

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 601 of 2000.

this the 10th day of August'2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

Vighnesh Kumar Shukla, aged about 33 years, S/o Sri Dinanath Shukla, R/o Quarter No. 286-B, New Model Railway Colony, Izatnagar, Bareilly (U.P.)

Applicant.

By Advocate : Sri T.S. Pandey.

Versus.

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Senior Divisional Yantrik Engineer/Diesel, N.E. Railway, Izatnagar.
3. Chief Workshop Manager, N.E. Railway, Izatnagar.
4. Sri S.N. Yadav, Chief Manager, R.D.S.O., N.E. Railway, Lucknow.

Respondents.

By Advocate : Sri D.C. Saxena.

ORDER

The applicant, who is working as Diesel Technician Gr.III under Diesel Mechanical Engineer, Izatnagar, Bareilly (respondent no.2), has filed this O.A. for quashing of the order dated 4.4.2000 (Annexure-9 to the O.A.) passed by the Chief Workshop Manager (C.W.M. in short), Izatnagar, Bareilly (respondent no.3). By the said order, the request of the applicant for allotment of Railway Quarter no. 286-B on the basis of sharing accommodation has been rejected. The applicant also seeks directions to the respondents to allot him the railway quarter, in question.

2. In brief, the case of the applicant is that father of the applicant Sri Dinanath Shukla, who was also

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working as Supervisor in Paint Shop/Workshop, Izatnagar, was in occupation of the railway quarter, in question. The father of the applicant was to retire from service on 30.6.2000. Since the applicant was not allotted any railway quarter, his father was to retire on 30.6.2000 and the applicant had been residing in a house far away from his office, the applicant submitted an application under Rule 4 of Chapter V requesting the respondent no.3 for allotment of railway quarter, in question, on 22.8.97. The applicant also claims ^{that} vide his letter dated 7.12.99/^{he} intimated the respondent no.2 that he had started living with his father in the house, in question, w.e.f. 1.12.99 and requested him to deduct the House Rent Allowance from his salary. The applicant also submitted an application dated 9.12.99 before the respondent no.3 for grant of permission for allotment of railway quarter, in question. The applicant further submitted the same representation on 7.2.2000 and again on 6.3.2000 requesting the respondents to allot the railway quarter and to deduct H.R.A. from his salary w.e.f. 1.12.1999. The applicant was, however, directed to produce the permission granted by the respondent no.3 for the purposes of allotment of house, in question. As the house belongs to Workshop pool. In reply to this letter, the applicant vide his letter dated 31.3.2000 requested again to allot the railway quarter under the relevant provisions for joint allotment. The applicant again sent a reminder dated 7.4.2000 for joint allotment of the house, but vide impugned order dated 4.4.2000, the applicant was informed by the respondent no.3 that the request of the applicant for permission for sharing accommodation of railway quarter was rejected. Thereafter, the applicant again made a representation on 10.4.2000 stating therein that motive of the respondent no.3 for rejecting his claim for joint allotment.

3. It is claimed by the applicant that since the applicant was not given an opportunity of being heard before

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passing the impugned order, the same is illegal and the order has not been passed in terms of Rule 4(c) of Chapter V of I.R.E.M. and the applicant being in the category of essential staff, is entitled for allotment of the house out of turn. It is also alleged that his request has been rejected malafide.

4. I have heard the learned counsel for the parties and have also perused the pleadings on record.

5. The temptation to get the railway accommodation occupied earlier by the father of the applicant, allotted is natural and reasonable. However, the applicant cannot claim the same as a matter of right and the same is to be allotted to the applicant in terms of the provisions contained in Railway Board's instructions. Rule 4(c) of Chapter V of I.R.E.M. reads as under :

"When a Railway servant who has been allotted Railway accommodation retires from service (normal retirement) or dies his/her while in son/daughter/wife/husband/father may be allotted /regularised Railway accommodation of same or lower type on out of turn basis provided the said relation of the railway servant is eligible for same or higher type of accommodation and further he/she declares without suppressing the fact that he/she had been sharing accommodation with the retiring railway servant for atleast six months before the date of retirement and has not been drawing house rent allowance and the said relation of his family members does not own house at the place of her/his posting."

