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RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 19th day of December, 1997

Original Application No.821 of 1996

District : Varanasi

CORAM:-

Hon'ble Mr. D.S. Baweja, A.M.

Bipin Sharma S/o Ishwar Sharma
R/o 844-B, New Central Colony,
Mughalsarai, Varanasi.

(By Sri SK Day/Sri SK Misra, Advocates)

. Applicants

Versus

1. Union of India
Through the General Manager,
Eastern Railway,
Calcutta.
2. The A.D.R.M.
Eastern Railway,
Mughalsarai

(By Sri Avnish Tripathi, Advocate)

. Respondents

O R D E R

By Hon'ble Mr. D.S. Baweja, A.M.

This application has been file with the prayer
for granting the following reliefs:-

- (a) to quash the order dated 18-7-1996 cancelling
the allotment order of the Quarter No.844-B,
(b) New Central Colony, Mughalsarai and not to recover
any damage rent treating the applicant as
unauthorised occupant of the quarter.
- (b) any other relief to which the applicant is entitled
alongwith the award of costs.

2. The applicant is working as a Khalasi under Chief
Traction ~~xx~~ Foreman (Construction), Traction ~~xxxx~~
Distribution, ^(TRD) Eastern Railway, Mughalsarai since 1989.

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On 29-1-1996, the applicant made a representation for allotment of Quarter No.844-B, New Central Colony, Mughalsarai, which was ^{getting} ~~xxxx~~ vacated. Vide order dated 30-1-1996, the Deputy Chief Electrical Engineer ^{Construction} (TRD), ^{to the applicant} Mughalsarai, allotted ~~the~~ said quarter on vacation. The applicant occupied the quarter immediately on vacation and recovery of the rent started from January, 1996 onwards. However, as per the order dated 18-7-1996, ^{Divisional} Additional ~~Railway~~ Manager (ADRM), cancelled the allotment of quarter No.844-B, and the applicant was directed to vacate the quarter by 31-7-1996 failing which damage rent will be recovered from 1-8-1996. Being aggrieved, this application has been filed on 1-8-1996.

3. The applicant has contended that the impugned order dated 18-7-1996 is arbitrary, injurious, harassing and issued in violation of the principles of natural justice as no reasons for cancelling of the allotment ^{have} letter ~~xxx~~ been conveyed and no reasonable opportunity had been given to the applicant. It is further contended that damage rent cannot be recovered treating him as unauthorised occupant of the said quarter without any finding of the Estates Officer.

4. The respondents in the counter reply have submitted that the allotment and retention of the quarter is governed by the Rules laid down as per letter dated 28-5-1994. As per these rules, the allotment of the quarter is to be done by nominated Quarter Committee as per the seniority and priority (essential and non-essential staff) as per the

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register maintained for the purpose. For any out of turn allotment on the various grounds including medical grounds, the competent authority is Divisional Railway Manager or Additional Divisional Railway Manager as delegated. In the present case, the quarter under reference ^{was} ~~considered~~ for allotment by the Quarter Committee and the same was allotted on 30-1-1996 to one Shri Sheo Murat Singh, Khalasi. The allotment of the quarter to the applicant on medical ground by the Deputy Chief Electrical Engineer (Construction) was not as per the rules as he was not the competent authority for out of turn allotment. Further, the pool for quarters for the TRD Staff in the Construction Unit as well as in the Open Line is common and, therefore, the allotment of the quarter was to be considered based on the common seniority as per the date of registration.

It is further stated that since the quarter was wrongly allotted in violation of the laid down rules to the applicant, the competent authority i.e. ^{the} the D.R.M. cancelled the allotment of ^{the} quarter which was done as per the order dated 30-1-1996. The concerned office was also advised as per the order dated 8-2-1996 not to deduct any rent from the pay bill of the applicant. Further the applicant was also advised as per letter dated 4-4-1996 to vacate the quarter in view of the cancellation of the allotment order as per D.R.M.'s letter dated 27-3-1996. The applicant was given final notice to vacate the quarter by 31-7-1996 failing which as advised, the penal rent will be recovered treating the quarter occupied unauthorisedly. The respondents, therefore, contend

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that since the allotment of the quarter was in violation of rules, the allotment order was invalid and, therefore, no illegality has been committed in cancellation of the same. In the light of these facts, the respondents plead that the reliefs claimed by the applicant are not tenable and the application deserves to be dismissed.

