

99
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
* * *



O.A. NO. 2235/91

DATE OF DECISION : 07.08.1992

Shri Harish Khanna

...Applicant

vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri S.K. Sawhney,
Counsel

For the Respondents

...Shri P.S. Mahendru,
Counsel

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys.*
2. To be referred to the Reporter or not? *Ys.*

JUDGEMENT

The applicant is working as Head Clerk under PWI, Northern Railway and assailed the order dt. 29.7.1991

(Annexure A1) whereby the representation of the applicant

regarding cancellation of the allotment of the quarter

No. 83/—4 Tughlakabad dt. 16.7.1991 was rejected. He was

also ordered to pay damage rent @ Rs.1743 p.m. besides

conservation charges. The applicant claimed the relief

that the impugned order dt. 29.7.1991 as well as another

order dt. 17.7.1991 be quashed with the direction to the

Respondents to allow the applicant to continue in possession

of the Railway quarter and charge the normal rent.



2. The facts of the case are that the applicant at the relevant time was working in the engineering branch as a Head Clerk under PWI. The applicant applied for allotment of a Railway quarter on 1.3.1980. The quarter No.83/C-4 Tughlakabad fell vacant which belongs to the engineering pool, and the Area Housing Committee agreed to allot the said quarter to the applicant by the letter dt. 23.10.1990. The applicant occupied the said quarter. However, subsequently on 17.7.1991, the allotment of the said quarter was cancelled stating that it was out of turn allotment. The applicant submitted the appeal against the same, but that too was rejected on 29.7.1991. The allotment in favour of the applicant, according to him, was made as it belongs to the engineering pool and the respondent No.2 has wrongly treated the same as an out of turn allotment.

3. The respondents contested the application and stated that the allotment made by the Area Housing Committee was only provisional to the applicant and the same required the approval of respondent No.2, who is the competent authority in the matter. Respondent No.2 is Divisional Superintending Engineer (Estates) Northern Railway. The possession of the

de

...3...

quarter by the applicant is unauthorised because the applicant has obtained the possession of the quarter from the outgoing tenant without approval of the competent authority. The cancellation of the provisional allotment of the quarter made by the Chairman of the Area Housing Committee is valid and legal. The post of Head Clerk in the Engineering Branch comes under non essential staff and the same does not come within the ambit of the rule for allotment of the quarter on out of turn basis and as such the allotment made to the applicant is unauthorised.

The order passed for recovery of damages in addition to water and conservation charges is perfectly legal.

4. It is also prayed that the application be dismissed with cost.

5. I have heard the learned counsel for both the parties at length and perused the relevant rules. The applicant has also filed the rejoinder and along with it he has annexed a note of the Office of the Chief Yard Master, Tughlakabad and his priority in essential staff was at Sl.No.100 and as guard, his priority is at Sl.No.38 on 11.3.1980. The applicant has also

filed an affidavit that the post of Works Clerk be declared as essential category for the purpose of allotment of Railway quarter. However, the applicant is working as a Head Clerk and not as Works Clerk. The rules regarding the functioning of the Area Housing Committee and allotment of the Railway quarter have been perused. Rule 2 lays down the functions of the Central Housing Committee and the Central Housing Committee has the power to decide the disputed points received from the Area Housing Committee. However, Divisional Superintendent Engineer (Estates) is the final authority in the matter. In para-1, Chapter-II, Sub Para(f), it is laid down that in respect of the allotment of the quarter, the Appellate Authority will be the Area Housing Committee, though the allotment in favour of the applicant was made by the Chairman of the Area Housing Committee, Tughlakabad. But it appears to be a provisional allotment. When the allotment has been made in favour of the applicant, though provisional, then the subsequent order of cancellation of allotment should have been passed after giving a show cause notice to the applicant. The reason given in the cancellation of allotment of the said quarter is that out of turn allotment to non essential staff is to be cancelled because it has been made ignoring the rules and regulations.

J

...5...

The DRM Office has written the said letter dt. 16.7.1991 to the Assistant Engineer, Tughlakabad, though the allotment in favour of the applicant has been made treating the applicant belonging to essential category staff. But in fact he belongs to non essential category as he is a Head Clerk. It appears that the applicant obtained the consent of both the unions and also got necessary recommendations from his superiors including PWI on the basis of which the allotment appears to have been done in favour of the applicant. The allotment in favour of the applicant, therefore, cannot be said to be in confirmity with the Rules. However, PWI, New Delhi has given a certificate that the applicant has been working as Works Clerk and thus he becomes entitled to the Railway quarter being of essential category. The respondent No.2 has not questioned the authority of PWI, Northern Railway, New Delhi as to under what circumstances he has given a certificate to a Head Clerk as belonging to Essential Category. Though the applicant is working under the PWI and his performance has been judged to be as an Essential Category by immediate officer then it is not necessary to go into further detail whether the applicant belongs to essential category or non-essential category staff. Both PWI and Asstt. Engineer are working under the same Dvl. Superintending Engineer and expected to

know the certificate issued by the PWI. When such a certificate is ~~filed~~ ^{issued} by the PWI, Northern Railway, New Delhi then that certificate cannot be lightly ignored. The respondents could not show that the applicant inspite of this certificate issued by immediate officer i.e. PWI Northern Railway can be classified as belonging to non-essential category. The Area Housing Committee has considered this aspect and made the allotment in favour of the applicant. Thus, if there was any violation of the rules or administrative instructions in this regard then such rules appears to have been relaxed in the case of the applicant. The applicant, therefore, cannot be said to be in anauthorised occupation of the quarter allotted to him by the Area Housing Committee though provisionally by the order dated 23.10.90.

6. The learned counsel for the applicant has also urged that the person junior to the applicant i.e. one Shri Raj Kumar, who is a clerk and working in the office of the Area Housing Committee, Tuglakabad has also been allotted a quarter but the said Shri Raj Kumar is junior to the applicant regarding the registration of priority of allotment of quarter. This fact has not been disputed by the learned counsel for the respondents.

(26)

- 7 -

7. Since the allotment of the quarter in the name of the applicant has been made by Competant Authority so subsequently it cannot be said that said allotment has not been made in its proper prospective. The quarter belonging to the Engineering Pool and the applicant was working on the same post in Engineering Branch. Earlier an allottee of the said premises also works in the Engineering Branch. On this aspect also it cannot be said that the applicant could not have been given the said quarter and the only hurdle in the way was that he was classified as belonging to non-essential category. That disability has been removed by the certificate issued by the PWI, Northern Railway, New Delhi.

8. The applicant has also occupied the quarter and is also residing there with his family. The cancellation of the allotment also is not in pursuance of the Rule 1713(b) (v) of the Railway Establishment Manual.

9. Since the allotment in favour of the applicant has been made by a Competant Authority and he has entered into possession on the basis of that allotment order, the possession cannot be said to be un-authorised and as such

Je

the respondents cannot recover penal rent/damages from the applicant.

10. The certificate of the PWI filed by the applicant is made part of the record.

11. In view of the above facts, the present application is allowed and the impugned orders are quashed and the applicant shall continue in the said premises on the basis of the allotment order subject to the payment of normal licence fee, leaving the parties to bear their own costs.

J. P. SHARMA 7.8.92
(MEMBER (J))