

RESERVED:

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE DAY OF 28 JULY, 2006
Original Application No. 776 of 1998

CORAM:

HON.MR.JUSTICE KHEM KARAN, V.C.

Som Nath Pandey, Junior
Account Assistant (Pension Section),
F.A. & C.A.O's office, North
Eastern railway, Gorakhpur. Applicant.
(By Adv. Shri S.Sahai)

Versus

1. Union of India, through
General Manager, North Eastern
Railway, Gorakhpur.
2. Financial Adviser & Chief Accounts
Officer, Administration, North
Eastern Railway, Gorakhpur.
3. Assistant Account Officer,
Administration, North Eastern Railway
Gorakhpur. Respondents.

(By Adv. Shri A.V. Srivastava)

O R D E R

JUSTICE KHEM KARAN, V.C.

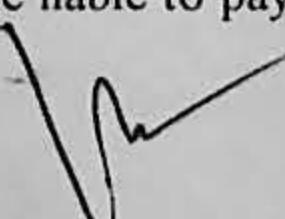
The applicant is aggrieved of the two orders dated 20.6.1995 and 9.6.1998. By order dated 20.6.1995, residential quarter No. 619-B Type-II in Baulia Railway colony, Gorakhpur, which was in his occupation since November 1993, was allotted to one Raghunath Prasad Yadav and by order dated 9.6.98, his request to regularize the allotment of the quarter in question, in his favour, has been turned down and recovery of damage rent has been ordered.

2. There is no dispute that while still working as mali-khalas in the accounts section of North Eastern Railway, Gorakhpur in the year 1993 the applicant was allotted out of turn, quarter No.619-B Type-II in Baulia railway colony vide order dated 8.11.1993 (Annexure III) and he took possession of the said quarter on 13.11.1993. The applicant has conceded in his OA that as mali-khalasi he was entitled to Type-I quarter and Type-II

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quarter was allotted to him out of turn. It was vide order dated 20.6.1995 that the said Type-II quarter occupied by him was allotted to one Shri Raghunath Prasad Yadav Account Assistant in Signal work shop Gorakhpur and quarter No.L-81 G (Type-I) situating in the same colony occupied by Shri Yadav, was allotted to the applicant. On coming to know about this order dated 20.6.1995 and on his being promoted to the post of Accounts clerk in the accounts department (Pension section), the applicant gave an application dated 7.12.1995 for regularizing allotment of quarter no.619-B in his favour as according to him he had become entitled to get Type-II accommodation. He repeated this request on 12.2.1998(Annexure V). It was on these applications that impugned order dated 9.6.1998 were passed reiterating the stand taken in earlier order dated 20.6.1995 and directing for the recovery of damage rent for non compliance of order dated 20.6.1995. According to him order dated 20.6.1995 is erroneous as it has been passed without cancelling out of turn allotment dated 8.11.1993 and order dated 9.6.1998, is bad for being non speaking. The sum and substance of his case is that once he became entitled on his promotion on 29.11.1995 to Type-II quarter, there was no justification for asking him to vacate the quarter in question and to shift to Type-I quarter allotted vide order dated 20.6.1995.

3. In their reply the respondents have tried to say that earlier out of turn allotment dated 8.11.1995 was for a temporary period and according to the relevant rules regulating the allotment of such quarters an employee was entitled to allotment only on his turn and since the applicant was not entitled to Type-II quarter even on 20.6.1995 so it was allotted to Shri yadav and in place of it, the applicant was allotted Type-I quarter occupied by Shri Yadav. They have stated that it is true that after his promotion on 29.11.1995, the applicant became entitled to Type-II quarter but on his turn only and not out of turn. They have tried to justify order dated 20.6.1995 and 9.6.1998 and have said that by not honouring the allotment order dated 20.6.1995 by vacating type-II quarter, the applicant become unauthorized occupant and so became liable to pay damage rent as per rules.



4. In his rejoinder the applicant has reiterated the stand taken in original OA. The sum and substance of his stand in his rejoinder is that once he become entitled for allotment of type-II quarter, the authorities ought to have regularized the allotment of quarter in question in his favour. He has also complained that his representations in this regard have not properly been considered or have been kept pending. Attempt has also been made to say that in para 12 of his rejoinder that he was not aware of order dated 9.6.1998 prior to the receipt of the copy of reply so he could not challenge it earlier.