5. The applicant has controverted the submissions of the respondents through the rejoinder reply. The applicant has contended that the Deputy Chief Electrical Engineer Construction / (TRD), was competent to allot the quarter to the applicant as per rules. It is further stated that Shri Sheomurat Singh, Khalasi was already in occupation of the quarter and, therefore, the allotment of another quarter to him is illegal and arbitrary. The applicant further alleges that Shri Sheomurat Singh being the office bearer of the recognised union was the Member of the Quarter Committee, and he has managed allotment of the quarter in his name. The applicant has also cited the order dated 5-4-1997 of this Bench in OA No. 665/96, B.R. Goswami Vs. UOI to support his case.

6. As per the order dated 2-8-1996, it was provided that the impugned order shall remain stayed till the next date. This interim stay order was extended from time to time.

7. I have heard Shri SK Dey and Shri SK Misra, the learned counsel for the applicant and Shri Avnish Tripathi, counsel for the respondents. The arguments advanced during the hearing and the material brought on record have been carefully considered.

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8. The basic facts with regard to allotment of quarter No. 844-B to the applicant as per order dated 30-1-1996 and cancellation of the allotment of the same and asking the applicant to vacate the said quarter by 31-7-1996 by the impugned order dated 18-7-1996 are admitted. It is also admitted fact that the applicant had made an application for out of turn allotment on medical grounds on account of sickness of his mother. The main argument of the respondents is that as per rules laid down, the allotment of quarter on out of turn basis on medical grounds is within the competency of D.R.M. or A.A.D.R.M. where the power is delegated. The respondents have brought on record the rules laid down as per letter dated 20-5-1994 at Annexure-CA-1. The applicant on the other side has contested stating that the Deputy Chief Electrical Engineer was competent to allot the quarter to the applicant as per the rules. However, the applicant has not brought on record any rules to support his contention. He has also not refused the extant rules as per letter dated 20-5-1994. I have carefully gone through the rules dated 20-5-1994 and it is noted that in para (B), it is provided that out of turn allotment on the various grounds including medical ground is within the competence of the D.R.M. or A.D.R.M. as delegated. Keeping these extant rules in view, I am inclined to accept the contention of the respondents that Deputy Chief Electrical Engineer was not competent for out of turn allotment.

9. The respondents have also contended that the staff working in the TRD Construction Unit were posted from the open line with the lien on open line and

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maintaining their seniority for all purposes with the open line. It is also submitted that the pool for the quarters is common for the TRD(Construction) and open line staff. Though the applicant has denied the submission of the ^{respondents} ~~applicant~~ in the rejoinder affidavit but has not brought any documentary evidence to show that the pool of quarters for the TRD(Construction) is separate. In view of this, there is no option but to accept the contention of the respondents. In such an event, the allotment of the quarter was required to be done by the Quarter Committee as per the rules laid down ^{and} referred to above. The Dy. Chief Electrical Engineer was neither competent to allot the quarter on out of turn basis nor on a seniority basis without putting up the matter to the Quarter Committee for allotment of quarter as per the rules. Keeping these facts in view, I have no hesitation to infer that the allotment of quarter to the applicant was in violation of the extant rules.

