

Central Administrative Tribunal
Principal Bench: New Delhi.

OA No. 257/2016

MA No.1110/2016

Reserved on: 18.05.2016

Pronounced on: 15.07.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Dr. B.K. Sinha, Member (A)

Goutam Majumder s/o Trilokeshwar Majumder,
Chief Workshop Manager,
Mechanical Workshop, Gorakhpur,
North Eastern Railway, Gorakhpur,
(Now on study leave at Management
Development Institute (MDI),
Gurgaon, Haryana.

...Applicant

(By Advocate: Mr. Prem Prakash)

Versus

1. Union of India through Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.
2. The Secretary (Establishment),
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.
3. General Manager,
Rail Wheel Factory,
Yelahanka,
Bangalore-560064.

...Respondents

(By Advocate: Mr. VSR Krishna & Mr. R.N. Singh)

O R D E R

Dr. B.K. Sinha, Member (A):

In the instant Original Application filed under Section
19 of the Administrative Tribunals Act, 1985, the applicant
is aggrieved by the Office Order of the respondent No.3 dated

09.01.2016, rejecting his representation dated 08.08.2015 and directing him to vacate Quarter No.51, East Colony, Railway Wheel Factory, Yelahanka, Bangalore, within seven days from the date of receipt of the said order.

2. The applicant has prayed for the following relief(s) by means of this OA:-

- “(i) to quash the impugned order dated 23.12.2015 passed by respondents to this Original Application; and*
- (ii) to quash the Letter No.RWF/GM/AS(C)3/IX dated 09.01.2016 issued by the Respondent no.3 to the Applicant; and*
- (iii) allow the applicant to remain in possession of the Quarter No.51, East Colony, Railway Wheel Factory, Yelahanka till the completion of the study leave as per Rule; and*
- (iv) pass any other orders which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

3. The facts of the case, in brief, are that the applicant is a SAG Officer working as Chief Workshop Manager, Mechanical Workshop, North Eastern Railway, Gorakhpur under the control of Railway Board, New Delhi, Government of India. He was sanctioned study leave for three years by the GM, North Eastern Railway and has been pursuing fellowship from Management Development Institute (MDI), Gurgaon. It is the case of the applicant that retention of the Railway quarter for the entire period is permissible within the terms of the Railway Board’s Circular dated 22.09.1992

subsequently revised by the Circular dated 20.04.2007. The applicant was transferred to North Eastern Railway in place of one PV Barapatre vide the order dated 02.03.2015 and has been posted as Chief Workshop Manager in SAG, Mechanical Workshop, North Eastern Railway, Gorakhpur vide letter dated 31.03.2015. He, however, did not get any Railway Quarter allotted at his new place of posting, i.e., Gorakhpur and instead was allowed to retain his quarter at Yelahanka for a period of two months, i.e., from 12.03.2015 to 11.05.2015 on payment of normal rent. He was further allowed to retain the said quarter for a period of four months, i.e., from 12.05.2015 to 11.09.2015 on grounds of illness on payment of special licence fee, i.e, double the normal rent. In the meantime, the applicant was offered fellow programme in Management with fellowship vide letter dated 19.05.2015. The respondents accorded sanction of study leave to the applicant for three years to pursue his fellow programme in MDI, Gurgaon vide Memorandum dated 18.06.2015. The applicant applied for retention of his quarter on the basis of provisions of 10.25 of the OM dated 20.04.2007 on payment of rent vide letter dated 23.06.2015, which was declined by the respondents vide their communication dated 14.07.2015 on the ground that he had already been granted retention earlier. The applicant then submitted a representation dated 08.08.2015 to the Railway

Board through GM (NE) requesting consideration of his case. Being aggrieved, the applicant subsequently filed OA No.330/01225 of 2015 before Allahabad Bench of this Tribunal, which was disposed of at the admission stage itself staying the effect of the operation of the impugned order dated 14.07.2015 and further directing the respondents – Railway Board to take a decision on the pending representation of the applicant dated 08.08.2015 within a period of two months. In the meantime, the applicant submitted another application to the respondent no.3 and got the period of retention extended by another two months on ground of illness of his wife vide Memorandum dated 12.09.2015. Pursuant to the directions of the Allahabad Bench, the pending representation of the applicant dated 08.08.2015 was considered and rejected by the respondents vide reasoned order. The applicant, vide letter dated 09.01.2016, was advised to vacate the afore quarter within seven days from the date of receipt of this letter, as his continued occupation beyond 11.11.2015 was unauthorized. The applicant submitted another representation dated 15.01.2016 seeking more time to vacate the afore quarter as he had not been provided with a copy of the Railway Board's letter containing the above decision and the same was rejected by letter dated 02.01.2016, as it had not been backed by reasonable grounds. The applicant has thereafter

filed the instant OA with the prayers which have been mentioned in the preceding para.

