

**Central Administrative Tribunal
Lucknow Bench Lucknow**

Original Application No.376/2007
This, the 28th day of September 2007

HON'BLE MR. M. KANTHAIAH, MEMBER (J)

Ajay Yadav, Son of Late Ram Chandra Yadav, Resident of B-50/1,
Manak Nagar Colony, Alambagh, Lucknow.

Applicant.

By Advocate:- Shri D. Awasthi.

Versus

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.
2. Director General, R.D.S.O., Manak Nagar, Lucknow.

... Respondents.

By Advocate:- Shri N.K. Agrawal.

ORDER

BY MR. M. KANTHAIAH, MEMBER (J)

The applicant has filed the Original Application to quash the order dated 22.8.2007 (Annexure-1) passed by the Respondent No.2 rejecting the claim of the applicant for allotment of Type-III Quarter instead allotted Type-II quarter on the ground that the impugned order is arbitrary and non-speaking and also on the ground that many of Type-III quarter are lying vacant.

2. The respondents have filed Counter Affidavit denying the claim of the applicant on the ground that the respondent authorities have issued the orders covered under Annexure-1 in accordance with the terms of Railway Board instructions and there is no illegality to questioning the same.

3. The applicant has filed Rejoinder Affidavit reiterating his pleas in the OA and also denying the stand taken by the respondents.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the father of the applicant Late Ram Chandra Yadav, while working on the post of Mechanical Fitter died in harness leaving behind his parents, wife and two sons including the applicant and three daughters. While, he was working on the RDSO office a quarter of Type-III bearing No. B-50/1 was allotted to him and he was residing there at the time of his death. Subsequently, at the request of the family members of the deceased, Respondent No.2 permitted them to continue in the said quarter till 28.8.2007 under Annexure-3 dated 17.3.2006. But in the meantime, the applicant got compassionate appointment on the post of Stenographer Grade-III in the pay scale of Rs. 4000-6000 under the respondents by means of order dated 28.02.2007.

7. Thereafter, the applicant also made a representation dated 18.7.2007 (Annexure---) requesting for regularization/ allotment to the respondents authorities for allotment of Type-III quarter allotted to his deceased father but the same was rejected under Annexure-1 dated 22.8.2007 stating that the applicant is not entitled for such type quarter and thus, allotted Type-II quarter stating that he is entitled for such quarter as per Railway Boards instructions. As per Railway Boards letter No. E(G) 2006 /QR 1-6 (Master Circular) Dated 20.04.2007 (Annexure-4) all Group 'D' staff are entitled for Type-1 Quarter, All Group 'C' staff who are in pay scales , the maximum of which is equal

to or less than Rs.7000 are entitled for Type-II quarter and all Group-'C' staff who are in pay scales , the maximum of which is equal to or less than Rs.9800 but the minimum of which is equal to or more than Rs.4500 and above are entitled for Type-III quarters and all Group-"C" staff who are in the pay scales of Rs. 6500-10500 and 7450-11500 are entitled for Type -IV quarters. The applicant who has been appointed as Stenographer Grade-III in the pay scale of Rs. 4000-6000 is entitled for Type-II quarter as per the instructions of Master Circular covered under Annexure-4,

8. It is also not in dispute that after the appointment of the applicant on compassionate ground, he applied for Type-III quarter vide his application dated 2.7.2007 (Annexure-CR-2) on which the respondent have allotted Type -II quarter No. B-88/8 dated 01.08.2007 but the applicant refused to occupy the said quarter and such refusal also reveals on the copy of allotment letter (Annexure-CR-3). Thereafter, the applicant was again allotted Type -II quarter on 17.6.2007 covered under (Annexure C-4) but the applicant without communicating his response, he submitted another represented dated 18.7.2007 with a request for regularization/ allotment of Type-III Quarter No. B- 50/1, which was earlier allotted to his father but the same was rejected by the respondent authority and informed the same under impugned order Annexure-1 dated 22.8.2007, which is under challenge in the OA.

9. It is the contention of the applicant that though he is entitled for Type-II Quarter, he requested the authorities for continuation of Type-III Quarter in which he has been residing along with his family

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members from the date of allotment to his deceased father on the ground that in the near future he is going to reach the cadre for entitlement for Type-III Quarter. He also further contended that many others Type-III Quarters for about 26 are vacant now and there are no applications are pending and as such there is no problem for the respondent authority for allotment of such Type-III quarter to the applicant. He also further contended that the respondent authority have allotted Type-III Quarters to apprentice trainee candidates prior to their substantive appointment and there is no problem for allotment of Type -III quarter to him. But the respondents have filed their Counter and denied the claim of the applicant for continuation in the quarter, which was allotted to the deceased father of the applicant or for allotment of any other Type-III quarter stating that the applicant is only entitled for Type -II quarter as per Railway Boards instructions and thus denied the claim of the applicant.

10. It is clear from the Railway Boards Master Circular Annexure-4, that the applicant is entitled for Type-II quarter but not Type-III quarter. When, Boards Circular not allowing the Type -III Quarter for the cadre of the applicant, it is not fair on the part of the applicant to blame the department for not allotting such Type quarter to him. Further, the respondent authority has allotted Type -II quarter for which the applicant is entitled as per Railway Boards Master Circular.

11. In respect of the complaint of the applicant against the respondent authority that they have allotted quarter to the Apprentices by using their discretionary power, the respondents have denied the same and stated that all these apprentices are entitled for

quarter as per paragraph 6.60 of Master Circular (49) (Annexure-C-7) depending upon their educational qualification and further stated that the same is allotted purely on temporary and ad hoc base. They also Further stated that those training candidates have been allotted Type-II quarters on ad hoc basis but not Type-III quarters thus, denied the contention of the applicant. When the apprentices are entitled for such allotment, the applicant is not justified to say that the respondent authority have allotted quarters to the apprentices by deviating or by using their discretionary power.

12. It is also the contention of the applicant that there are about 26 Type -III quarters which are vacant and no waiting list candidates are there for allotment to such quarters and as such there is no problem for providing such quarter to him, who is going to get entitlement for such quarter after one and half year by way of promotion. When the applicant is not entitled for such allotment of Type -III quarter at present, taking note of future of events and entitlement is not justified ground.

13. Further, when there are no instances of allotment of such quarters to its employees by deviating the instructions and by using their discretionary power, it is not at all open to the applicant to insist for allotment of such quarter to him by using discretionary powers of the allotment authorities.

14. Further in the impugned rejection order (Anenxure-1), the respondents have furnished reasons for rejecting the claim of the applicant.

15. In view of the above circumstances, there are no justified ground either to quash the impugned order (Anexure-1) rejecting the claim of the applicant for allotment of Type-III quarter or permitting him to continue in the quarter bearing No. B-50/1, without any penal rent from him, as claimed by him and as such the application is liable for dismissal. Hence OA is dismissed. No costs.

  
(M. KANTHAI)

28-09-2007

MEMBER (J)

/AMIT/