10. Keeping in view the above finding, I will now consider the grounds of the applicant that the allotment has been cancelled without giving any show cause notice and assigning reasons and thereby violated the principles of natural justice. As regards the first contention with reference to non-conveying of the reason for cancellation of the allotment, considering the contents of the documents brought on record, I am unable to find any merit in the same. The respondents have submitted that cancellation of the allotment was advised to the applicant as per letter dated 4-4-1996. The applicant has not mentioned this fact in the OA. However, in

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the rejoinder reply, receipt of this letter addressed to the applicant has not been denied. On going through the letter dated 4-4-1996, it is noted that the reason for cancellation has been noted. Even in the impugned order dated 18-7-1996, reason for cancellation of the allotment has been also given. Therefore, in view of these facts, this plea taken by the applicant ^{ground} does not survive. The second ~~xxx~~ is that no notice has been given before cancellation of the allotment order. There is some merit in the contention of the applicant. The cancellation has been done as per the order dated 4-4-1994 and it appears ~~xxx~~ that no show cause notice was given to the applicant proposing cancellation of the allotment. Accepting this contention of the applicant, it is, however, to be seen whether the applicant had been denied any opportunity to represent his case before he has been asked to vacate the quarter. In the order dated 4-4-1994, the applicant was asked to vacate the quarter within 10 days from the date of issue of the order. However, this order was not effected and finally as per the impugned order issued almost after three months, the applicant was finally asked to vacate the quarter by 31-7-1996. This means that sufficient period was available at the disposal of the applicant to make representation. The applicant has not made any averment ^{made} that he ~~represented~~ against the order dated 4-4-1996. No copy of the representation has also been brought on record. This would imply that even though the applicant got a chance to represent his case, he did not avail the opportunity and allowed the matter ^{to} ~~linger~~ till the second notice was given to the applicant to vacate the

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quarter. In consideration of these facts, though initially no show cause notice was issued but subsequently the applicant had sufficient time to represent the matter, but he did not avail the same, and the applicant, therefore, cannot take the plea that he had been denied the opportunity of show cause notice to present his case.

11. The applicant has relied upon the order dated 5-4-1997 in OA No. 655 of 1996 as referred to above. I have carefully gone through this order and find that ~~as~~ the facts and circumstances of the present ^{are} case ~~is~~ distinguishable from this case. In this OA, the applicant was already occupying the quarter and he was allowed a change on medical grounds. The case for allotment of the quarter on medical grounds was processed and was finally put up to the A.D.R.M, who sent ^{the} ~~proposal~~ ^{back} with the observation that since the quarter belongs to the pool of Divisional Mechanical Engineer, approval of A.D.R.M. for out of turn allotment was not necessary. Further after cancellation of ~~the~~ allotment, ~~as~~ the applicant was deprived of any allotment of quarter and, therefore, deprived him of the quarter which he was occupying before the change was allowed. Considering these facts and circumstances, the Tribunal held that a show cause notice was necessary before cancellation of the quarter and accordingly quashed the impugned order cancelling the allotment of the quarter. In the present case, the out of turn allotment of quarter was done without following ~~the~~ ^{competent} extant rules by the authority who was ~~not~~ ^{competent} ~~allowed~~ to allot the quarter on out of turn basis, and, therefore, the cited case does not help the applicant.

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12. The applicant has also made a prayer for relief that no recovery of the damage rent should be made from the applicant. Since the findings have been recorded above that there is no illegality in the action taken by the respondents, the applicant is not entitled to continue to occupy the quarter. However, the applicant has been allowed to continue to occupy the quarter as per the interim stay order dated 2-8-1996. It is, therefore, provided that for the period he has continued in the said quarter under the interim order, the occupation of the quarter for the said period including the period from 31-1-1996 will not be treated as unauthorised. However, for the period of any occupation beyond further allowed as per the direction given above, shall be unauthorised and respondent shall be free to take action as per the extant rules.

12. In the light of the above deliberation, I am unable to find any illegality in the action taken by the respondents in issuing the impugned order. The application is, therefore, devoid of merit and the same deserves to be dismissed and is accordingly dismissed. It is, however, provided that the applicant will be allowed to retain the quarter for further ^{period} ~~time~~ of three months from the date of the order to enable him to make alternative arrangement for his residence. The interim stay order ¹²⁻⁸⁻⁹⁶ shall stand vacated after three months from the date of this order. No order as to costs.

S. B. N. K. P.
Member (A)

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