

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 433 of 2019

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Sanjeev Singh, aged about 49 years, S/o Kameswar Singh, at present working as AGM (Material), Central Stores Smelter Plant, National Aluminium Company Ltd., At/PO/PS-Malco Nagar, Dist.-Angul, Pin-759145, at present residing at Experts Hostel Angul (NALCO ATHITHI NIWAS), Angul, At/PO/Dist.- Angul.

.....Applicant

VERSUS

1. Chairman-cum-Managing Director, National Aluminium Company Ltd., NALCO Bhawan, P/1 Nayapalli, Bhubaneswar, Dist-Khurda, Odisha, Pin-751013.
2. Sr. Manager, Administration Estate, Estate Department, National Aluminium Company Ltd., NALCO, Angul, At/PO/Dist-Angul, Pin-759145.

.....Respondents

For the applicant : Mr.S.B.Jena, counsel

For the respondents: Mr.D.K.Patnaik, counsel

Heard & reserved on : 20.9.2019 Order on : 1.10.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"Under the premises as stated above it is most humbly prayed therefore that the Hon'ble Tribunal may graciously be pleased to quash the letter dtd. 23.3.2019 under Annexure A/2 and letter dtd. 25.6.2019 under Annexure A/4 issued by respondent No. 2.

And further be pleased to direct the respondent No.2 to allot D-Type quarter to the applicant as per Clause-4.1(4) of the NALCO House Allotment Rule, 1994.

And further be pleased to pass any other order/orders as this Hon'ble Tribunal may think fit and proper.

And allow this Original Application with Cost."

2. The facts in brief are that the applicant is posted as AGM (Material), Central Stores Smelter Plant of the respondents-NALCO at Angul. He is aggrieved by the order dated 25.6.2019 by which the respondent No.2 had issued the following instruction to the applicant :

"With reference to the above, it is observed that you have not taken possession of the allotted quarter No. C/255 till date.

You are once again reminded to take possession of the allotted quarter immediately and vacate Room No. 24 at NALCO Atithi Niwas."

3. The applicant states in the OA that he is entitled to D-type quarter and since no such quarter is available, he is staying at NALCO Atithi Niwas on payment of Rs.300/- per day rent. He stated that he received an order dated 23.3.2019 (Annexure A/2) by which the respondent No.2 allotted the quarter No. CP/255 in his favour, which is a lower type of quarter than his entitlement of D-type and it is alleged in the OA that such order is in violation of NALCO House Allotment Rules, 1994. It is further stated in the OA that he submitted a letter dated 27.4.2019 (Annexure A/3) addressed to respondent No. 2 stating that as per the rules without proper application, no allotment can be made. It is stated by the applicant in the said letter that although he never applied for allotment of any quarter after his transfer from Bhubaneswar to Angul on 6.3.2017, he has been allotted the lower type quarter vide order dated 23.3.2019. He further stated in the said letter that he has filed OA No. 152/2019 on the issue of payment of the HRA to the applicant. The letter dated 27.4.2019 (Annexure A/3) of the applicant mentioned the following in last paragraph :-

"Under these circumstances, I humbly pray your honour may graciously pleased to allow me time to take appropriate steps in this matter till finalization of OA No. 152/19 by the Hon'ble Central Administrative Tribunal, Cuttack Bench, Cuttack."

The applicant submitted further letter dated 26.6.2019 (Annexure A/6) which is almost the repetition of the letter dated 27.4.2019 (Annexure A/3).

4. Counter has been filed by the respondents stating that the applicant did not participate in the notifications issued by NALCO for allotment of the quarters and that without applying for the quarter, he is occupying one room in the Guest House on payment of Rs.300/- per day. It is stated in the counter that the applicant has over-stayed in the Guest House beyond four months period. It is also stated that the Guest House is a transit house, which is allotted to the transferred employees during transition period as well as to other Guests, for which, the applicant was advised to vacate the room and the quarter has been allotted to him below the type of quarter for which the applicant was entitled. It is also stated that while issuing the letter dated 25.6.2019 (Annexure A/4) to the applicant, no rule has been violated. It is further stated in the counter that while considering the issue of payment of HRA to the applicant, the CMD examined the appeal of the applicant for grant of HRA and while rejecting the said appeal, the applicant was advised to apply immediately for an entitled type of quarter as per the rules and the Executive Director of the Plant was advised to allot a quarter of his type or a type below in case entitled type of quarter is not available. The decision of the CMD, Nalco dated 15.2.2019 is annexed at Annexure R/3 of the counter. Accordingly, the applicant was issued the letter dated 23.3.2019, allotting quarter No. CP/255 and there is no violation of Nalco House Allotment rules for issue of this order.

