

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

O.A.No/T.A No 1298/03 alongwith 562/03

Date of decision 28/9/2004

Sushil Charles Johnson and Ors Applicant(s)

Sri Shyamal Narain Counsel for the applicant(s)

Versus

O O I and Ors Respondent(s)

Sri A.K. Gaur Counsel for the respondent(s)

CORAM

Hon'ble Mr: D.R. Tiwari V.C./Member(A)

Hon'ble Mr: _____ Member ()

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? yes
3. Whether their Lordship wish to see the fair copy of the judgment? yes
4. Whether to be circulated to all Benches?

[Signature]

SIGNATURE.

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1298 of 2003.

Allahabad, this the 28th day of September, 2004.

Hon'ble Mr. D.R. Tiwari, A.M.

Sushil Charles Johnson,
aged about 42 years,
S/o late Myril Johnson,
presently resident of Type III
Railway Quarter No.642, Nawab
Yusuf Road, Allahabad, and
posted as Laboratory Superintendent,
Central Laboratory, North Central,
Railway, Hospital, Allahabad.

.....Applicant.

(By Advocate : Shri Shyamal Narain)

Versus

1. The Union of India, through the General Manager,
North Central Railway, Allahabad.
2. The Divisional Railway Manager,
North Central Railway, Allahabad.
3. The Chief Medical Superintendent,
North Central Railway, Allahabad.
4. Senior Divisional Medical Officer (Sr. D.M.O.)/
Pool Holder, Medical Pool/ North Central Railway
Allahabad.
5. Sri Hari Prasad, Extension Educator,
Family Welfare, Divisional Railway
Hospital, North Central Railway,
Allahabad, and resident of 696-A,
Loco Colony, Nawab Yusuf Road,
Allahabad.

.....Respondents.

(By Advocate : Shri A.K. Gaur)

With

Original Application No.562 of 2003.

Hari Prasad, Extension Educator,
Family Welfare, Divisional Railway
Hospital N.C.R., Allahabad.
R/o 696-A, Loco Colony, Nawab Yusuf
Road, Allahabad.

....Applicant

(By Advocate : Shri V.M. Zaidi)
Shri S. Mandhyan)

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Versus

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, N.C.R., Allahabad.
3. Chief Medical Superintendent, N.C. Railway, Allahabad.
4. Sr. DMO (Divisional Medical Officer)/Pool Holder Medical Pool/N.C. Railway, Allahabad.
5. Dr. R.S.Rajput, Sr. DMO/N.C. Railway, Divisional Hospital, Allahabad .
6. Sushil C.Johnson, Lab, Superintendent, Divisional Railway Hospital, Allahabad R/o Qr. No.839-C, Loco Colony, Allahabad.
7. S.L. Patel, Chief Pharmacist, Divisional Railwasy Hospital, N.C.R. Allahabad, R/o 172-A, Hospital Compound, N.C. Railway, Allahabad.
8. D.B. Katiyar, Pharmacist, Divisional Railway Hospital, Allahabad R/o 786-C, Loco Colony, Allahabad.
9. Smt. Shyama Clearance, Matron, Divl. Railway Hospital N.C.R. Allahabad R/o 634-A, Traffic Colony, N.Y. Road, Allahabad.
10. Krishna Kumar, Head Clerk in the Office of Chief Medical Supdt. N.C.R. Allahabad. R/o Qr. No.596-C, Traffic Colony, Allahabad.

..... Respondents.

(By Advocate : Shri A.K. Gaur
Shri R.C. Srivastava

O R D E R

By Hon'ble Mr. D.R. Tiwari, A.M. :

With the consent of the counsel for the parties, I propose to dispose of the above mentioned QAs by a common order as the facts of the cases and reliefs sought are similar. The QA No.1298 of 2003 would be leading case.

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2. By this OA filed under Section 19 of A.T. Act, 1985, the applicant has impugned the orders dated 17.10.2003 and 23.10.2003 by which allotment of Quarter No.642 has been cancelled and he has been asked to vacate the same within 15 days (Annexure No.s A-1&2). He has further prayed for passing a suitable orders restraining the respondents from interfering with the applicant's possession and occupation of the aforesaid quarter. The applicant in OA No.562 of 2003 has called in question, inter-alia, the order dated 7.5.2003, priority list dated 9.4.2003 and order rejecting his representation sought issuance of direction to the respondents for making allotment of Railway Quarter No.642 in the name of the applicant.

3. Shorn of superfluties, the necessary factual matrix to adjudicate the dispute is that the applicant is working on the Class III post of Laboratory Superintendent in the N.C. Railway Hospital, Allahabad. In the year, 1987, he was allotted quarter No.839 C (Type II) in Loco Colony Allahabad. As per his entitlement for higher type of official accommodation, he applied in 1992. His second application for better accommodation was registered on 13.10.1992 which is evident from Annexure No.A-3. The Chief Medical Superintendent issued the quarter priority list of Class III & IV staff vide letter dated 9th April, 2001 (Annexure No.A-4). He was informed by a letter dated 11.5.2001 (Annexure No-A-5) that he stood at Sl. No.1 for better accommodation among the remaining staff.

4. Aggrieved by the quarter priority list dated 9th April, 2001, the respondent No.5 filed OA No.647/2001 -

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Hari Prasad Vs. Union of India and the Tribunal passed an interim order dated 30.5.2001 providing that the case be listed on 10.7.2001 and in the meantime allotment of any Type III quarter would not be made by the respondent No. 3 & 4. On 27.2.2003 disposed of the said OA finally with a direction to the respondent No.3 to consider and decide the representation of the applicant within two months according to rules. It was further provided that allotment of quarter No.642 shall be made only after the representation is decided. Copy of the order dated 27.2.2003 passed in OA No.647/2001 is at Annexure No.A-7.

