

(42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 1580/93.

Dt. of Decision : 20-10-94.

Suryakanth Ballappa

.. Applicant.

Vs

1. Divl. Railway Manager(Personnel)
SC Rly, Hyderabad (MG) Division,
Secunderabad-500 371.
2. Assistant Engineer,
SC Rly, Jalna
(Maharashtra State)
3. Sr. Divl. Electrical Engineer,
SC Rly, Hyderabad(MG)Division,
Secunderabad-500 371.

.. Respondents.

Counsel for the Applicant : Mr. G.V. Subba Rao

Counsel for the Respondents : Mr. N.V. Ramana, Addl.CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

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25/10/

OA 1580/93.

Dt. of Order: 20-10-94.

(Order passed by Hon'ble Shri A.V.Haridasan, Member (J)).

* * *

The applicant who is an Electrical Khalasi, on his transfer from Manmad to Aurangabad was allotted a Type-I

he requested the Asst.Engineer, for allotment of another better quarter, to which he was entitled. In the meanwhile as the Quarter No.7/6, in which the applicant was staying and to which he was paying rent and electrical charges/to be demolished for the purpose of re-construction, the AEN by his order dt.

1-9-93 allotted to him a quarter of Type-II No.79/G. The applicant moved into that quarter and he was paying monthly rent at the rate of Rs.60/- p.m. While he was staying in that quarter the AEN, vide his letter dt.11-11-93 cancelled the allotment of the quarter No.79/G in favour of the applicant on the ground that the quarter belongs to a pool of C & W as per DRM/O/HYB's Lr.No.YP/555/12/AWB/Conversion dt.6-8-93. This cancellation was made and he was directed to vacate the quarter immediately without giving him any alternate accommodation.

Though the applicant had submitted a representation for mutual exchange with Sri Ismail, who was the allottee of Type-II quarter, this representation was not considered and the applicant was directed to vacate the quarters forthwith. Even before the AEN had by his order dt.11-11-93 cancelled the

allotment of the quarter in the name of the applicant, ~~and~~ an order was issued from the office of the DRM directing the applicant to vacate the quarters immediately and it was also intimated that the damage rent at the rate of Rs.15/- per sq. ft. would be charged from him with effect from 26-9-93 on the ground that his occupation of the quarter was un-authorised. The applicant has assailed this action of the Respondents and prayed that the Respondents may be directed to allot him/Type-I quarter to which he is entitled and to allow him/in the quarter which he ~~is~~ ^a staying until he is allotted ~~a~~ quarter to which he is entitled on normal rent and to refund the penal rent already recovered from his pay and allowances.

2. The Respondents in their reply have contended that the Type-I quarter No.7/6 was not actually allotted to him but was allotted for Temporary joint occupation of Electrical staff, that the AEN is not competent to allot the quarter to the applicant because by order dt.24-1-92 DRM had withdrawn the powers of allotment of quarters at AWB by Supervisors, that the allotment of Type-II quarter to the applicant by being AEN ~~was~~/irregular, ~~XXXXXX~~ it became necessary to cancell the allotment ~~as~~ and to recover penal rent from the applicant as he was unauthorisedly in occupation of the quarter of Type-II. It has further been contended that the applicant has no right to claim ^a quarter of Type-I also. The applicant in his rejoinder contended that the letter dt.24-1-92 does not ~~XXXXXX~~ the ~~as~~ apply to his case because AEN ~~was~~ not mentioned

(B)

in that letter, that the allotment of the Quarter Type-I, No.7/6 to the applicant was made by the ADRM, as is evident from/Electrical Inspector dt.7-4-93, that the quarter having been allotted to the applicant, it is unjust, and unfair to treat the applicant as an unauthorised occupant and to re-

dents in throwing him and his family out of the quarter when no alternate accommodation is available is wholly unjustified.

