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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No. 1439 of 1993

Dated: 25 November, 1994

Km. Vimla Sharma, daughter of late
Ram Swaroop Sharma, aged about 37
years, presently posted as Head Clerk,
in the office of General Manager,
Principal Training School Diesel Locomotive
Works, Varanasi. ... Applicant.

(By Advocate Sri Shisir Kumar)

Versus

1. Union of India, through Railway
Board, Baroda House, New Delhi.
2. General Manager (P) Diesel Locomotive
Works, Varanasi.
3. Chief Personnel Officer, Diesel
Locomotive Works, Varanasi.
4. Deputy Chief Personnel Officer,
Diesel Locomotive Works,
Varanasi.
5. Deputy Chief Engineer, Diesel Locomotive
Works, Varanasi. ... Respondents.

(By Advocate Sri Amit Sthaleker)

ORDER

(By Hon. Mr. S. Das Gupta, Member (A))

The applicant through this Original
Application has approached this Tribunal praying
for the relief of quashing of the order dated
12.8.1993 (Annexure- A 1) by which the allotment
of a railway quarter to the applicant was cancelled

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and she was advised to vacate the same failing which damage rent would be recovered w.e.f.

13.8.1993 as well as the order dated 13.9.1993 (Annexure- A 7) by which the deduction of damage rent from the salary of the applicant was ordered. It is also been prayed that the respondents be directed not to evict the applicant from the quarter No. 388-B Type-III which was allotted in her favour by an order dated 7.9.1992.

2. The applicant is working as headclerk in the office of the General Manager, Principal Training School, Diesel Locomotive Works, Varanasi. She was allotted quarter No. 388-B Type-III out of turn on medical ground. The allotment of this quarter in favour of the applicant was cancelled on the ground that she had sublet the same in violation of the extant Rules prohibiting subletting of quarters. The cancellation was ordered by the impugned order dated 12.8.1993 and thereafter ^{as} she did not vacate the quarter, recovery of damage rent was ordered by the impugned order dated 13.9.1993.

3. The applicant's case is that she has never sublet the accommodation allotted to her. She claims that being a heart patient and an unmarried person, she had kept two children

two children of her relation with her for the purpose of looking after her. These two persons viz Nitya Nand Pandey and Pankaj Kumar Pandey are nephews of the applicant and they are staying with her since there is none else to look after her. It has been stated that he had gone out of station for the purpose of medical checkup and during her absence, a surprise check was conducted and it was wrongly reported that she had sublet her house and thereafter without giving her any notice, the order of allotment was cancelled. This order, she says, is based on incorrect factual premise and is also violative of principle of natural justice inasmuch as it was issued without giving an opportunity to show cause.

4. In the written statement the respondents have stated that the allotment of the quarter to the applicant was cancelled since it was found that she had sublet the same to 4 persons namely Nitya Nand Pandey, Rajesh Kumar Pandey, Pankaj Kumar Pandey and Jyoti Prakash Pandey, all sons of one Chandra Kumar Pandey, R/o Rampur Milki, District Bhojpur, Bihar. It has been stated that a committee of three officials conducted a surprise check on 10.8.1993 and submitted its report stating that the quarters in dispute was found to be in occupation of the

4 persons named above and that they were out siders. A copy of the report dated 10.8.1993 is at Annexure- R 2. It has been further submitted that in terms of the instructions contained in Railway Boards Circular No. E(G)92QR 1-28 NEW DELHI dated 21.12.1992(Annexure- R 1) prior sanction of the competent authority is required to be taken by a Railway servant for sharing of the accommodation allotted to him. Since these instructions were violated by the applicant and the quarter was sublet to out siders, the order of allotment was cancelled and recovery of damage was ordered when she did not vacate the quarter.