The reference to rule 10.03 of the said rule made in the counter stating that the competent authority can allot a quarter below the quarter which is being occupied by the applicant, if the said residence is required to be vacated.

5. Rejoinder has been filed by the applicant. It is submitted that regarding matter of HRA the issue is sub-judice in OA No. 152/2019, which is filed against the decision of the CMD, Nalco dated 15.2.2019 (Annexure R/3). It is stated that the rule 10.03 referred to in para 5 of the counter, is applicable to the employee who is occupying a residence and since the applicant is not occupying any residence, the said rule is not applicable and the present allotment is illegal. He further denied the contention of the respondents that there was no violation of principles of natural justice as he was staying at the Guest House without applying for a proper quarter. He further reiterated that the action of the respondents was in violation of the rules.

6. The respondents have filed a reply to the rejoinder stating that no statutory norm or guidelines were violated while issuing the letter dated 25.6.2019 (Annexure A/4) to the applicant. The respondents have reiterated that the applicant is staying in the Guest House since 18.7.2017 and has not participated in the notification issued for allotment of D-type quarter which was issued five times after the applicant's transfer to Angul. In the recent circular dated 5.7.2019, the employees who had applied for the same were allotted D-type quarter. It was further stated that the allotment of Guest House is the discretion of the management and the applicant is not entitled to occupy the same for longer period and not shifting to the allotted quarter. The reasons of threat and filing of FIR mentioned by the applicant are not known to the respondents. It was reiterated that in consideration of the appeal submitted by the applicant regarding his claim for HRA, the CMD, Nalco examined the appeal by passing the order at Annexure R/3 of the counter in compliance of the directions of Hon'ble High Court. It was further reiterated that the allotment of quarter No. CP/255 vide letter dated 23.3.2019 was not a violation of the House Allotment Rules. It is further stated that whatever may be his position in the seniority list he cannot be allotted a D-type quarter unless he participated in the notification issued by the management for allotment of such quarter.

7. Learned counsel for the applicant was heard. He submitted that the applicant is at the seniority of E-7 and is eligible for a D-type quarter. The allotment of a C-type quarter to him vide Annexure A/2 has been challenged in this OA. He further pointed out to the averments in para 7 of the rejoinder in which the case of another applicant Sitaram Mohanty has been mentioned as he has been allotted to continue in the Guest House after being allotted a quarter.

8. Learned counsel for the respondents submitted that he has been transferred to Angul from Bhubaneswar on 6.3.2017 and he availed all the benefits for shifting his family as per the rules although his family is continuing at Bhubaneswar. He has not applied for allotment of the quarter deliberately and continuing in the Guest House.

9. In reply, learned counsel for the applicant mentioned the fact that the applicant is facing threat for which he has filed an FIR. Respondents' counsel submitted that reasons for which there is threat, is unknown to the respondents, as stated in the counter.

10. Learned counsels for the both the parties have filed their written note of submissions. In the submissions in the written note of submissions on behalf of the applicant, main submissions apart from the averments in the pleadings, are as under:-

(i) The applicant has been issued a provisional allotment of a C-type quarter vide order dated 23.3.2019 although he was entitled for a higher type quarter and he had not applied for the same. Hence, the said allotment of quarter is in violation of the Rules.

(ii) Without considering the applicant's grievance dated 27.4.2019 and 26.6.2019, he has been asked to take possession of the quarter provisionally allotted to him and to vacate the guest house vide the orders at Annexure A/2 and A/4, which are not reasoned orders.