6. The father of the applicant was working as Supervisor in Railway workshop, Izatnagar and the accommodation belongs to railway workshop, whereas the applicant belongs to different Deptt. namely Diesel Shed / pool. A perusal of the impugned order dated 4.4.2000 (Annexure-9) indicates that the C.W.M. had rejected the claim of the applicant for sharing / of the railway quarter, in question, on sharing basis because there are number of claimants for accommodation in question, who have come from different stations namely Patiyala, Bokaro, Mughal Sarai, Lucknow

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and Gonda are making claims for the same. Hence it was not found feasible to transfer the same to Diesel side to which the applicant belongs.

7. ^{as} Now, the question arises to what extent this Tribunal can examine the reasonableness of the administrative orders passed by the respondents. The apex court in the case of Union of India Vs. G. Ganayutham (1997 (7) SCC 463) has observed that "while examining 'reasonableness' of an administrative decision, the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view."

8. The case of the respondents, in short, is that the applicant did not obtain any permission from the competent authority for living with his father in the railway quarter, in question, and also on account of claims for allotment of the quarter by several other persons ^{had} who/ come from various stations, the claim of the applicant for allotment of the quarter has been rejected. It is, on the other hand, contended by the learned counsel for the applicant that the applicant is entitled for allotment of the accommodation out of turn basis on two counts. Firstly, he is entitled under Rule 4(c) of Chapter V on account of sharing accommodation, and secondly, because he belongs to the category of essential staff. It is also contended that the impugned order has been passed in arbitrary manner and malafide because the same was passed by Sri S.N. Yadav, the then C.W.M. (respondent no.4) only two days before his transfer against whom the father of the applicant had made a complaint of corruption to the

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Vigilance Department. It is also contended that the impugned order is also discriminatory as much as one Sri V.K. Srivastava working as Diesel Mechanic in the Diesel Shed was allotted quarter no. 281-B belonging to Workshop pool on out of turn basis on retirement of his father Sri S.L. Srivastava, who was also working in Workshop vide order dated 31.10.97.

Similarly, the quarter no. 305-A belonging to Workshop pool was also allotted out of turn basis to one Sri J.K. Tewari working in Diesel Shed on retirement of his father Sri B.R. Tewari, who was working in the office of C.W.M. vide order dated 12/13.6.2000.

9. I have carefully considered the rival contentions of the parties counsel. I find force in the arguments of the learned counsel for the applicant in the present case.

10. It is no-doubt correct that it is necessary for an employee to obtain the permission from the competent authority for sharing accommodation. In the present case, it is not in dispute that the applicant had submitted as early as on 22.8.97 a detailed application for allotment of the quarter, in question. The applicant, thereafter, again submitted an application on 7.12.99 for permission for sharing accommodation, intimating the respondent no.2 that he had started living with his father in the house, in question, and also requested to deduct HRA from his salary and to do the needful.

11. It is now to be seen whether the permission has been validly refused and the order of the refusal is reasonable. I find force in the arguments of the learned counsel for the applicant that under the facts and circumstances of the present case the refusal order cannot be said to be reasonable. It is an admitted position that the respondents have allotted the quarters belonging to Workshop pool to the staff working on Diesel side. The applicant has specifically

mentioned that S/Sri V.K. Srivastava and J.K. Tewari who are working on Diesel side, permission was accorded to them for sharing accommodation after retirement of their fathers from Diesel Shed and the permission was granted on 31.10.97 and again on 12/13.6.2000. The reasons mentioned in the impugned order dated 4.4.2000 for not granting permission to the applicant that there are several claimants for the quarter is, therefore, not valid. The impugned order dated 4.4.2001 is rather vague and no specific reason has been mentioned for refusing the permission to the applicant. Besides, the applicant admittedly belongs to the category of essential staff. He is, therefore, eligible for allotment of the quarter on out of turn basis under this category also. The action of the respondent no.3 in refusing the permission for sharing accommodation to the applicant is obviously discriminatory.

12. Since I have not considered it necessary to discuss the question of malafide on the part of the respondent no.4 because the impugned order is liable to be quashed being un-reasonable and discriminatory, for the reasons discussed above.

13. For what has been stated above, the impugned order dated 4.4.2000 is quashed and the respondents are directed to regularise the allotment of the applicant in respect of railway quarter no. 286-B, New Model Railway Colony, Izatnagar, after giving formal permission for sharing accommodation under the rules and allot the same to the applicant. It is, however, provided that the applicant will refund the amount of HRA received by him w.e.f. 1.12.1999. The O.A. stands allowed as above with no order as to costs.

Rajiv Mehta
MEMBER (J)

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