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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

OA No 2129/91

Date of Decision : 27.11.1992.

Shri V.K. Upadhyaya

.....Applicant

Versus

Union of India & Ors

..... Respondents

CORAM :-

HON'BLE SHRI I.K. RASGOTRA, MEMBER (A)  
HON'BLE SHRI J.P. SHARMA , MEMBER (J)

For the applicant ... Shri G.D. Bhandari

For the respondents No.1&2 .. Shri N.K. Aggarwal

For the Respondent No.3 .. Shri V.P. Sharma

JUDGEMENT

(of the Bench delivered by Hon'ble Mr J.P. Sharma, )  
Member (J)

The applicant Shri V.K. Upadhyaya, was allotted Quarter No. T-65/B, Type-III, Railway Colony, Moradabad when he was working as a Section Controller Northern Railway. He has assailed the order dated 5.9.1991 by which the Chief Controller, Northern Railway, Moradabad cancelled the said allotment order in favour of the petitioner on the ground that the Bungalow No. T-65/B, Type-III has been upgraded to Type IV and consequently, the petitioner was not entitled to the accommodation in question. This is said to have been with the approval of Divisional Railway Manager.

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The applicant has prayed for quashing of the said Order dated 5.9.1991 (Annexure A1) with further direction to the respondents to allow the applicant to take peaceful possession of the said quarter.

During the course of the arguments we were told that by order dated 8.10.1992, the Chief Controller, Northern Railway, Moradabad has allowed the applicant to take the possession of quarter No T-65/B which had already been allotted to him by order dated 31.1.1992 subject to the condition that he withdraws OA-2129/91. This course of action has been adopted with the approval of DRM. We are also informed by the learned counsel for the petitioner that the petitioner has since been promoted to the pay scale of Rs.2000-3200 and as per the letter No 88/DM(P)/21/79 dated 24.7.1989 issued by the Railway Board, and that the applicant has, therefore, become entitled to even Type IV quarter. A copy of that circular is filed by the learned counsel for the respondents at P-102 of the paper book.

2. The case of the applicant is that he has been working as Section Controller since 14.11.1980 and has also been regularised in that post w.e.f. 11.4.1990. He was in occupation of Type-II quarter, which is one step lower type quarter than his entitlement. He submitted a request for allotment

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of Type-III quarter. In the mean time, quarter No T-65/B which was earlier allotted to Shri B.P. Singh when he was in Class III cadre of Control Branch, was retained by him on promotion, firstly, to Class II and later to class-I fell vacant when he retired on superannuation. The said quarter, on vacation by the said occupant, being in control pool, was allotted to the applicant vide order dated 31.1.1991 (Annexure A-4) who stood first in the priority for this type. The applicant is also said to be an active member of the Northern Railway Men's Union (NRMU). There is a rival union called Uttariya Railway Mazdoor Union (URMU) and its Secretary Shri Pradeep Kapoor is occupying quarter No T-64/A, which is a part of the same block of 4 quarters as T-65/B allotted to the applicant. The aforesaid URMU complained against allotment of this quarter to the applicant and this seems to have caused reconsideration of this allotment to the petitioner. Be that as it may, it is the contention of the applicant, the aforesaid quarter is a Type-III quarter and the same has been illegally and in a malafide and arbitrary manner upgraded to Type-IV to deprive him of his rightful entitlement in <sup>violation of</sup> all rules in this behalf.

The official respondents opposed the application stating that quarter No.T-65/B, Type-III, was

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upgraded to Type IV by providing additional facilities like additional water closet, toilet fittings etc., in the financial year 1983-84 and that the allotment order issued in the name of the applicant was cancelled by the impugned order dated 5.9.1991 with the approval of DRM, Moradabad keeping in view the changed ground stuation. It is the stand of the Respondents that quarter No T-64/A, in possession of Shri Kapoor, has not been provided additional facilities and therefore, T-64/A continues to be a Type-III quarter.

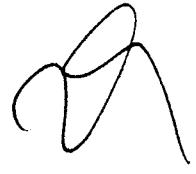
It is asserted by the Respondents that the quarter No T-65/B is upgraded to Type IV in that view of the additions/alterations made and the applicant is not entitled to the same.

The petitioner has filed the rejoinder reiterating his contentions in the application.