(iii) NALCO guest house has 24 rooms and since there was no possibility of the applicant to get the D-type quarter as stated in the Counter and the applicant had not been provided with a quarter as per his entitlement, he should not have been issued the letter at Annexure-A/4 to vacate the guest house. In the case of one Sitaram Mohanty, who has been allotted a D-type quarter, he has been allowed to continue in the guest house till the allotment of the said quarter.

(iv) As per the applicant's FIR with the police, there is a serious threat to his life.

(v) In absence of the notifications for allotment of quarters in which the applicant was stated in the Counter to have not participated, it cannot be said that the applicant did not participate with a view to remain in the guest house.

The details of the occupancy of the guest house from June, 2019 till 25.9.2019 have been enclosed with the written note of the applicant.

11. The written note of submissions filed on behalf of the respondents stated inter alia as under:-

(i) The applicant was transferred to Angul on 6.3.2017 and he has availed the benefits and allowances to shift his family to Angul. But instead of shifting his family, he is continuing in the guest house. Although the circulars have been issued after his transfer for allotment of quarters, the applicant did not participate in the same.

(ii) The allotment of the C-type quarter to the applicant is as per the order dated 15.2.2019 of the CMD (copy at Annexure-R/3 of the Counter) and there is no violation of the rules.

(iii) The applicant is overstaying in the guest house which is meant for accommodation of the officials on tour or transit for short duration of stay and they have to vacate on allotment of a quarter so as to accommodate other guests. The allotment of guest house is the discretion of the management and an employee is not entitled to occupy the guest house and not shift to the quarter.

(iv) During the pendency of the OA, the respondent no. 2 issued a circular dated 5.7.2019 for allotment of five D-type quarters, but the applicant did not apply under the said circular.

A copy of the House Allotment Rules, 1994 has been enclosed with the written note by the respondents, counsel.

12. The pleadings on record as well as the submissions by learned counsels for both the parties are duly considered by me. The applicant is aggrieved by the letter dated 23.3.2019 (Annexure A/2) by which the quarter No. CP/255 has been allotted in favour of the applicant. The applicant avers that the said letter dated 23.3.2019 is not in accordance of the rules. It is obvious from the facts of the OA that the applicant is not interested to shift to a quarter and wants to continue in the Guest House. As stated by him in his letter dated 27.4.2019 that he has claimed HRA and the rejection of his claim for HRA has been challenged by him in OA NO. 152/2019. In this OA he has opposed the allotment of any quarter without submission of any application by him as required under the rules and has also opposed the letter asking him to occupy the quarter and vacate the Guest House.

13. The applicant has raised the issue of violation of the principles of natural justice while passing the impugned letters. From the undisputed facts it is clear that the respondents have not taken steps to evict the applicant from the Guest House after issue of letter dated 23.3.2019 and another letter was issued to the applicant vide letter dated 25.6.2019 (Annexure A/4) to vacate the Guest House and to occupy the quarter allotted to the applicant. The applicant has submitted his grievance vide his letter dated 27.4.2019 (Annexure A/3) and then on 25.6.2019 (Annexure A/6) in reply to the impugned letter dated 23.3.2014 (Annexure A/2) and 25.6.2019 (Annexure A/4). The applicant was allowed opportunity to submit his grievance and was allowed to continue in the Guest House till the letter at Annexure A/4 was issued on 25.6.2019. I am, therefore, unable to agree with the contention of the applicant that there has been violation of the principles of natural justice by respondents while issuing the impugned letters dated 23.3.2019 and 25.6.2019.