5. Respondent No.4 vide order dated 7.5.2003 (Annexure-8) allotted quarter No.642 (Type III) to the applicant and directed to take possession of the said quarter. By the self same order, Quarter No.839/C previously occupied by the applicant was allotted to Miss Mary Munda, staff nurse. The applicant took physical possession the said quarter on 12.5.2003 (Annexure-A-9).

6. Aggrieved by the allotment order dated 7.5.2003 the respondent No.5 filed OA No.562/2003 challenging the allotment order of above date and other reliefs mentioned in para 2 of this order. The present applicant has been arrayed as respondent No.6. There is no order of the Tribunal staying the effect and operation of the allotment order dated 7.5.2003 passed in favour of the present applicant. The respondent No.5 filed a Civil Contempt Application No.100/2003 - Hari Prasad Vs. Dr. S.K. Mehta & ors. on 2.6.2003, alleging contempt of interim and final orders dated 30.5.2001 and 27.2.2003 passed by this Tribunal in OA No.647/2001. The main allegations against the contemner are that they have passed the allotment order dated 7.5.2003, without first deciding the applicant's

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representation. The Tribunal admitted the contempt petition on 6.6.2003 and notice was issued to the respondents to show cause. The contemner, Dr. S.K. Mehta filed an counter affidavit (Annexure-A-11). By an order dated 10.10.2003 (Annexure-A-12) the respondent No.s 1 & 2 were directed to appear before the Tribunal personally on 23.10.2003.

7. Meanwhile the respondents passed impugned orders dated 17.10.2003 and 23.10.2003. These orders have been assailed by the applicant on various grounds as indicated below :-

- (a) By the reasoned order passed by the respondents rejecting the representation of the respondent No.5, both the priority list and the allotment letter dated 7.5.2003 have been justified and defended (Annexure-A-13).
- (b) The impugned orders appear to have been passed only as an extreme reaction to the order dated 10.10.2003 passed by the Tribunal in contempt proceedings. This is further corroborated by the conduct of respondents as they moved application dated 22.10.2003, seeking recall of the order 10.10.2003 on the ground that the allotment has been cancelled (Annexure-A-14).
- (c) The cancellation order passed without issue of any notice is violative of principle of natural justice.
- (d) The respondents have not even bothered to offer any other alternative accommodation to the applicant and
- (e) the impugned orders have been passed arbitrarily mechanically and are wholly unreasoned and non-speaking in nature. In view of these reasons, the applicant has argued, the OA deserved to be allowed.

8. The respondents, on the other hand, have filed the counter affidavit and contested some of grounds taken by the applicant. They have submitted that the averments made

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in order dated 15.10.2003 to the effect that the very basis of priority list is date of giving the application and not seniority, in indicative of the policy of Railways regarding priority list for better accommodation and it does not entail the intention of the respondents to defend the priority list. They have further argued that the cancellation letter dated 07.05.2003 has not been passed as an extreme reaction to the order dated 10.10.2003 but it has been passed to rectify the mistake committed by the competent authority due to misconstruing the order dated 27.02.2003 passed in O.A. No.647 of 2001 which clearly stipulated that the allotment of quarter in dispute i.e. quarter No.642 shall be made only after the representation of the applicant is decided. Hence the direction of the Court to decide the representation first and then allot the quarter could not be complied in the sequence and the respondents had to issue order dated 17.10.2003. They have contended that there was no need to give the notice to the applicant prior to cancelling the allotment order dated 7.5.2003 because it has been passed in compliance of this Tribunal's order.

9. I heard the counsel for both the parties at length and given thoughtful consideration. I have perused the records very carefully and examined the original records produced by the respondents.

10. The most central question which falls for consideration and decision is whether the respondents are justified in passing the impugned order. The impugned order passed to comply to order of the Tribunal in O.A. No.647 of 2003 does not deprive the applicant of his seniority in the priority list. It has been admitted by the respondents that the applicant is at Sl. No.1 of the list. Mistake

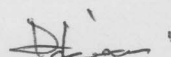
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committed by the respondents in not following the sequence of taking action to comply the Tribunal's order to decide the representation first and then consider the allotment to entitled person, led to cancellation of the allotment to the applicant. I have gone through the order of the Tribunal of which I was also party and it is clear that the order did not decide the dispute in the O.A. and directed the respondent to settle the issue first and then make the allotment and respondent did not follow the proper sequence. Thus the cancellation order deserves to be set aside. I have gone through the original records very carefully and I am not in doubt ^{about} the entitlement of the applicant as he is at Sl. No.1 of the priority list whereas the respondent No.5 is at Sl. No.5. Hence the contention of the respondent No.5 is negatived. The counsel for the 5th respondent has submitted the written argument and have gone through that and find that nothing now has come which require adjudication. The written arguments are on the pattern of arguments during the course of the hearing.

11. In view of the facts and circumstances mentioned above, the O.A. No.1298/2003 succeeds and is allowed. The impugned orders dated 17.10.2003 and 23.10.2003 are quashed and set aside. The respondents are directed not to interfere with the possession and occupation of quarter No.642 type III. The O.A. No.562/2003 is devoid of merit and is accordingly dismissed. No exception can be taken ^{to} regarding the impugned orders as they are valid orders.

No order as to costs.


Member-A.

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