

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 929 of 97

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

- 1) Sri Jagabandhu Ghosh, son of late S.C. Ghosh residing at 30/C/D, European Colony, Mughalsarai, working as TTI in the Eastern Railway, Mughalsarai Division,
- 2) Sri Jayanto Ghosh, son of Sri J.B. Ghosh residing at 30/C/D European Colony, Mughalsarai working as Clerk Gr.II under AEN(2)/E. Railway, Mughalsari.

...Applicants

-v e r s u s-

- 1) Union of India, service through the General Manager, Eastern Railway, 17, N.S. Road, Fairlie Place, Calcutta-1.
- 2) Chief Personnel Officer, Eastern Railway, Fairlie Place, 17, N.S. Road, Calcutta-1.
- 3) Divisional Railway Manager, Eastern Railway, Mughalsarai Division, P.O. & P.S. Mughalsarai.
- 4) Divisional Personnel Officer, Eastern Railway, Mughalsarai Division, P.O. & P.S. Mughalsarai.

...Respondents

For the applicants : Mr. B.C. Sinha, counsel.
Mr. P.C. Das, counsel.

For the respondents : Mr. C. Samaddar, counsel.

Heard on 24.6.98

Order on 24.6.98

O R D E R

D. Purkayastha, JM

The applicant No.1 is the father of the applicant No.2. They filed joint application challenging the validity of cancellation order of granting permission to the applicant No.2 for sharing of accommodation with the applicant No.1 who is a railway employee in the quarter No. 30/C/D, European Colony at Mughalsarai issued by Divisional Manager, Mughalsarai vide letter dated 23.12.96 on the ground that order of cancellation is illegal, arbitrary and liable to be quashed. They also prayed for direction upon the respondents to allot Railway quarter in favour of the applicant No.2 under the father and son rule on out of turn basis since the applicant No.1 retired w.e.f. 30.9.97. It is alleged by the applicant No.2 that he applied for sharing accommodation with

his father by a letter dated 3.7.96 on transfer from KMS to Mughalsarai alongwith the other officers. On receipt of the said application (Annexure-A to the application), the respondents granted the prayer by an order dated 23.12.96 (Annexure-B to the application). On the basis of the said permission contained in Annexure-B) the applicant had been residing with his father and no House Rent was paid to the applicant from 23.10.95. But suddenly the respondents without serving any notice and without giving any opportunity of being heard to the applicant, had cancelled the said order of sharing accommodation granted to him by a letter dated 20.6.97 (Annexure-C to the application). Since the respondents acted arbitrarily in cancelling the order of sharing accommodation as stated above and did not allot any quarter on their prayer, they approached this Tribunal with this application.

2. The claim of the applicant is resisted by the respondents by filing a written reply. The case of the respondents in short is that as per


rule the share accommodation is permissible on condition that an employee has not drawn House Rent Allowance for the last six months preceding to the date of sharing allotment. In the present case, the applicant No.2 had been drawing house rent allowance upto January '96 and he obtained the order of sharing accommodation by giving false declaration and took undue advantage of sharing accommodation. It is also stated that the applicant No.2 is not entitled to Type-III quarter whereas the quarter no. 30/CD is a Type-III quarter. Accordingly the sharing allotment of the quarter No. 30/CD Type-III was cancelled and it was not regularised in the name of the applicant No.2. It is also stated in the reply that the said quarter belongs to the Checking Branch and the staff of this Branch are essential staff. Therefore, the quarter of Essential staff cannot be transferred to non-essential staff. So the applicant No.2 is not entitled to get allotment of the such type of quarter under the father and son rule. It is also stated that as per extant ^{rules} sharing accommodation is allowed on the condition that the employee has not drawn House Rent Allowance for the last six months preceding to the date of sharing allotment. In the instant case, the applicant No.2 had been drawing House Rent Allowance upto January, 1996 by concealing ^{said} the fact. It is mentioned that sharing accommodation confers no right

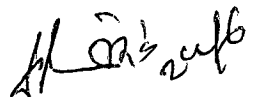
for permanent allotment. In view of the aforesaid circumstances, it is prayed by the respondents that the application should be dismissed.