14. On perusal of the letter dated 27.4.2019 (Annexure A/3) of the applicant, it is revealed that the clause No. 8.00, 10.01(b), 10.03 and provisions of the circular dated 3.2.2009 (Annexure A/9 to the Rejoinder) have been mentioned by the applicant while requesting for time till finalization of OA No. 152/2019. The Rule 8.00 of NALCO House Allotment Rules, 1994 states that no allotment

will be made without an application. Admittedly, the applicant has not submitted any application for allotment of quarter in spite of the circulars at Annexure R/2 series issued by the respondents inviting application for allotment of quarters as averred in para 4 of the Counter and no evidence has been furnished by the applicant in his Rejoinder to prove that such averment was false or incorrect. Hence, although the applicant cannot be faulted for refusing to accept the allotment of quarter No. CP/255 vide letter dated 23.3.2019 which has been made in pursuance to the order dated 15.2.2019 of the CMD (Annexure R/3), but it is obvious from the facts on record that the applicant has not participated in the circulars issued by the respondents (copy at Annexure R/2 series of the Counter) and no reason has been furnished by the applicant for non-participation in these circulars.

15. Regarding the circular dated 3.2.2009 (Annexure A/9 to the Rejoinder), it is stated under the heading "Other terms & conditions of accommodation of Guest Houses" as under :

"5. No guests shall be permitted to stay beyond 10 days without specific approval of ED in respect of Guest House at the Unit level and Director (P&A) in respect of other guest houses of the company. In case of medical treatment, this limit is up to 30 days. As regards to transferred employee the room rent will be recovered as per the details given at – II above."

16. It is noticed that while the applicant has been pointed out the flaws in the letter dated 23.3.2019 issued by the respondents, he has not furnished any specific provisions of the rules or the circular which permitted him to occupy the Guest House beyond the time specified in the circular dated 3.2.2009, without specific approval of the competent authority. There is nothing on record in support of the contention of the applicant that he has the right to occupy the Guest House, although he did not participate in the circulars for allotment of quarters as stated in para 4 of the Counter.

17. The applicant has raised the issue of serious threat to his life for which he has lodged the FIR with police. Respondents have stated that there is no information with the authorities about such threat or FIR. It is noticed that the applicant has not enclosed any letter by which he has informed the authorities about the threat being faced by him for which he has lodged the FIR with Police. It is noticed that his letter dated 27.4.2019 (Annexure A/3) by which he has requested the authorities for some time, there was no whisper about such threat being faced by him or about the FIR which was lodged by him with police in this regard. In absence of anything about such threats or FIR in the letters dated 27.4.2019 (Annexure A/3) and 26.6.2019 (Annexure A/6), such contentions of the applicant at para 4 of the rejoinder, which have been contradicted in para 5 of the reply of the respondents to the Rejoinder, cannot be accepted to be a valid ground to justify the reliefs sought for by the applicant in the OA.

18. The averment of the applicant that the provisional allotment vide letter dated 23.3.2019 (A/2) is illegal and it violates the Rules, as he has not submitted any application for allotment of the said quarter. This averment has been reiterated in the Rejoinder as well as in the written note of submissions by learned counsel for the applicant. The respondents in the Counter have submitted that the said provisional allotment was made as per the order dated 15.2.2019 (Annexure-R/3 to the Counter) of the respondents no.1 (CMD, NALCO) and it is permissible as per the NALCO House Allotment Rules, 1994, particularly under the rule 10.03 of the said rules. Per contra, the applicant has referred to the rule 8 to state that without any application submitted by him, no allotment of quarter is to be made. It is seen from the rule 23 of the said rules, copy of which has been enclosed with the written note of submissions by the respondents, that the CMD has the right to supplement the rules by issuing administrative orders. Hence, the contention of the respondents that the provisional allotment by the impugned letter dated 23.3.2019 (A/2) which was issued as per the order dated 15.2.2019 of the CMD (Annexure-R/3 of the Counter), does not violate the rules, has some force and it cannot be said that the letter dated 23.3.2019 is illegal. But as observed earlier, since the applicant did not apply for the quarter allotted to him vide letter dated 23.3.2019, he cannot be compelled to occupy the said quarter. At the same time, the applicant has not been able to furnish any rules or circular to prove that he has the right to continue to occupy the guest house as discussed in para 16 of this order.

19. In the facts and circumstances as discussed above, we are unable to allow the reliefs sought for by the applicant in this OA. Hence the OA is dismissed. However, the respondents will be at liberty to consider the matter as per the existing rules/guidelines in case the applicant submits a representation with justifications to continue in the Guest House. There will be no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath