

Central Administrative Tribunal
Jodhpur Bench, Jodhpur

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Date of order : 14.02.2001

Original Application No. 200/1999

R.B.Saxena S/o Shri Kishan Lal by caste Saxena, aged about 56 years, R/o Quarter No. 206/A, New Railway Colony, Lalgarh, at present working as Office Superintendent in Electrical Department, D.R.M. Office, Bikaner.

..... Applicant.

Vs.

1. The Union of India through General Manager Northern Railway, Headquarter Building, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, D.R.M.'s office, Bikaner.
3. The Divisional Electrical Engineer, Northern Railway, D.R.M.'s office, Bikaner.

..... Respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

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Mr.S.N.Trivedi, Counsel for the applicant.

Mr.R.K.Soni, Counsel for the respondents.

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ORDER

Per Hon'ble Mr.A.K.Misra, Judicial Member :

The applicant had filed this O.A. with the prayer that the impugned order dated 25.6.99 (Annex.A/1), passed by the respondent NO.3, be quashed and set aside

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and the applicant be allowed to continue in the allotted quarter 206/A New Railway Colony, Lalgarh, Bikaner.

2. Notice of the application was given to the respondents who have filed their short reply to which a rejoinder was filed by the applicant.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. The applicant has challenged the impugned order Annex.A/1 dated 25.6.99, by which the Quarter No.206/A/ Lalgarh, which was allotted to the applicant was cancelled by the Divisional Electrical Engineer on the ground that the applicant had constructed one room unauthorisedly for running a cable disk establishment for commercial purposes. He was directed to vacate the quarter immediately and was also asked to pay the damage rent for un-authorised construction in the said quarter. The applicant has challenged the order on the ground that the same has been passed without affording an opportunity to the applicant in this regard. The applicant had denied that any un-authorised construction was raised by him in the said quarter. It is also alleged by the applicant that commercial connection regarding electricity was got installed after due permission from the Divisional Electrical Engineer. Inview of this, the action of the respondents is arbitrary, un-constitutional and illegal.

5. There is no dispute regarding the facts of the case. From the record, it appears that initially the said quarter was allotted to the applicant by the Deputy

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Chief Mechanical Engineer (Workshop), Northern Railway, Bikaner, vide its order dated 30.4.88 and since then the applicant has been residing in this quarter. While the applicant was in occupation of the said quarter, the applicant's son moved an application before the Senior Electrical Engineer (Power), for providing a separate electric connection for commercial purposes i.e. for disk connections etc. The same was sanctioned vide order dated 30.6.97 (Annex.A/2). Thereafter, there has been a vigilance inspection on 2.12.98 and a report was prepared by the vigilance team, a copy of which is at Annex.R/1 and consequent thereto, the allotment of quarter to the applicant was cancelled which is the subject matter of challenge. During the course of arguments, it was stated by the learned counsel for the applicant that no notice prior to cancellation of allotment was given to the applicant. The applicant in fact had removed all his disk establishments in the month of December 1998 itself. He had never constructed any extra room in the court-yard and in view of this had the applicant been given a notice to show cause in respect of cancellation of allotment of his then he would have explained the entire circumstances. But, in absence of any show cause notice the applicant was deprived of an opportunity to defend him in this regard. Thus, the principles of natural justice have been violated. On the other hand, it was argued by the learned counsel for the respondents that no notice was needed prior to the cancellation of the allotment order because the applicant knew very well that he was continuously violating the conditions of allotment of the quarter.

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6. We have considered the rival arguments. In our opinion, by not providing an opportunity to the applicant to show cause in respect of the cancellation of the quarter, the applicant has been deprived of his valuable right. Cancelling the allotment of a quarter straightway without providing an opportunity to the applicant is violative of principles of natural justice and is difficult to sustain. It is also seen that the allotting authority of the quarter is Deputy Chief Mechanical Engineer (workshop), as per Annex. A/5, whereas, the allotment has been cancelled by the Divisional Electrical Engineer who is not competent to allot or cancel allotment of accommodation? In our opinion, only the allotting authority is the competent authority to cancel the allotment of a quarter. In view of this also, the order Annex. A/1 dated 25.06.90 is difficult to sustain.

7. While we are holding Annex. A/1 as bad on the aforesaid grounds it should be clearly understood that the respondents are not restrained from proceeding in respect of other proposed actions as mentioned in the said order. In other words, the order Annex. A/1, has been found to be illegal only in respect of cancellation of allotment of the quarter and our observation would not affect any action of the respondents relating to major penalty chargesheet, recovery of damage rent as per rules and action relating to demolition of unauthorised construction raised by the applicant.

8. The O.A. therefore, deserves to be accepted,

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The impugned order dated 25.6.99, Annex.A/1, deserves to be quashed so far as it relates to cancellation of the allotment of the quarter in question. However, the respondents would be free to take action in this regard as per law.

9. Consequently, the O.A. is accepted. The impugned order dated 25.6.99, Annex.A/1^{is quashed} so far as it relates to cancellation of the allotment of the quarter in question. The competent authority shall be free to proceed against the applicant in respect of cancellation of allotment of the quarter in question and eviction of the applicant therefrom, as per law after due notice and observance of due procedure as prescribed in the rules in this regard.

10. The parties are left to bear their own cost.

Chwpd
(A.P.NAGRATH)

Adm.Member

Sm 14/12/2001
(A.K.MISRA)
Judl.Member

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Per
2/3/201

Part II and III destroyed
in my presence on 2/1/3/27
under the supervision of
Section Officer 26/2 as per
order dated 2/1/27
Section Officer (Record)