5. Shri S.Sahai, appearing for the applicant has vehemently argued that order dated 20.6.1995 (Annexure 1) allotting the accommodation in question to one Shri Raghunath prasad Yadav is bad on the very face as out of turn allotment dated 8.11.1993 in favour of the applicant, was not cancelled. The learned counsel says that before any such order would have been passed, earlier allotment dated 8.11.1993 ought to have been cancelled. On the other hand, Shri A.V.Srivastava, appearing for the respondents has contended that express cancellation of earlier allotment dated 8.11.1993 was not necessary for issuing fresh allotment order dated 20.6.1998. With a view to support his submission, Shri Srivastava has referred to a Full bench decision of this Tribunal in 'Ram Poojan Vs. Union of India & another (1996) 34 Administrative Tribunal cases pg 434 . He has tried to say that order dated 20.6.1995 allotting the accommodation in question to another railway employee, amounted to implied cancellation of out of turn allotment order dated 8.11.1995 in favour of the applicant. The Tribunal is of the view that there is force in the submission of Shri Srivastava. More over, subsequent order dated 9.6.1998 virtually ratifies this order dated 20.6.1998. The allotment in favour of the applicant made in the year 1993 was out of turn and was in view of the circumstances prevailing then. The allotment was temporary one as the applicant was not entitled to that type of accommodation. We fail to understand as to how the applicant can assail allotment order dated 20.6.1995 by which this type-II residential quarter occupied by him has been allotted to another railway employee named Shri Raghunath Prasad Yadav. It is never his case that

Shri Yadav was not entitled to such allotment as per rules. So the first submission of Shri Sahai fails.

6. It has next been argued by Shri Sahai that after the applicant became entitled to type-II residential quarter and after he made request in writing for regularizing the allotment of this quarter in his favour, the authorities ought to have accepted his request considering his problems. He said that there is no dispute that on his promotion to the post of account clerk, the applicant also became entitled to the allotment of type-II quarter and since he was already occupying such quarter so the most proper course for the authorities was to allow him to remain in this quarter and to allot some other quarter to Shri Raghunath Prasad Yadav. But the submission of Shri Srivastava is that becoming entitled to get type-II quarter is not enough as there are several employees in queue and according to the entitlement the quarter is allotted on his turn and not out of turn. He said that the applicant too will be considered for such allotment whenever his turn comes, seeing the availability of such quarters. The learned counsel says the claim of the applicant for regularizing the allotment of the quarter in question in his favour, was totally ill founded and so the same was refused vide order dated 9.6.1998. The Tribunal is of the view that Shri Srivastava is right. Merely because the applicant became entitled to get type-II accommodation was not enough to regularize the allotment of the accommodation in question in his favour as his turn was not there for such allotment. He could claim such type of accommodation only when his turn comes as there might be several such employees in queue so the request for regularization was rightly turned down.

7. Shri Sahai has also contended that no damage rent could have been ordered as the occupation of the present applicant was not unauthorized. Attempt has also been made to say that if occupation of the applicant of the quarter in question was thought to be unauthorized, recourse ought to have been had to the provisions contained under Public Premises (Eviction of unauthorized occupants) Act 1971. Relying on 'Ram poojan's case (Supra) Shri Srivastava has contended that there was no legal requirement to have recourse to the provisions of that Act for recovering the damage rent or penal rent after the applicant refused

to vacate the quarter in question in compliance of order dated 20.6.1995. We think that Shri Srivastava is absolutely right. The possession of the applicant of quarter in question was apparently not authorized after order dated 20.6.1995. He ought to have vacated within the period permissible under the rules and should have handed over possession to the next allottee and should have gone to the accommodation which was allotted to him by the same order. But he continued in the same quarter, by making one representation or the other for regularizing the allotment of that type -II quarter in his favour.

8. I am of the view that the OA is totally misconceived and is devoid of merits. It is accordingly dismissed with costs.

VICE CHAIRMAN

Dated: July 28, 2006

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