

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

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OA No. 2296/93

11th Jan 1994

HON'BLE MR. J.P.SHARMA, MEMBER(J).

Shri Gouri SHanker Sharma,
son of Shri Amar Nath Sharma,
Highly Skilled Instrument Mechanic Gr.I,
Under Workshop Electrical Engineer,
Northern Railway Workshop, Dayabasti,
Delhi.

R/o: 69/A-2, Motia Bagh, Delhi-6

(By advocate : Shri S.K.Sawhney) ...Applicant

VERSUS

1. Union of India, through
General Manager,
Northern Railway,
New Delhi.

2. Divisional Supdtg. Engineer(Estate),
Northern Railway, New Delhi.

(By advocate : Shri K.K.Patel) ...Respondents

ORDER (ORAL)

The applicant is a Highly Skilled Instrument Mechanic Gr.I in the Under Workshop Electrical Engineer, Northern Railway. He was allotted railway quarter at 69/A-2, Motia Bagh, Delhi in the year 1981. The applicant is aggrieved by an order issued by the respondents dated 29.9.93 taking certain action on the basis of unauthorised subletting of railway quarter aforesaid by the applicant and cancelling that allotment wef 5.7.93 and ordering vacation of the quarter failing which to face eviction proceedings.

2. The applicant has prayed for the grant of relief that the aforesaid order of 29.9.93 be quashed and the order of the respondents cancelling the allotment of quarter in

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question be set aside with a further direction to charge a normal rent.

3. A notice was issued to the respondents who contested this application and in the reply stated that as per rules of allotment annexed with the reply at page 11 which lay down the administrative instructions regarding the allotment of the aforesaid quarter to be used in a particular manner and as and when the allottee will be unauthorised occupant in certain eventualities. It is further laid down that there should be surprise checks of railway quarters by a committee consisting of the pool holder (Supervisor), the Sectional IOW, one representative each of URMU and NRMU, the registered union of the railway employees. The report of the committee on the basis of the joint check will be considered and where subletting has been found without prior permission of the competent authority, certain action shall be taken as laid down in para 4.3, sub para I,II,III & IV of the said instructions. It is further stated that in the present case, the procedure has been followed and before passing the impugned order, a show cause notice was issued by Divisional Supdtg. Engineer (Estate) on 28.7.93 and after receiving the reply of the applicant dated 3.8.93, the impugned order dated 29.9.93 was passed. The various averments made by the applicant in the application that the persons in occupation - Shri S.C.Tiwari and Shri Ghanshyam were in his relation, has been denied. It is, therefore, prayed that the application is devoid of merit and be dismissed. The applicant has also filed the

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rejoinder reiterating the points taken in the OA stating further that he has not let out the premises to the aforesaid 2 persons and he has never received any consideration whatsoever from them. These persons happened to be in relation of the applicant and for a short time when the family of the applicant had shifted to Chandigarh to live with the elder son employed there, present relations came. The inspection had taken place at a time when the premises were locked.

4. During the course of arguments, learned counsel for applicant placed for perusal a memo of chargesheet issued to the applicant for alleged misconduct of subletting dated 24.12.93 after the filing of this OA where the article of charge against the applicant is also to the effect that he has, in an unauthorised manner, sublet the allotted premises aforesaid to 2 persons and, therefore, committed misconduct as defined in the Railway Servants (Conduct) Rules, 1966.

5. I have heard the learned counsel for the parties at length and perused the records. The first contention of the learned counsel is that the committee which made the surprise check was not duly constituted and the report of such committee cannot be relied upon for passing impugned order. The argument appears to be plausible but the guidelines issued in the instructions filed by respondents

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As annexure to the counter, referred to above, goes to show that the representatives of the union had to be associated in the surprise checks. The respondents, before effecting surprise check have issued the letter dated 14.6.93 and it is annexed with the counter bearing page no.16. A copy of this joint checking of subletting has also been sent to a number of persons including the Divisional Secretary of both the Unions and at the bottom, there are signatures showing the receipt of the information at the hands of the concerned union personnel. The site check form dated 19.11.92 gives a clear picture of the premises in occupation of the applicant and it is also signed by 2 witnesses. There is also note at the bottom that the persons in occupation were paying certain consideration in cash to the applicant for use and occupation as a part of allotted premises which appears to have been raised by the applicant in the courtyard as jhuggis. The administrative rules framed in this regard have not been challenged. What is assailed before me is non compliance with the rules. Administrative instructions may be directory or mandatory which are to be preferred from the spirit underlying those instructions. When the respondents have taken steps to apprise the prescribed members to be present in the surprise check and if any of such persons is not present, then the check cannot be faulted with. The respondents have taken step on their part. It is only to show fairness by the administration to avoid arbitrariness in matters of report and it is not that the surprise check is taken to be unwanted or unreliable.

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6. I, therefore, find that this cannot be faulted with. Learned counsel, however, when the order was being dictated, pointed out certain over-writing in the site check form. Learned counsel also pointed out that in the letter of joint check addressed to the concerned designated authorities, there is some over-writing on the date. This fact cannot be denied. On perusal of the aforesaid letter, earlier date was 25.6.93 which has been made to read as 5.7.93 by making the impression of over-writing at certain digits deleting 2 before 5 in date and deleting 6 and putting 7 there. This cannot mislead an ordinary reader. This point, therefore, has no force.

7. The next contention of the learned counsel is that the inquiry is in progress. It is beyond the scope of this application. In the interest of justice, it is not good to touch this inquiry while discussing the merits of this application. It is also made clear that any observation made in the order will not touch the case either of the parties in the aforesaid departmental proceedings. This application is only confined to the impugned order of 29.9.93 and no more.

8. The other contention of the learned counsel is that keeping a relation for certain period or non-acceptance of consideration from any person who happened to live for sometime does not come within the definition of

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subletting. In this connection, the applicant has been allotted a railway premises and is bound by the instructions on this subject. Para 2.1 of the aforesaid instructions clearly laid down as to who will constitute the family and those who can share the accommodation of the allottee. In short, such persons are blood relations which have been qualified as parents, children and their families, brothers and sisters and any other person who is a railway employee. A perusal of the reply given by the applicant to show cause notice on 5.8.93 does not go to show that the applicant has obliged any of his relations by ^h posting them. When they are not guests, temporarily or for a longer period, the stand taken by him that aforesaid persons are his relations cannot be taken to be on its face as a correct statement. That may be so but has not been projected as such. Even in the application, how Ghanshyam and S.C.Tiwari are related by proximity or remoteness has been shown nor any document to that effect has been filed. The conclusion drawn by the respondents in the impugned order, therefore, cannot be faulted that those who were staying in the absence of the applicant in the premises in certain temporary structure were not relations of the applicant. This tribunal cannot sit as an appellate authority to scrutinise that fact or make a de novo inquiry into that. Thus, this argument also fails.

9. Learned counsel also argued that the structures which were raised were of temporary nature. Fitting ~~it~~ tin shed and constructing the ^{ed} roof structure, to my mind, is
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of such a nature which is equivalent to in all respects an accommodation ^{which is} ~~where~~ and wind ^{have been proofed} ~~water~~. As such, it cannot be said that raising of structure which has been admitted by the applicant himself in para 4.4 of the application was of temporary nature. It amounted to alteration materially of the allotted premises.

10. In view of the above facts and circumstances, I find no merit in the present case and the same is dismissed leaving the parties to bear their own costs. It is, however, made clear that any finding or observation given in this case will not come in the way of departmental inquiry.

Sharma.

(J.P.SHARMA)
MEMBER (J)

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