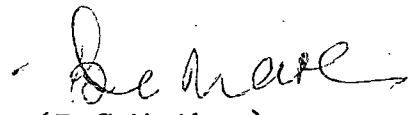
7. Whether any reliance should be placed on the letter of allotment dated 27.12.86 in favour of respondent no. 5

or not, it is quite clear that an out of turn allotment was made by the competent authority in favour of the applicant and this should not have been cancelled, if cancellation was warranted, without giving a fair chance to the applicant. The applicant has enclosed photostat copies of telegrams and letters indicating his address as Quarter No. M-12, Railway Colony, Shahdara showing that he was in fact living there. In any case, having issued allotment letter in favour of the applicant, cancellation of the same without making proper enquiries, giving a fair chance to applicant to state his case would be considered arbitrary.

8. It is very difficult to establish that there has been any conspiracy against the applicant by the officers of the railway administration. The letters of allotment to the applicant as well as to respondent no. 5 are both issued by the competent authority and therefore a prima facie mistake has been made. It is also a fact that respondent no. 5 is now living in the railway quarter concerned for the last 8 months. It is, however, quite clear that having allotted a house to the applicant and deducted house rent and house rent allowance from him, it was not open to the respondents to cancel the allotment on any ground without giving a chance to the applicant in case the charge was that he had made a false statement earlier. As such, the applicant, Shri Mehar Singh, is entitled to a railway quarter. At this stage, it is not necessary that the applicant should be re-allotted quarter no. M-12 at Shahdara, but he must be compensated by allotment of a similar quarter in that area within a period of 30 days from the receipt of this order by the respondents. Railways have a large number of quarters and it is hoped that one quarter can be allotted easily to the applicant. Normally, the applicant is entitled to re-allotment of quarter no. M-12 which was allotted to him, as the cancellation was done in an arbitrary way. It has, however, not been

established conclusively that respondent no. 5 broke open the lock of the house and entered the house unauthorisedly. To meet the ends of justice therefore, it is directed that the applicant should be allotted a house on an out of turn basis within a month. In case it is not possible to allot a regular house of the same category as M-12 within 30 days, some other accommodation should be offered to him temporarily within a month of the receipt of this order by the respondents till a regular house can be allotted to him, but under all circumstances the next house falling vacant under that category should go to the applicant.

9. There will be no order as to costs.


(B.C. Mathur)
Vice Chairman