4. The respondent, in the meantime, filed misc. Application bearing No. 1110/2015 prayed for vacation of stay orders on the ground that as soon as the applicant was transferred, the relationship between the Rail Wheel Factory, i.e., respondent no.3, and the applicant ceased to exist. The study leave has been granted by General Manager, North Eastern Railway and the respondent no.3 had nothing to do with it. Therefore, reliance of applicant in Para 10.25 of the Railway Board's circular dated 20.04.2007 in claiming retention of RWF Quarter No. 501 East Colony, Yelahanka, Bangalore, was totally misplaced. The applicant has filed reply to the said MA resisting the prayer made therein giving list of persons who have been allotted quarters in contravention of the Railway Board policy. He has also submitted that a large number of outsiders have been allowed quarters and a number of quarters are still lying vacant. The applicant has further alleged malafide against the respondents, but has not made any person party in his personal capacity. The principal point of the applicant is that right had accrued to him on the basis of the circular of the Railway Board dated 20.04.2007 and that had all-India jurisdiction which could not be taken away either by the

respondent no.2 or respondent no.3 through individual orders.

5. The respondents have also filed counter affidavit in the OA rebutting the points raised by the applicant in the OA. They have submitted that the study leave has been granted to the applicant from NE Railway, Gorakhpur and as such, he is entitled to retain quarter which should be from NE Railway and not from the respondent no.3. The applicant has been shifting stand right from the beginning. The study leave had not been granted while the applicant was with the respondent no.3. However, he kept on extending the retention of quarter on one plea or the other and then finally after the study leave was sanctioned, he applied for retention of quarter for a period of three years, i.e., w.e.f. 01.07.2015, likely the date of commencement of course at MDI, Gurgaon. It is the further ground of respondent no.3 that the General Manager/NE Railway, who had granted study leave, has not been made party by the applicant and the circular dated 20.04.2007 is only relevant in case where the officer is in occupation of Railway quarters at the station from where the officer takes study leave. The respondents have further submitted that there are many officers waiting for allocation of quarters and that quarters have been allotted to outsiders for the purposes of course, on instructions or on compulsion

ground and to the staff of Kendriya Vidyalaya Schools functioning in the premises of the organization and to CISF, ordinance and others based upon necessity. They have strongly refuted the allegations of waiver allocation of quarters and submitted that three quarters, which have been allotted to Railway officers posted in Bangalore on tool of balancing basis have been vacated. As such, no procedure has been violated in making allocations of these quarters. The respondents have further questioned the jurisdiction of this Tribunal as it does not constitute an authority under the Public Premises (Eviction of Unauthorized Occupants) 1971.

6. The applicant has filed a rejoinder application reiterating the averments in the OA stating that the judgments on which the respondents have relied are not applicable to the facts of this case, as the case challenging eviction is not amenable to the jurisdiction of this Tribunal. Instead the judgment of the Hon'ble Delhi High Court in **Smt. Babli & Anr. Vs. Govt. of NCT of Delhi & Ors.**, 95(2002) DLT 144, upholds the jurisdiction of this Tribunal, as provisions have been made under different set of rules affecting the service conditions of the employees. The applicant has relied upon the judgment of the Hon'ble Supreme Court in **Shiv Sagar Tiwari Vs. Union of India &**

Ors., AIR 1997 SC 2725 where high confidence had been in the public functionaries.

7. We have carefully gone through the pleadings of rival parties and patiently heard the arguments so advanced by the learned counsel for both the parties.

8. The issue to be decided in this regard is that whether the instant case is amenable to the jurisdiction of this Tribunal. It is an admitted position that this Tribunal does not have authority to entertain cases under PP Act, 1971. Therefore, the case pertaining to eviction and fine imposed under the States Act is not amenable to the jurisdiction of this Tribunal. However, at the same time, allocation of accommodation to the employee is made under different set of rules and series of circulars issued by the department. In the instant case, the applicant has retained the afore quarter allocated under Master Circular No.49 (Revised) dated 20.04.2007. The respondents have accepted existence and applicability of the said Master Circular as rules governing allotment and retention of railway quarters in para 10 of "Facts of the case" of their reply. Para 10.25 of the said Master Circular reads as follows:-

"10.25 **Study Leave:**

(a) In case the officer is in occupation of accommodation below his entitlement for the entire period of study leave on payment of normal rent.

