

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 36/2001

Mumbai this the 6th day of JUNE 2001

CORAM: Hon'ble Shri Shanker Raju, Member (J)

Harry W. Fernandes
Railway Quarter No.
RB III/273/09
Central Railway Colony
Parel, Mumbai.

...Applicant.

By Advocate Shri G.S. Walia.

V/s

1. Union of India through
The General Manager
Central Railway,
Headquarters Office,
Mumbai CST, Mumbai.
2. Chief Work Shop Manager
Central Railway's Parel
Workshop, Central Railway,
Parel, Mumbai.
3. Ramji Singh
Working as Section Engineer
(MS) Central Railway's Parel
Workshop, Central Railway
Parel, Mumbai.

...Respondents.

By Advocate Shri S.C. Dhawan.

O R D E R

{Per Shri Shanker Raju, Member (J)}

The applicant, a Technician Grade II employee has assailed an order passed on 15.12.2000 by the respondents whereby the request made by the original allottee, i.e., respondent No.3, of quarter No.RB-III/273/09 at Parel for sharing the accommodation with the applicant and his family has been rejected by the competent authority without assigning any reason. The applicant has prayed for a direction to the respondents to grant permission to the applicant to share the Railway accommodation with respondent No.3.

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2. To resolve the controversy in the present case the brief facts are that the applicant is yet to be allotted a Govt. accommodation and as such R-3 made an application to the respondents being the original allottee, seeking permission to share the accommodation with the applicant and his family giving his own consent which could have facilitated performance of duties by the applicant. The permission was granted from time to time and ultimately on a request made by respondent No.3 on 28.2.2000 the respondents issued an order cancelling the accommodation of R-3. The aforesaid order was challenged before this Court and the same was set aside on the ground that no prior show cause notice was issued to R-3 before cancelling his accommodation and the respondents were accorded a liberty to observe the principles of natural justice. Ultimately, the permission for sharing the accommodation has been rejected by an order passed on 15.12.2000 addressed to R-3 and a copy of which was also endorsed to the applicant. The applicant has assailed this order on the ground that he is aggrieved by the order passed by the respondents refusing the request of R-3 to share the accommodation with the applicant and as per the provisions of Section 19 of the Administrative Tribunals Act, 1985 a person being aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal may make an application for redressal of his grievance. As the impugned order has affected the applicant as he has been denied sharing of accommodation permissible under the rules with R-3 he has a cause of action to assail the impugned order,. The applicant has further contended that before passing the order no reasonable opportunity to show cause has been accorded to him. The impugned order has been assailed also on the ground that the

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action of the respondents is discriminatory and arbitrary, as similarly situated persons have been allowed to share the accommodation but the applicant has been treated differently in violation of Articles 14 and 16 of the Constitution of India. It is further contended that although respondent No.3 has consented to share the accommodation and sharing of accommodation is very much permissible under para 1712 of IREM Vol.II on fulfilling all the conditions given therein. It is mandatory upon the respondents to have accorded permission to share the accommodation and this permission is only formal. The order is assailed on the ground that the order passed by the respondents does not contain any reason at all and supplementary reasons have been adduced by the respondents in their counter-reply which are irrelevant and cannot be considered keeping in view the ratio laid down by the Apex Court in M.S. Gill v. Chief Election Commissioner, 1978 (1) SCC 405. It is further contended that the respondent No.3 has been forced to write letter dated 29.12.2000 at Annexure A-5 keeping in view the order passed by the respondents on 16.12.2000. By referring to the reply filed by R-3 it is pointed out that R-3 is ready to share the accommodation with the applicant and his family but for the permission accorded by the respondents. The applicant has further assailed the order on the ground that respondent No.2 has acted with a malafide under the pressure from Labour Union personnel, viz., Shri V.P.S. Rastogi as the applicant has filed a Review Petition No.125 of 1996 in OA No.826 of 1996, seeking vacation of Railway quarter No.F-51 at Parel in possession of VPS Rastogi and since then respondent No.2 is tantamount to get the Railway quarter vacated from respondent No.3.