3. We have heard the learned counsel for both the parties at length and have gone through the record of the case. The respondents themselves by a letter dated 29th July, 1992 have filed a copy of the original work order dated 3.11.1983 relating to quarter No T-65/B along with photocopy of relevant papers of the measurement book dated 5.5.1987. We have gone through these documents. The copy of the work order filed shows that there

were certain special repairs proposed to be carried out to bathrooms by way of providing additional water closet and toilet fittings to 10 bungalows including No. T-65/B. The photocopy of the relevant papers of Measurement Book which is the basic record indicating the work done, however, does not give a clear picture of the nature and extent of work done and consequently fail to provide conclusive evidence that additions justify upgradation of the said quarter. The respondents have also filed administrative instructions dated 25.7.1962 of the Railways relating to standard pay scale for entitlement of staff quarters. Type-III quarter comprises two rooms with inside verandah, kitchen, stores, individual latrine in the courtyard. The plinth area of the covered space for the above accommodation is stated to be 960 square feet, i.e. 89.28 Square metre. The respondents have also filed a copy of the letter dated 24.7.1989 from the Railway Board indicating entitlement of accommodation based on the revised pay scale recommended by the Fourth Pay Commission. All Group 'C' staff in the pay scale of Rs.1640-2900 are entitled to Type-III quarters and those in the pay scale of Rs.2000-3200 are entitled to Type IV quarter. They have also filed a statement that plinth area of quarter No. T-65/B is 177.01 square metres. If this statement is to be believed

The area of T-65/B is a little more than twice the area shown in the circular letter of the Railway Board of 1962 where the covered space of Type-III quarter is stated to be 89.28 Sq. mtrs and is also much larger than the area prescribed for Type IV quarter viz 97.6 Sq. mtr. Thus the area of bungalow No T-65/B does not fit either in Type-III or Type IV quarter, obviously respondents have not taken care to give correct details. Further the expenditure which is shown to have been incurred on quarter No.T-65/B appears to be of the nature of running expenses incurred on the maintenance of the quarter. Event if an additional water closet and improved toilet fittings have been provided, which is the case of the respondents, they will not by themselves upgrade the said quarter from Type-III to Type-IV. Shri B.P. Singh who was earlier allottee of the said quarter was allotted the same while he was holding a Group 'C' post. He was subsequently, promoted to Class-II post and later to Class I post as said earlier but he continued to retain the said quarter. Merely because he got some addition/alteration made and he continued to retain the same quarter will not upgrade type-III quarter to Type-IV. Further paraPara 2303, in Chapter-23, a copy of which has been filed by the applicant at P-107, of the



paper book shows that the additions and alterations to staff quarters of a temporary nature alone can be made under Para-1966.E with the prior approval of the Divisional/District Engineer and on the specific understanding that the tenant will dismantle the same on vacating the quarter. It is further laid down that the additions and alterations to the quarters should not be carried out without the prior approval of the Chief Engineer. The respondents have not made any clear cut averment/or filed any document to show as to when this Type-III quarter was upgraded and to Type-IV whether that was done after obtaining sanction of the competent authority. This controversy has arisen only after the allotment has been effected in the name of the applicant and there was some objection and complaint made by the other Union, URMU. There is also a controversy as to when this quarter was upgraded to Type IV. According to one averment, it was upgraded some-time in 1987, while in the counter, the plea taken is that the quarter had been upgraded in 1983, and these two statements do not reconcile with each other. The applicant has also filed a certificate of Chief Controller, Northern Railway, Moradabad dated 13.12.1991 that the applicant is even entitled to Type-IV quarter being Deputy Coaching in the

grade of Rs.2000-3200. He has been working as such w.e.f. 24.7.1990 (P-118 of the Paper Book).

4. The respondents were asked <sup>on 7.7.1992</sup> to file an affidavit by an authorised person with a view to determine the ground situation indicating :-

(i) alterations and additions made in Quarter No T-65/B and its revised plinth area.

(ii) Sanction of the competent authority to upgrade the quarter T-65/B from Type-III to Type-IV.

They were further directed to keep relevant records available on the next date of hearing. Eventually the respondents have filed an affidavit on 29.10.92 of Shri Syed Anis Ahmed, Inspector of Works (IOW) who is a class-III official and who according to our understanding is not competent to do so. No material has also been produced by the respondents to indicate that IOW is competent to file an affidavit in this behalf.

5. Taking all these facts into account, and in the absence <sup>of</sup> any convincing evidence on record that the said quarter was upgraded to Type-IV, we are inclined to the view that applicant was correctly allotted the said quarter under order dated 31.1.1991

and that the said order does not suffer from any illegal or arbitrary infirmity. Further, as mentioned earlier the applicant has also been promoted in the grade of Rs.2000-3200 since 24.7.1990 as Deputy Coaching entitling him to the allotment of a Type-IV quarter. Taking from any angle the allotment of T-65/B cannot be said to be against the extant rules and is, in fact, in accordance with the Circular of the Railway Board. We also have no hesitation in rejecting the contention of the respondents that area of quarter No.T-65/B is  $177\frac{01}{4}$  square metre after the additions and alterations to the said quarter were made.

6. In view of the above facts and circumstances, the present application is allowed and the impugned order of cancellation of allotment dated 5.9.1991 is quashed and set-aside. We take note that the applicant has already been given possession of the said quarter and direct the respondents that the petitioner shall not be evicted from it otherwise than under due process of law. In the circumstances, the parties shall bear their own costs.

*J. P. Sharma*  
(J.P. SHARMA) 27.11.92  
MEMBER (J)

*I. K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER (A)