

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 93/96

Present : Hon'ble Dr. B.C. Sarma, Administrative Member.
Hon'ble Mr. D. Purkayastha, Judicial Member.

Sri Nankoo Kahar, son of late Kanta Kahar working
as Gangman, under CPWY/Sealdah, residing at Rly.
Qrs. No.194/E Type -I, Harshi Street.

...Applicant.

- v e r s u s -

- 1.Union of India through the General Manager, Eastern
Rly., 17, Netaji Subhas Road, Calcutta-1.
- 2.Sr. Divisional Engineer, Eastern Railway, Sealdah.
- 3.Asstt. Engineer (1) Eastern Railway, Sealdah.
- 4.Chief Permanent Way Inspector, Eastern Railway,
Sealdah.

...Respondents.

For the applicants : Ms. Ghosh Dutta, Counsel.

For the Official : Mr. M.M. Mullick, Counsel.
respondents

For the Private : Ms. B. Banerjee, counsel.
respondents.

Heard on 1.7.97, 25 & 26.8.97

Order on 29.8.97

O R D E R

D. Purkayastha, JM

The limited issue to be adjudicated in this case is whether the notice dated 8.1.96, as set out annexure-A9 to the application, asking the applicant to vacate the quarters which was allotted to him earlier on 17.4.95, is valid in the eye of law. The applicant contends that he was given allotment of a quarter No. 194/E, Type-I by the Asstt. Engineer concerned on the basis of the recommendation of the quarter allotment committee and that quarter was also occupied by him and an occupation certificate was given by the appropriate authority. He was surprised to find the notice dated 8.1.96 asking him to vacate the quarter since allegedly it was allotted to some one else.

2. The government respondents have filed a reply stating therein that the quarter was allotted by the Superintendent, Carriage & Wagon Div. to pvt. respondent No.5, but that was not known to the AEN. Mr. M.M. Mullick, Id. counsel, submitted that the quarter which was allotted to the applicant was in the pool of Superintendent, Carriage & Wagon Division.

3. Mr. S. Bhattacharya, Id. counsel, appears for the pvt. respondent. He contends that the private respondent was allotted the same quarter earlier than the applicant.

4. The case was partly heard on 19.2.97 and the Govt. respondents were directed to produce the relevant file in which the decision of the allotment of the quarter with the approval of the DRM was taken. Today during hearing Mr. Mullick, Id. Advocate appeared on behalf of the respondents produced a minutes book only in respect of the decision of the allotment of the quarter taken by the Allotment committee. No file as directed by this Tribunal could be produced by the Government respondents and no reasonable explanation could be assigned by Mr. Mullick, Id. counsel for non-production of the file which contained the decision of the allotment of the quarter with the approval of the DRM. However, we have gone through the minutes book produced before us today.

5. We have gone through the application, written records available before us. The short question that falls for determination in this case is whether the applicant is entitled to get reasonable opportunity of being heard by way of show cause notice before cancellation of the order of the allotment of the quarter in question.

It is found from the letter dated 27.2.95 Annexure-R-1 to the reply of the private respondents and from the letter dated 24.3.95 Annexure-R-1 to the reply of the private respondents that said quarter was allotted initially in favour of the private respondent, Sri Sadhan Chandra Dey and he did not take possession of the quarter. It is also found from the records that the said quarter was again allotted in favour of the applicant on 17.4.95 on the basis of the discussion of the Allotment Committee as it is revealed from the page 1 of the minutes dated 30.3.95

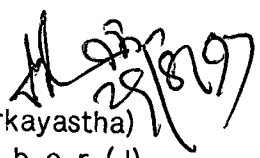
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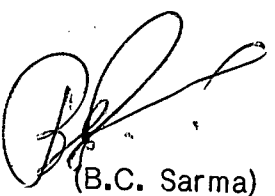
at page 1 of the minutes Book and order of allotment in favour of the applicant was issued by letter dated 17.4.95 Annexure-A to the application. It appears that the allotment order was issued in favour of the applicant Nankoo Kahar after cancelling the previous allotment order No. W/1/23C dated 30.11.94. It is further established that the Chief Inspector of the Works, Eastern Railway Sealdah intimated the authority that the applicant Shri Nakoo Kahar took over the possession of the quarter from one Shri Sitaram Teli on 18.4.94. It is also found from the pay roll i.e. Annexure-B to the application ~~that~~ [✓] the rent of the said quarter was realised by the official respondents from the applicant from time to time. From this fact, it is found that though the quarter was allotted in favour of Shri Sadhan Chandra Dey earlier to the applicant ~~but~~ [✓] Sadhan Chandra Dey did not take over the possession of the quarter for the reasons best known to the authorities. But we find that there is nothing on record to show that any show-cause notice was issued to the applicant before cancellation of the order of allotment of the applicant in the aforesaid circumstances. But due to such so-called cancellation of the order of allotment in favour of the applicant, a criminal case u/s 144 Cr.P.C. have been cropped up between the parties. From the records we are fully satisfied that the official respondents are responsible for creating such abnormal situation in respect of the allotment of the quarter as they did it without application of the mind [✓] to the facts and records. Therefore, we find that it is established by ~~the~~ [✓] the applicant beyond doubt that the applicant did not get any opportunity of being heard and impugned order of cancellation i.e. Annexure-D dated 8.1.96 to the application was issued in violation of principle of natural justice. Stand taken by the official respondents is that the allotment order was issued in favour of the applicant wrongly ignoring the fact of allotment in favour of the private respondent, Sri Sadhan Chandra Dey, that wrong has been corrected by order of cancellation of allotment order in favour of the applicant. It is true that official respondents are competent authority to decide the question of allotment of the quarter but official respondents must act fairly, properly and in accordance with the rules and in accordance with the principle of natural justice. It is now well settled law that no order detrimental to the interest of the citizen could be passed by

the authorities without affording any reasonable opportunity of being heard before passing such order which has civil consequences. The transshipment of quarter after possession involves financial expenditure, which could not be paid from the exchequer. Since the authorities realised the rent from the applicant and applicant was/is in possession of the quarter thereby it is the bounden duty of the respondents to issue show-cause upon the applicant before passing of the impugned order of cancellation. In case of Director of E.S.I. Scheme -Vs- Sabita Mahanty in S.L.P.(C) No. 15023-24A of 1993, decided on 2.9.91, Hon'ble Apex Court had relied on judgment reported in 1943 AC-627, 1943 of All ER 337 where Hon'ble House of Lords held -

"If the principle of natural justice is violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at the absence or departure from the essential principle of justice. The decision must be declared to be no decision."

In view of the aforesaid circumstances, the impugned order of the cancellation i.e. Annexure-D and all subsequent orders passed by the authorities regarding vacation of the quarter by the applicant are found arbitrary, illegal and violation of the principle of natural justice and not tenable in law. Hence all orders are set aside. Accordingly the application is allowed without any cost.


(D. Purkayastha)
M e m b e r (J)


(B.C. Sarma)
M e m b e r (A)
29/8/97

a.k.c.

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