

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

O.A. No.2050/92

18.12.92

Shri S.K.C.Tiwari

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM :

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

For the Applicant

...Shri B.S.Mainee

For the Respondents

...Shri R.L.Dhawan

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

JUDGMENT

The applicant, is Statistical Inspector, Railway Board, assailed the eviction order dt.28.7.1992 passed under Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, hereinafter referred to as Eviction Act, passed by the Estate Officer, Northern Railway from Quarter No.285/3, Railway Colony, Shakur Basti. He has also assailed the order of cancellation of allotment dt.14.9.1990 with respect to the above premises directing to vacate the said premises within ten days, failing which action under the Eviction Act will be taken besides levying damage rate of rent.

The application was filed on 10.8.1992 and an interim direction was issued in favour of the applicant, "In the

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meantime, the status-quo as of today be maintained by the respondents." That order was extended from time to time and continues till today. The applicant was working as Electric Chargeman at Delhi and was allotted Quarter No.285/3 Shakur Basti, Railway Colony. He was transferred as Senior Foreman, Diesel at Ludhiana where he joined on 8.12.1989. He submitted his request for retention for four months by the letter dt.6.12.1989 (Annexure R3). He gave another application dt. 17.3.1990 to retain the quarter for the month of April because of the education of the elder ~~re~~ son, who was appearing in Class XII final examination. The applicant made another written request (Annexure R6) for retention of the quarter from 1.4.1990 to 30.9.1990 on the ground of sickness of his another son. The ~~application~~ ^{applicant} was, however, asked by the DRM Office by the letter dt.14.6.1990 that his request for retention of quarter has been rejected for want of Railway doctor's recommendations and he should submit medical certificate duly recommended by the medical authority so that further action may be taken on his application for retention of the quarter on the ground of sickness of the son. The applicant did not submit any such medical certificate of the Railway doctor for his son and he himself reported sick and placed himself under the treatment of the Railway doctor on 30.3.1990 (Annexure A4). The applicant has alleged in the application that his sickness was prolonged and he continued to be ill until the fitness certificate from the Railway doctor dt.27.3.1992 (Annexure A7).

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On 19.7.1990 DRM office informed the applicant vide letter (Annexure A8) to vacate the quarter failing which action under Eviction Act shall be taken. The allotment of the quarter was, therefore, cancelled by the order dt.14.9.1990 (Annexre 1).

In the meantime by the order dt.10.10.1990, the applicant was posted as Foreman, Diesel Shed, Bhagat Ki Kothi, Jodhpur. According to the applicant, this amounted to his reversion from the post of Senior Foreman and the same was challenged by him in another application filed before the Principal Bench of the Central Administrative Tribunal. The applicant, however, did not join at Jodhpur and continued to retain the quarter in question. The applicant further made a representation dt.7.7.1991 (Annexure A9) that his tenancy be prolonged till he recovers, but he did not challenge the impugned order of cancellation of allotment dt.14.9.1990 earlier.

The applicant, however, submitted his leave applications supported with medical certificates of private doctors. He sent the sick certificate of the Railway doctor only on 21.10.1991 for 15 days (Annexure A9-p 62) and this was upto 19.11.1991.

In the meantime, the Ministry of Railways considered

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the applicant for recruitment to the post of Statistical Inspector.(CA) by the letter dt.11/15.2.1992 (Annexure A10) in the pay scale of Rs.2000-3200. The terms and conditions of his appointment are given in the said letter and the relevant portion is quoted below:-

"He would be eligible for the allotment of residential accommodation in his turn out of the General Pool of residential accommodation, controlled by Directorate of Estates, Government of India, in accordance with the rules governing the same. Depending upon the availability of the accommodation, he will also be entitled to transit accommodation, controlled by Railway Board in accordance with the rules governing the same. Regarding Railway accommodation, if any, already in his occupation, attention is also invited to this Ministry's letter No.E(G)82-ORI-11 dated 23.4.1982."