(b) In case the officer is in occupation of his entitled type of accommodation, for the period of study leave but not exceeding six months on payment of normal rent provided that where the study leave extends beyond six months, he may be allotted alternative accommodation, one type below his entitlement, on the expiry of six months or from the date of commencement of the study leave if he so desires.

(c) In case the officer does not want to shift to the house below his entitlement, he will be charged special licence fee for the entire period of study leave after the initial 6 months for which only normal rent should be charged.”

9. In view of the above discussion, we have no hesitation to hold that in the respondent organization, allocation of quarters and cancellation thereof is governed by Master Circular No.49 and other circulars which have the same force as rules. Hence, the issue remains amenable to the jurisdiction of this Tribunal.

10. Having considered and decided the issue of jurisdiction, we can now safely take up the issue that whether the applicant can retain the quarter no.51, East Colony, Railway Wheel Factory, Yelahanka, Bangalore, for a period of three years as being sought. Here the facts play an important role in determination of this issue. All India Railways are organized in different zones which have separate administrative units having owned rules and practices at times. The circular dated 22.09.1992 was revised by Master Circular No.49, para 10.25 of which has already been extracted elsewhere. The very opening para of

this circular states that “*Master Circular No.49 on “ALLOTMENT OF QUARTERS AND RETENTION THEREOF”, a compilation of instructions on the subject was last brought out and circulated vide Railway Board’s letter no.E(G)92 QRI-20 dated 19/1/93. Since then the various provisions of instructions have undergone major changes and some new provisions have also been introduced. With the objective to bring about all the current basic instructions at one place, the Master Circular has been updated by incorporating the modifications/additions to the instructions in this revised Master Circular*”. This clearly indicates that this Master Circular is introduced to bring all the instructions regarding eligibility of allocation, retention and eviction of quarters at one place. This circular nowhere states that para 10.25 is applicable only to certain Railway establishments and not to all India level. It clearly has all-India ramification. We are also of the opinion that facts play an important role. No doubt, the applicant is an intelligent person, otherwise he would have not have got fellowship from MDI, Gurgaon, certainly a most prestigious institution. However, we need to look at sequence of events. On 08.04.2011, the applicant was occupying a quarter no. 501, East Colony, RWF, Yelahanka, Bangalore as per his entitlement. He gets transferred to NE Railway, Gorakhpur on 02.03.2015 and he is posted as Chief Workshop Manager in SAG, Mechanical

Workshop, NE Railway, Gorakhpur on 31.03.2015. On 14.05.2015, he applies for extension of quarter on grounds of illness of his wife. In the meantime, he gets study leave sanctioned from the NE Railway on 18.06.2015. He also submits an application dated 23.06.2015 to the Railway Board permitting him to retain the said quarter for the entire period of study leave, without giving copy to the respondent no.3. We also find that the applicant, vide his application dated 15.01.2016, is seeking time to vacate the quarter. He obtains a stay order from the Allahabad Bench of this Tribunal in OA No. 330/01225 of 2015 and subsequently he has approached the Principal Bench. His entire sequence of events indicates that the applicant has never been truthful in his averments and has been playing a game of cat and mouse with the Railway authorities. He has been using subterfuge in delaying the eviction of the quarter. Here, we take cognizance of the fact that though Para 10.25 of the Master Circular No. 49 holds good for Railway establishments at all-India level, the autonomy of the individual units within the Railways and their operational systems have to be respected. Yes, the applicant is entitled to quarter in question, but within the NE Railway, where he was last posted. He purposefully kept the respondent no. In dark till study leave was sanctioned. In addition, he has been making allegations, which have not been substantiated

regarding malpractices in the organization of the respondent no.3. He has also concealed the fact that he owns an accommodation within one kilometre of the said quarter and also has an accommodation in Gurgaon. The motive is obviously clear that the applicant wants to earn rent from these accommodations while occupying Railway accommodation.

11. In view of the above circumstances, we regret to hold that the applicant has not come to this Tribunal within clean hands. Instead he has come with hands blackened with soot. We wish that his intelligence should have been used in furthering interest of his organization and not in making attempts to mislead this Court. We could have imposed fine upon the applicant for his perfidious conduct. However, we resist for being the same, as the applicant is enrolled in a prestigious institution and we think that with this order, he will do his best to mend his conduct in future. The OA is accordingly dismissed. MA No. 1110/2016 also stands disposed of. No order as to costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member(J)

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