

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.060/704/2017

Date of decision: 05.04.2019

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

...

Om Veer Singh son of Shri Lakhi Ram, aged 47 years, Senior Section Engineer/Shell Shop, Employee No.457500, resident of Quarter No.437-E, Type-II, Rail Coach Factory, Kapurthala (Punjab) Group B.

**... APPLICANT
VERSUS**

1. Union of India, Ministry of Railways through its Secretary, Rail Bhawan, Baroda House, New Delhi.
2. Rail Coach Factory, Kapurthala (Pb.), through its General Manager.

... RESPONDENT

PRESENT: Sh. Inderjit Kaushal, counsel for the applicant.
Sh. Yogesh Putney, counsel for the respondents.

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant, working as Senior Section Engineer, is before this Court for quashing of the order dated 20.5.2017 (Annexure A-8), order dated 21.6.2017 (Annexure A-10), whereby respondents have cancelled the allotment of house and have asked for damages for occupying house without entitlement and directed him to vacate the house.
2. Facts broadly are not in dispute.
3. Applicant who is permanent employee of Railway Coach Factory, Kapurthala was sent on deputation to RITES, vide communication dated 17.12.2013 for a period of three years and joined on 8.1.2014. He was prematurely repatriated to parent department where he

joined on 7.11.2015. After return, he moved an application for allotment of house as per seniority maintained by respondents and was allotted Quarter No.1028-D, Type-II accommodation on 6.9.2016. Thereafter on 1.2.2017, applicant submitted another application for change of quarter which was returned with remarks that his request can only be considered after six months from allotment of earlier house. On 4.4.2017, his request was accepted and he was allotted Quarter no.437-E, Type-II at RCF Colony, Kaputhala. Subsequently, respondents have passed impugned order dated 20.05.2017, whereby he was held to be illegally occupying house and have cancelled allotment and have decided to charge Rs.4624/- per month as penal rent. Against these orders applicant, submitted representation dated 3.6.2017, which has been rejected vide order dated 21.6.2017 and directed him to vacate house against which applicant is before this Court.

4. Respondents have resisted claim of the applicant by filing written statement wherein they have not disputed factual accuracy of the matter. However, they have submitted that after repatriation from RITES, it was not in the notice of the respondents that he had to apply afresh based upon seniority and allotted accommodation based on seniority. When this fact came to their notice, they have passed the impugned orders as applicant was allotted accommodation out of turn in violation of draft rule i.e. Rule 3.3 of Terms of Residential Accommodation to non-gezettled staff of RCF and accordingly decided to charge penal rent for the period he was occupying Govt. house without entitlement.
5. We have heard learned counsel for the parties.

6. Learned counsel for the applicant vehemently argued that the applicant was on deputation with RITES but his seniority cannot be taken away because he is permanent employee of RCT, therefore he was rightly allotted accommodation as per seniority, which was wrongly ordered to be cancelled. To substantiate his plea, he submitted that applicant is having lien with RCF, that cannot be taken away by respondent directing him to apply afresh and application based upon old list cannot be accepted.
7. Learned counsel for the respondents vehemently opposed prayer by submitting that word lien will not make applicant entitled for seniority. Lien is only for that he is permanent employee of RFC and that has nothing to do with the seniority maintained for allotment of house. By wrongly counting seniority he was allotted house and subsequently when this fact came to notice of the respondents, they have passed impugned order. He also submitted that in the absence of any rule, draft rules can be acted upon and in terms of rule 3.3 of the draft rules governing field namely "Rules for Allotment of Residential Accommodation to Non-Gezotted Staff" as per which action has been taken, therefore, he prayed that the impugned order be upheld.
8. We have given our thoughtful consideration to the matter with able assistance of learned counsel for the parties.
9. Admittedly, applicant was sent on deputation to RITES for a period of three years and para 3.3 of Draft Rules reads as under:-

"3.3 The name of employees transferred from RCF to other Railway/PSU will be deleted from priority list of allotment of quarter."

10. Applicant was prematurely repatriated to department but in terms of these rules, he has to apply afresh and his seniority for allotment of house is to be taken from the date when he applied. However, by taking his earlier seniority he was allotted house and was paying admissible license fees. When respondents noticed their mistake, they rectified the same by passing impugned order and we do not find any illegality because the same is in consonance with rule 3.3 of allotment of Government Accommodation of RCF, as noticed above. Only point which comes in favour of the applicant is that he has not concealed any fact that he was sent on deputation and prematurely returned to parent department. Based on his application, he was allotted that accommodation and was paying license fee, thus action of the respondents in charging damage rent cannot be approved for the fault of the department. Once respondents have admitted mistake for allotment of house then they cannot have both the things in their hands firstly cancel allotment and secondly, charge damages for the period 31.9.2016 to 4.4.2017. Accordingly, action of the respondents in charging penal rent is set aside.

11. Considering the above, O.A. is partially allowed by directing the respondents not to charge penal rent when he was in occupation of the house. The O.A. stands disposed of accordingly. No costs.

(P. GOPINATH)
MEMBER (A)

Date: 05.04.2019.
Place: Chandigarh.

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(SANJEEV KAUSHIK)
MEMBER (J)