3. I have gone through the pleadings and the documents on record. The contention of the Respondents is that the AEN had no authority to allot the quarter because the power to allot the quarter was withdrawn by the letter of the DRM dt.24-1-92 is not sustainable because AEN is not one of the authorities mentioned in this letter. However, the case of the applicant, which is supported by the letter of the Electrical Inspector Dt.7-4-93, a copy of which is available at page-1 of the material papers makes it clear that the quarter No.7/6 was allotted to the applicant by the ADRM. It is also not disputed that eversince March, 1992, the applicant was residing in that quarter and paying rent and electricity charges. If the quarter was not allotted to the applicant, rent would not have been accepted from the applicant exclusively. The AEN has allotted Type-II quarter bearing No.79 G to the applicant since the type-I quarter in which he was staying was to be demolished and since the Quarter No.79 G was not occupied by the/allottee. Whether the AEN has powers to allot

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type-II quarter to the applicant or not does not assume any importance because the fact that pursuant to the allotment by the AEN, the applicant has shifted his family to the quarter No.79 G, type-II. It is true that the applicant being a group 'D' employee is not normally entitled for allotment of type-II quarter. From the facts and circumstances it appears that the type-II quarter was allotted to the applicant as ~~there was~~ no type-I quarter was vacant and the type-II quarter was remained vacant as the person to whom it was allotted did not occupy the same. In these circumstances, I am of the view that to throw the applicant ~~was~~ out of the quarter and to charge penal rent is unfair ~~in the~~ ~~last~~ ~~last~~ ~~last~~ ~~last~~. The applicant did not ask for a Type-II quarter. He only requested for a quarter to which he is entitled. It was the AEN/allotted type-II quarter to the applicant. If the allotment of quarter by AEN is not in his powers for any reason, it is for the concerned authorities to take up the matter with AEN but that does not justify throwing the family of the applicant to the street while private accommodation is so expensive and rare and when the applicant, a Class-IV employee could not be in a position to meet the huge amount payable as rent for private accommodation. In any case the decision of the DRM contained in his letter dt.28-10-93 to charge damage rent from the applicant from 26-9-93 onwards is absolutely unjustified because the applicant did not occupy the quarter unauthorisedly but occupied the same because the same was allotted to him. When the quarter was allotted by a Gazetted Officer, the employee

is not normally expected to ask the officer who had allotted the quarter whether he had the authority to allot or not.

Therefore there was absolutely no fault or negligence on the part of the applicant when he moved into the Type-II quarter, which was allotted to him by his senior officer. Hence I have no hesitation to hold that the applicant occupied the quarter under authorisation and therefore his occupation of the same in any case cannot be held to be unauthorised.

4. Since the applicant is only Group-D employee, as of right he is not entitled to be allotted a type-II quarter. The Respondents would be at liberty to evict him from the type-II quarter provided he is allotted with a quarter to which he is entitled. Till an alternate accommodation in type-I quarter is provided to the applicant, he should not be disturbed from the quarter in which he is staying as no damage rent can be charged from him. In the result, the application is disposed of with the following directions :-

(a) the respondents are directed to allow the applicant to continue in a type-II quarter No. 79 G till such time of a quarter to which he is entitled is allotted to him;

(b) no damage rent shall be collected from the applicant for his occupation of the type-II quarter No. 79 G pursuant to the impugned orders and if any amount in excess of the normal license fee has been recovered from his pay and allowances, the same shall be refunded to the applicant within

6/11/12

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one month from the date of
communication of a copy of this
order.

5. There will be no order as to costs.



(M. HARIDASAN)

Dt. 20th October, 1994,
Dictated in Open Court.

av1/

10/1994
DEPUTY REGISTRAR (J)

Copy to:

1. Divisional Railway Manager, (Personnel)
South Central Railway, Hyderabad (MG) Division,
Secunderabad - 500 371.
2. Asst. Engineer, South Central Railway,
Jalna, (Maharashtra State)
3. Senior Divisional Electrical Engineer,
South Central Railway, Hyderabad (MG) Division,
Secunderabad - 500 371.
4. One copy to Mr. G. V. Subba Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr. N. V. Ramana, Addl. CGSC, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

YLKR

7 M.P. copy
Mr. 10/10/94.

Typed by
Checked by

Composed by
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

AND

THE HON'BLE MR. A. S. GORTHI : MEMBER

Dated: 20.10.94

ORDER/JUDGMENT.

M.A. /R.P./C.P./No.

in

D.A. NO. 1580/93

T.A. NO.

(W.D. NO.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

Central Administrative Tribunal

DESPATCH

24 NOV 1994

HYDERABAD BENCH.

10/11/94