5. The respondents have further averred that the proceedings for vacation of the applicant from the quarter on the ground of unauthorised occupation have already been initiated before the Estate Officer under the Public Premises(Eviction of Unauthorised Occupant) Act, 1971 and in view of the ongoing proceedings, the recovery of damage rent has already been stayed. It has also been submitted that there was no statutory requirement of serving any notice on the applicant before cancellation of the allotment order and in any case, she will now get an opportunity to present her case before the estate officer.

6. The applicant has also filed rejoinder

affidavit in which, apart from recording the averments made in the Original Application, it has been denied that any proceedings have been initiated against her under the Public Premises (Eviction of Unauthorised Occupant) Act 1971. It has also been stated that the committee deputed to carry out surprise check, was not properly constituted.

7. I have gone through the instructions contained in the Railway Board circular dated 21.12.1992. It appears from Appendix-H thereto that a railway servant is not authorised to sublet any part or whole of it to any other person out sider or others. However, sharing of railway accommodation may be provided in respect of the blood relation viz parent, children and their families, brothers, sisters and their families or any other person who is a railway employee. It is, therefore, clear that if the applicant had actually allowed her brother's children to stay in her quarter, the same cannot be called subletting provided this arrangement had approval of the concerned authorities. It is not the case of the applicant that she had obtained permission of the authorities concerned for keeping the children of her brother in her quarter. Moreover, while she has mentioned only 2 persons having been kept by her to lookafter her needs, the committee to carry out surprise

chek actually found 4 persons in occupation of the quarter. I have no reason to disbelieve the findings of the surprise chek

@@@ in the absence of any averment of malafide in this regard. It is, therefore, clear that even if the applicant had allowed only the children of her brother to stay in her official accommodation, the same would not exculpate ^{her} from the misconduct alleged since she did not obtain permission in this regard from the authorities concerned.

8. The rules contained in appendix H also enjoins that ^{there} it is established that an allottee has sublet his quarter without prior permission of the competent authority, he /she ~~renders~~ ^{himself} /herself to be ⁱⁿ taken following action against him/her.

*(i) Cancellation of his/her allotment in which he/she will be given a time limit to vacate the quarter after which his/her continued retention will be treated as 'unauthorised'.

(ii) Once the allotment order has been cancelled, the continued retention of the quarter by the railway employee will be treated 'unauthorised' in terms of Railway board's letter No. 86/W2/LM/14/51 dated 24.10.1986, besides taking administrative disciplinary action against the unauthorised occupant, eviction proceedings should be initiated immediately under the provisions of public premises (Eviction of Unauthorised Occupants) Act, 1971 for removal of the encroachment and recovery Railway's dues."

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In case, therefore, it is established that

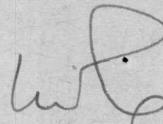
the applicant had allowed other persons in her quarter without obtaining prior permission of the competent authority, the allotment in her favour can be cancelled and in case, the allottee does not vacate the quarter after ^{a given} giving time limit, further occupation will become unauthorised occupation entailing usual consequences. There is no provision for issue any notice before the cancellation of the allotment in the event of subletting being established. The impugned order of cancellation cannot, therefore, be challenged on the ground that no notice was served on the applicant before the allotment was cancelled. The instructions contained in Railway Board circular have the force of statutory rules. If a statute does not provide for any show cause notice, before a particular action is taken, the requirement of such show cause notice cannot be imported by the application of the principle of 'audi alteram partem'.

9. The respondents have averred that the proceedings under unauthorised occupation (Eviction of Occupation) Act has already been initiated. Though this has been denied by the applicant, having no reason to disbelieve the statement of the respondents that such proceedings have actually been initiated. The applicant, ^{will} therefore, get adequate opportunity to present her case before

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estate officer and if she can prove that the persons who were found to be in occupation of the quarter during the surprise check were the son of her brother, there is no doubt that the said fact will be taken into consideration by the estate officer before passing his orders after the proceedings are completed.

10. The application before me has no merit and the same is, therefore, dismissed. There will be no order as to costs.


Member (A)

(n.u.)