

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH
ALLAHABAD.

Dated: THIS THE 8th DAY OF MARCH, 1997 APRIL

CORAM: Hon'ble Mr. S.Das Gupta, A.M.

Hon'ble Mr. T.L.Verma, J.M.

ORIGINAL APPLICATION NO.665/96

B.R.Goswami S/o R.S.Goswami,

R/o Loco Colony 329 EF Mughalsarai,

District : Varanasi. Applicant.

C/A Sri S.K.Dey and Sri S.K.Misra.

Versus

1. Union of India through the General Manager,
Eastern Railway, Calcutta.

2. The Divisional Railway Manager,
Eastern Railway, Mughalsarai,
District Varanasi.

3. The Divisional Mechanical Engineer,
(Diesel) Eastern Railway, Mughalsarai,
District Varanasi. Respondents

C/R Sri D.C.Saxena.

ORDER

By Hon'ble Mr.T.L.Verma JM.

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the order dated 30.4.1996 cancelling the allotment of quarter no.329.EF(TYPE I) Loco Colony, Mughalsarai in favour of the applicant and allotting

the same to Sri Misri Lal on the basis of out of turn allotment, and charge sheet dated 17.6.1996 issued for major penalty on the allegation that he did not vacate quarter no.329 EF despite orders passed by the D. R. M. and for issuing direction to the respondents to permit the applicant to continue in the said quarter.

2. The admitted facts of the case are that the applicant, while working as Tyoist in the office of A.M.E.(power) Eastern Railway, Mughalsari was allotted quarter no. 398A(type I) in Loco Colony by the competent authority. On his request, out of turn allotment of quarter no.329EF Loco Colony, Mughalsari was made, by the D.M.E(P) Eastern Railway, Mughalsarai by order dated 17.12.1995, on medical ground. Quarter hitherto in his possession was allotted to some one else. The applicant occupied the said quarter on being vacated by Shri Mahmood Khan. He also vacated the quarter allotted to him earlier. The allotment of quarter no.329 EF, Loco colony, Mughalsari was cancelled by the impugned order dated 30.4.1996. When the applicant did not vacate the said quarter, recovery of open rent was ordered by order dated 18.6.1996. In addition to the above, SF-5 was issued on 17.6.1996 on the allegation that he has not vacated the quarter though allotment in his favour has been cancelled.

3. This application has been filed by the applicant challenging the validity of the aforesaid orders on the ground that the same are arbitrary, against rules and in violation of principles of natural justice.

4. The respondents contend that the D.R.M. only, is empowered to make out of turn allotment of the quarter on medical ground and that the allotment has been made by the D.M.E(P), the same is, therefore, void and has rightly been cancelled by the D.R.M.. It has also been stated that the applicant has committed an act of grave misconduct by not vacating the quarter inspite of cancellation of allotment and direction to vacate the same.

5. We have heard the learned counsel for both the parties and perused the records. Though rules/instructions governing allotment of quarter have not been filed by either party, learned counsel for the applicant brought to our notice communication dated 20/9/93 and May/June 1994 from the office of the D.R.M. Western Railway Mughalsarai mentioning the system and procedure followed for allotment of quarter and laying down guidelines to be followed while making allotment of quarters. The authenticity of the document was not challenged by the learned counsel for the respondents. Accordingly the aforesaid guidelines for allotment of quarter has to be made strictly according to the seniority maintained by the Quarter allotment committee. According to the relevant rules/instructions, power of out of turn allotment, however, has been given to the D.R.M. (A.D.R.M. deligetee) only.

6. From the annexures 6, 7, 8, 9, 10 and 11 it would appear that the applicant had applied for allotment of type II quarter on medical ground as he was suffering from chronic bronchitis (Asthma)

His application was supported by medical certificate containing advice to him to live near railway hospital. C.M.E. (P) by his Note dated 9.11.1995 recommended for allotment of quarter no. 329 EF (Type II) to the applicant. The petition of the applicant with recommendation of the Chief Mechanical Engineer (Power), notes of Supdt.(Rent) and A.P.O. dated 30.11.1995 and 1.12.1995 respectively were placed before the A.D.R.M. for orders. The A.D.R.M., however, observed that since the quarter belongs to the pool of D.M.E., approval of the A.D.R.M. for out of turn allotment is not necessary. After the aforesaid note was endorsed by the A.D.R.M. on the file, the D.M.E. by order dated 17.12.1995 (anneure 12) allotted the said quarter to the applicant. From the narration of the facts given above, it is quite clear that the proposal for allotment of quarter out of turn on medical ground moved step by step and was placed before the A.D.R.M., who is competent to make such allotment. After his opinion that allotment can be made by the D.M.E., to whose pool the quarter belonged, the allotment order was passed. After the aforesaid order, was passed and communicated, the applicant vacated his own quarter before occupying the quarter allotted to him.

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7. In the circumstances mentioned above, cancellation of the order of allotment in favour of the applicant has visited him with Civil consequences inasmuch as he has been thrown on the road ^{and} ~~as~~ the same has been passed without making allotment of alternative accommodation. It is settled principle of law that Executive orders having civil consequences should abide by the principles of natural justice.

Admittedly no notice was given to the applicant to show cause as to why allotment of the quarter be not cancelled. This not having been done, we are satisfied that the impugned order cancelling the allotment of the quarter is arbitrary and, therefore, is not tenable.

8. In view of the foregoing conclusion, the second question that falls for our consideration is whether the applicant can be proceeded against for disobedience of the said order in the departmental proceeding. The answer is in the negative for the reasons that the operation of the impugned order dated 30.4.1996 has been stayed by the order dated 25.6.1996 by a bench of this Tribunal. Therefore, the impugned order shall be deemed as nonest so long as the operation of the order remains stayed and, there cannot be any disobedience of such any order culminating in initiation of disciplinary proceedings. The chargesheet also, therefore, cannot be sustained.

9. In the facts and circumstances of the case, this application is allowed and orders dated 30.4.96 and chargesheet dated 17.6.1996 ^{are} ~~is~~ quashed. *The parties shall bear their own costs.*

S. A. Jayaram
Member (S)

W.C.
Member (A)