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The respondents in their reply took exception to the contentions of the applicant. As a preliminary objection it is stated that the application is misconceived and not maintainable as the applicant has no right to claim sharing of Railway quarter allotted to another employee. It is further stated that the applicant has no locus standi or cause of action to assail the impugned order which is not directed to him, as R-3, the original allottee has been called upon to vacate the quarter consequent upon the order dated 15.12.2000 and accepted the order of the authority refusing permission to share the said accommodation. The applicant has no right to challenge the order. The respondents have further taken a preliminary objection that the application is barred by Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987, as plural reliefs have been prayed for in the form of direction to allot a Government accommodation and also allowing him to share the accommodation which are two distinct reliefs and cannot be maintained in a single application. The learned counsel of the respondents has stated that in pursuance of the direction of the Tribunal a show cause notice was issued to R-3 proposing to cancel his Government accommodation to which he had already filed his reply. It is also stated that on a surprise check it was found that R-3 has not been residing in the Railway quarter and has sub letted the quarter to some outsider along with the applicant as such his request for sharing the accommodation with the applicant has not been acceded to as per Rule 1712 of IREM Vol.II. It is further contended that the applicant is in fact residing at Vithal Vadi Kalyan East as such he is not even legally entitled to retain his Government accommodation. Lastly, it is contended that the applicant has no right to be accorded a

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reasonable opportunity to show cause before the request of R-3 is rejected regarding sharing of accommodation and the applicant would be allotted type II Railway quarter as per his turn and at present he is at serial No.532 of the wait list. The respondents deny any discrimination in the matter of according permission to share the Railway accommodation. As R-3 has not been sharing the accommodation with the applicant at the time of checking the aforesaid request was justifiably rejected and does not show any vindictiveness and arbitrariness on the part of the respondents. It is also contended that R-3 is likely to take the defence regarding sub letting to the fact that as the applicant is residing and sharing the accommodation with him there is no question of any sub letting and in that event if the OA is allowed the respondents would be in difficulty to get accommodation of R-3 cancelled.

I have carefully considered the rival contentions of the parties and perused the material on record.

Despite my direction to produce the relevant record the respondents have failed to produce the same and as such I proceed to decide the case in absence of the record.

The OA is liable to be dismissed on the ground that the applicant has no right or locus standi to challenge the order passed by the respondents. There is no cause of action accrued as such to the applicant. The resort of the applicant to the provisions of Section 19 of the Administrative Tribunals Act, 1985 would be of no avail to him as a person who is aggrieved by an order in any matter can resort to the jurisdiction of this Tribunal for redressal of his grievance. In fact, respondent No.3 made a request to the respondents according him permission to share the accommodation and as a formality the signature of the person who wishes to share the accommodation to

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ascertain whether he is an outsider the signataures were taken on the applicant for sharing the Govt. accommodation. The request of R-3 had been considered and rejected which does not give a right to the applicant to sassail this order merely because the copy of the order has been sent to him. In my view the name of the applicant figures in the order for the purpose of communicating the information regarding rejection of request of R-3 for ^hsharing of accommodation. The aggrieved person who is not a party to the order has no privity or right to challenge the same. The contention of the respondents that the application does not disclose any cause of action and is not maintainable holds water. The contention of the applicant that before issuing the order ^hhad ~~had~~ not been accorded a reasonable opportunity is not well founded. Under para 1712 of IREM it is the original allottee who has to make a request for according him permission to share the accommodation with another railway servant. The request has been made in writing by R-3 and the order has been passed ~~for~~ ^hrefusing his request has been communicated to him as such the applicant will have no grievance regarding according him a reasonable opportunity to show cause before the proposed action is taken as he has no right to claim sharing of accommodation independently without the consent of the original allottee and without the conditions being fulfilled as laid down under para 1712 of the IREM.

It is next contended that the applicant has been discriminated in the matter of according permission to share the Railway accommodation with respondent No.3 as number of officers have been accorded such permission and the applicant was also granted permission prior to rejection of his request on 15.12.2000 is concerned, the same is not justified and the applicant has failed to

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substantiate the same by giving specific names of the employees to whom such a permission was accorded. A vague assertion cannot establish his right. Apart from it, in cases where hostile discrimination is alleged it is incumbent upon the applicant to establish that he has been placed equally with the persons who have been accorded such a benefit. The stand of the respondents that 29 cases of sharing permission have come before the respondents and as the same ~~do~~^{he} not conform to the condition laid down under the rules were rejected. As respondent No.3 has not been found sharing the accommodation and rather staying at a different place the conditions laid down under Rule 1712 *ibid* have not been discharged and the permission was rightly refused to respondent No.3 and there is no question of any hostile discrimination meted out to the applicant.

It is next contended that the orders passed by the respondents is mechanical without any reasons and the accord of permission to share an accommodation on fulfilment of all the eligibility criteria laid down under the rules *ibid* is only a formality is concerned, is not legally sustainable. The resort of the applicant to the case of M.S. Gill (*supra*) would be of no help to him as the applicant has no right to share the accommodation and it depends upon the permission to be accorded to the original allottee. My attention has been drawn to Annexure A-5 where the applicant has been asked to vacate the accommodation by the original allottee and assuch keeping in view that the original allottee is not willing to get his accommodation shared by the applicant he has no indefeasible right to remain in the Govt. accommodation of R-3. Apart from it, I find from the record that on a

surprise check the respondents have found that the respondent No.3 had been residing at Kalyan instead of his railway quarter and had subletted the same to some outsider along with the applicant without seeking permission which has been denied on 22.8.2000. The respondents are right in acting in consonance with the provisions of para 1712 as the respondent^h No.3 had failed to conform to the conditions laid down, his accommodation was cancelled. No doubt the cancellation order has been set aside by this Court but the same has been subjected to passing of another order after according a reasonable opportunity to show cause. As again the show cause notice was issued and R-3 has filed his reply to it. The respondent shall take a decision and in the event the Government accommodation is cancelled the applicant would thereafter have no right to stay in it. The respondents have given justifiable and plausible reasons to refuse the permission on enquiry being made to the sub-letting against R-3 and despite the fact that R-3 in his reply has consented to share the accommodation by applicant would not have conferred a right upon the applicant to assail the impugned order to which he is not a party. The Govt. accommodation cannot be allowed to be shared in case it is found that under the garb of sharing the same has been misused by the original allottee though the respondents have yet to take a final decision on the issue of cancelling the allotment of Railway quarter of R-3 but in their wisdom and keeping in view the attending circumstances the rejection of the request of R-3 which has not been assailed by him would not have given a cause of action to the applicant to assail the impugned order. The respondents have fairly contended that the request of the applicant for allotment of Type II quarter has been registered and his name exists in the wait list at serial

No.532 in the non-essential category and would be allotted type II quarter as per his turn. As the applicant is also drawing HRA he would not have been prejudiced. The request to share accommodation has been accorded to R-3 with respect to the applicant for a period of six months and it is prerogative of the respondents to grant this permission further or not. By virtue of para 1712 of IREM a Railway servant cannot enforce an indefeasible right to share a Govt. accommodation. As R-3 accepted the order of sharing permission and has not assailed the same the request of the applicant is not legally tenable.

The applicant in this OA is seeking reliefs though in alternative to quash the orders and to permit him to share the accommodation and also to direct the respondents to allot him type II quarter which are not consequential to each other and would be tantamount to seeking plural remedies which is not permissible under Rule 10 of the C.A.T. (Procedure) Rules, 1987. In this view of the matter and for the reasons recorded herein, I find no merit in the present OA and the same is dismissed, but without any order as to costs.

S. Raju

(Shanker Raju)
Member (J)

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