This was deputation from the post of Foreman (Diesel Shed), Electrical from Diesel Shed, Bhagat Ki Kothi Jodhpur to the Railway Board. Finally the DRM issued a letter dt.6.4.1992 to the General Manager, Northern Railway, ^{Baroda} ~~Bharat~~ House, appointing the applicant in the Railway Board and as such, the applicant joined on [↓] 17.4.1992 in the Railway Board as Statistical Inspector. It is in the light of the above circumstances that the applicant has prayed for regularisation of the aforesaid quarter in his name.

However, in the meantime, the Senior Divisional Engineer/Estate, Northern Railway, DRM Office filed the application dt.16.11.1990 under Eviction Act before the Estate Officer, Northern Railway for eviction of the applicant from

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quarter No.285/3, Shakur Basti as well as for recovery of rent at penal rate. The applicant contested the application after taking a number of adjournments and it was only in June, 1992 that he filed his reply when he had already joined as Statistical Inspector in the Railway Board. The applicant also gave his statement on 13.7.1992. The department also led its evidence on the application of eviction dt.16.11.1990. The Estate Officer, Northern Railway after considering the evidence of the parties passed the eviction order dt.28.7.1992 (Annexure A2), which has been assailed by the applicant in the present case.

The respondents contested the application and opposed the grant of reliefs, prayed for. In the reply, it is stated that the cancellation of allotment was according to the Railway Board's circular dt.15.1.1990 (Annexure A13) and the eviction order has been passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 after observing the due procedure prescribed therein and in the Rules framed thereunder. The applicant has no case and the application be dismissed.

Heard the learned counsel for the parties at length and perused the record. Firstly, the challenge to the order of cancellation of allotment dt.15.9.1990 is barred by time. The applicant should have come within one year from the date of this order, but the present application has been filed in

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August, 1992. Special limitation is provided under Section 21(1) of the Administrative Tribunals Act, 1985 and there is nothing on record to show why the applicant did not challenge this order within the period of limitation. However, since the eviction order has also to be ^{adjudicated} ~~adjudged~~ upon, so the order of cancellation has also been considered on merit. As regards the order of cancellation of allotment, the applicant was transferred to Ludhiana on promotion as Senior Foreman where he joined on 8.12.1989. He could have retained the quarter for four months upto 8.4.1990 and thereafter he had to vacate the said quarter. Relevant circular relied by the applicant himself is dated 15.1.1990 (Annexure A13). Para-1.1 (iii) of the same is reproduced below :-

"Where the request made for retention of railway quarter is on grounds of sickness of self or a dependent member of the family of the railway employee, he will be required to produce the requisite Medical Certificate from the authorised Railway Medical Officer for the purpose."

The contention of the learned counsel for the applicant is that as the applicant has fallen ill, so till he recovers, he is authorised to retain the quarter, as laid down in para 7(iii) of the circular, quoted below :-

"When an employee already relieved on transfer to another station takes leave on medical ground, the period for retention of Railway quarter on transfer will automatically get extended by the period of medical leave normal rent/flat rate of licence fee/rent should be charged if the medical leave is taken from a date within the first two months of transfer and double the flat rate of licence fee etc. if it is taken after the first two months."

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However, the benefit of this cannot be given to the applicant because firstly the applicant applied for retention of the quarter ^{on} for the ground of illness of his son for the period from 1.4.1990 to 30.9.1990 and he was asked by the authorities by the letter dt.14.6.1990 to furnish the recommendations of the Railway doctor as envisaged under the rules. The applicant did not do so. He has been persistently asked to vacate the quarter and in this connection, letter dt.19.7.1990 (Annexure A8) is on record. When the applicant did not furnish any certificate of the Railway doctor, the order of cancellation of allotment dt.14.9.1990 was passed. The applicant during this period was posted at Ludhiana, though he has reported sick on 30.3.1990 and only a sick report of 7 days was obtained. The sick report expired before 7.4.1990 that ^{is} the period upto which the applicant could have retained the quarter by virtue of earlier permission granted to him of 4 months from 8.12.1989 when he was transferred to Ludhiana as Senior Foreman and joined there. The applicant, of course, has sent the certificate of private doctors in support of his leave applications on medical ground, but in the circular, referred to above, there is specific mention of the recommendations of the Railway doctor. Thus the medical certificate of the private doctor would not fulfil the conditions laid down in order to entitle the applicant to retain the Railway quarter for the period he was ^{allegedly} sick. The applicant remained on the strength of the Ambala Division and was posted at Ludhiana. If he has fallen ill at Delhi, then