3. Mr. B.C. Sinha, Id. counsel leading Mr. P.C. Das, Id. counsel for the applicant firstly argued that the impugned order of cancellation is violative of Art. 14 of the Constitution since the applicant was not afforded any opportunity of being heard ^{by} issuing show cause notice on the basis of the allegation brought against him regarding suppression of material fact at the time of taking allotment of sharing accommodation from the competent authority as stated in the reply. According to Mr. Sinha, Id. counsel for the applicant, the said order is liable to be cancelled since it is violative of the principles of natural justice and arbitrary. Mr. Samaddar, Id. counsel for the respondents by refuting ~~to~~ the said submission of the Id. counsel, Mr. Sinha, stated ^{ed} that no notice of show cause was required to be issued upon the applicant for the purpose of cancellation of sharing accommodation since the applicant suppressed the material fact before the authority at the time of seeking permission vide letter dated 3.7.96 and such cancellation is automatic as per rules.

4. In view of the divergent arguments advanced by the Id. counsels ^{of} both the parties regarding cancellation of sharing accommodation of the applicant No.2 with his father i.e. applicant No.1. I find that it is an admitted fact that no show cause notice was issued upon the applicant before passing impugned order of cancellation dated 20.6.97 Annexure-C to the application. It is found that the cancellation order was passed alleging that the applicant suppressed the material fact thereby such allegation of suppression of fact amounts to stigma to the applicant. It is now settled law that nobody should be condemned without ^{aff}ording him opportunity to state his case on the allegation for which he is liable to be penalised. In the instant case, according to the respondents, they cancelled the impugned order of sharing accommodation by an order dated 20.6.97 (Annexure-C) on the basis of the allegation of suppression of material fact which obviously is stigma to the applicant No.2 and natural justice demands that the applicant ought to have been given an opportunity of being heard before passing of cancellation order of allotment of quarter. I find that natural justice in this case was denied to the applicant. Therefore, the said impugned letter dated 20.6.97 is liable

to be quashed. The second submission of the Id. counsel for the applicants is that he is entitled to get a Type-III quarter. According to Mr. Samaddar, Id. counsel for the respondents, the quarter No.30/CD Type-III belongs to the Checker Branch and the staff of that branch are essential staff and the applicant was not entitled to get the benefit of such type of quarter on the basis of the status maintained in the office of the applicant No.2. But Mr. Sinha, Id. counsel for the applicant submits that the said quarter was allotted in favour of the applicant No.1, father of applicant No.2 while he was working as clerk under the respondents. Applicant No.2 got allotment of the quarter in the year 1976 and since then he has been residing in the said quarter though he has been promoted to Traffic Inspector under Mughalsarai Division. Mr. Samaddar, Id. counsel for the respondents further submits that he is not entitled to get the said quarter as per his status under the rule. ^{he has been in that} ~~so~~ reason shown by the respondents for non-allotment of the said quarter in favour of the applicant is not tenable on the face of he said facts ^{that} ~~which is supported~~ ^{with documents.} The father of the applicant No.2 was allotted the said Type-III quarter while he was clerk. ⁶ So argument of Mr. Samaddar, Id. counsel for the respondents is not sustainable. I am of the view that as per Railway circular under father and son rule, the applicant No.2 being a regular employee has some legitimate claim to get the allotment of the quarter under the father and son rules on retirement of his father w.e.f. 30.9.97 provided, other conditions of eligibilities for allotment of quarter are available with the applicant. The said circular is not disputed by the respondents and thereby it is found that the applicant is entitled to get benefit of the said circular for the purpose of allotment of the quarter under the father and son ¹ rule. The respondents refused to allot the said quarter which is being possessed by his father on the ground that it is meant for essential staff not for clerical staff. In view of the aforesaid circumstances, I think the Divisional Railway Manager, respondent No.3 and Divisional Personnel Officer should be directed to consider the case of the applicant for the purpose of allotment of the quarter under the father and son Rule, according to the seniority maintained by the Department for that purpose.

5. In view of the aforesaid circumstances, I allow the application and I set aside the order of cancellation dated 20.6.97 Annexure-C to the application and I also direct the respondents to consider the case of the applicant for the purpose of allotment of the quarter under the father and son rule within two months from the date of communication of this order and applicant No.2 will be allowed to continue in the said quarter till the decision is taken by the respondent No.2 over the matter. Accordingly the application is disposed of awarding no costs. 


(D. Purkayastha)
Judicial Member