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he should have got himself treated with the Railway doctor which he had not done. He has sent certificates of his illness supported by the private doctor of Ferozabad. This also goes to show that the applicant could go from place to place even out of Delhi, but he could not solicit the services of the Railway doctor. In such a case, the opinion formed by the respondents in not granting him further sanction for retention of the Railway quarter and cancelling the allotment by the order dt.15.9.1990 cannot be said to be unjust or in any way against the circular of the Railway Board. Thus the order of cancellation does not call for any interference. It may be seen that the respondents have filed an application for eviction of the applicant under the Eviction Act on 16.11.1990, but the applicant did not care to contest that application at the proper time and the Estate Officer has granted him time for all these about 18 months or so when ultimately the applicant filed the reply in June, 1990. In the statement before the Estate Officer, as reproduced in the judgment given by the applicatn on 13.7.1992, he admitted that he was transferred to Ludhiana as Senior Foreman and that he was given permission by the competent authority for retention of the Railway quarter for 4 months from 8.12.1989 to 7.4.1990. He also admitted thatt he requested for grant of retention of the Railway quarter for at least six months w.e.f. 8.4.1990 on account of his eldest son's illness. He has also admitted that the Railway authorities have directed him to produce the medical certificate from the Railway

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doctor, but he did not submit the same and, therefore his request was rejected by the competent authority for want of Railway doctor's recommendations. The applicant has also admitted in a statement that he has no authority to retain the said Railway quarter after 8.4.1990. He has also admitted that he is unauthorised occupant since 8.4.1990. In view of this factual statement of fact, given by the applicant, the Estate Officer has passed the impugned order dt.28.7.1992. The challenge to the aforesaid order is, therefore, misplaced. The Estate Officer has afforded adequate opportunity to the applicant and it is on the basis of his statement as well as on the statementt of the departmental authorities that the eviction order was passed. The Estate Officer has given adequate and convincing reason in coming to the conclusion that the applicant is an unauthorised occupant of the said Railway quarter.

The learned counsel for the applicant also argued that the applicant has since been posted at Railway Board, but in the terms and conditions of his appointment as Statistical Inspector, there is a clear mention that the applicant shall be entitled to allotment of quarter from the general pool and he has no right to retain the present quarter. Para-4 of the aforesaid appointment letter dt.11/15.2.1992 (Annexure A10) is clear on this point. The applicant, therefore, cannot claim as of right the retention of the Railway quarter which was allotted to him while he was posted in Delhi Division and

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which he had to vacate on transfer to Ambala Division when posted as Senior Foreman, Ludhiana in the Diesel Shed. The applicant did not join at Jodhpur when he was posted as Foreman there and in fact he has come on deputation to the Railway Board from the post of Foreman, Diesel, Jodhpur and he was not posted to the deputation post of Statistical Inspector from any post which he held in Delhi in Delhi Division. He was already relieved from Delhi Division to join on promotion at Ludhiana on 7.12.1989. If the applicant has unauthorisedly ^{ed} retain the quarter after a necessary permission was granted to retain the same upto 8.4.1990, then that will not condone the illegal act of the applicant for asking that the said quarter be regularised in his name because he has since been posted in the Railway Board, though on deputation.

The present application, is therefore, totally devoid of merit and the impugned orders do not call for any interference.

In view of the above discussion, the application is dismissed as devoid of merit. The stay granted in favour of the applicant by the interim order dt.10.8.1992 is vacated. However, the applicant shall be free to apply for general pool accommodation as per the Extant Rules. No costs.

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(J.P. SHARMA) 18/11/92
MEMBER (J)