

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2036/2003

New Delhi this the 16th day of February, 2004.

Hon'ble Shri Bharat Bhushan, Member(J)

Anil Kumar Tomar
S/o Late Sh. Jaivir Singh,
R/o II/31, NCERT Campus,
New Delhi.

.... Applicant

(By Advocate : Shri Arun Bhardwaj)

Versus

1. National Council of Educational
Research & Training,
Through its Secretary,
Sri Aurbindo Marg,
New Delhi-16.

2. Under Secretary,
Campus & Welfare Section,
NCERT, Sri Aurbindo Marg,
New Delhi-16.

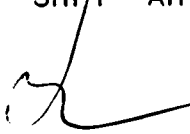
.... Respondents.

(By Advocate: Ms. Deepa Rai proxy counsel for
Shri R.K. Singh)

Order (Oral)

Heard.

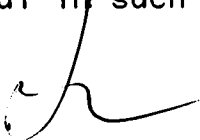
2. It is the case of the applicant that since 1987 he had been working as Lower Division Clerk (LDC) with the respondents, and he had been given appointment by the respondents on compassionate ground on the death of his father in June, 1987 who was earlier employed as Foreman and a staff quarter was also allotted to him. However, on the death of his father the said accommodation was allotted in the name of the son i.e. the applicant. It is alleged by the respondents that a complaint had been received from one Mrs. Karuna Singh an allottee of one Qtr. No. III/50-NIE Campus that one Rajinder Singh, the brother of Shri Anil Kumar, the allottee of Qtr.



No.II/31-NIE Campus along with two of his accomplices had indulged into anti-social activities in the campus on 20.3.2000 and had smashed the car of a relative of Mrs.Karuna Singh and also manhandled him. For this act of the brother of the applicant, a memo dated 12.4.2000 (Annexure A-4) was issued thereby asking the applicant to explain within seven days as to why action may not be taken against him under the provisions of Allotment (SR 317-B-21) which refers to the cancellation of the allotment of quarter. The applicant submitted reply to the said memo on 24.4.2000 (Annexure A-5) in which while denying the allegations he also stated that the copy of the complaint was also never provided to him. Thereafter, the respondents proceeded to cancel the allotment of the official accommodation allotted to him vide memo dated 28.8.2000 (Annexure A-1) followed by a subsequent reminder dated 5.9.2000 (Anexxure A-2). The respondents then also issued an order dated 7.8.2003 (Annexure A-3) thereby informing that the applicant was liable to pay damage charges at the rate of Rs.5906/-p.m. with effect from 16.9.2000 onwards till he vacates the premises.

3. For the aforesaid act of the applicant, the respondents also conducted an enquiry under Rule 14 of the CCS(CCA) Rules,1965 and finally, the disciplinary authority recorded that,

"whereas considering all the facts and circumstances of the case and submissions made, apology tendered and assurance given by Shri Anil Kumar Tomar, LDC CIET, I am inclined to take a lenient view against Shri Anil Kumar Tomar. And now therefore, Shri Anil Kumar Tomar, LDC, CIET is hereby warned to be very careful in such matters."



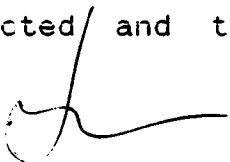
And while passing this order, the disciplinary authority had taken into consideration the following observations of the Inquiry Officer that,

"Shri Anil Kumar Tomar has argued that he has shown improvement of conduct by deleting his brother's name from the Ration Card and giving public notice through newspaper of dissociating himself from his brother, Shri Rajender. The province of the Disciplinary/Appointing Authority to consider the belated damage control acts of Shri Anil Kumar Tomar."

4. Feeling aggrieved against the orders dated 28.8.2000 (Annexure A-1), 5.9.2000 (Annexure-A-2) and 7.8.2003 (Annexure A-3), he has filed the present OA.

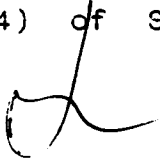
5. It is also the case of the applicant, that, prior to filing of this OA, he had filed a Civil Suit before Civil Judge, Tis Hazari, Delhi against the action of the respondents of cancelling the allotment of official accommodation and the Civil Judge by an order dated 4.11.2000 had been pleased to grant interim stay against the eviction from the Govt. accommodation. But, however, finally the said Civil Suit was rejected by the Civil Court, on 11.9.2002 holding therein that the matter was not covered within the jurisdiction of this Court in view of the provisions of Section 14 of the Administrative Tribunals Act, 1985. Hence, on this ground, he seeks and is allowed condonation of delay in filing this application at a delayed stage.

6. During the course of arguments, the learned counsel for the respondents contended that this was the case wherein the brother of the applicant had misconducted and the applicant had not shown



sufficient control upon him thereby causing avoidable inconvenience and disturbance to the neighbours living in the locality. Hence the learned counsel contends that the respondents had rightly cancelled the allotment of the applicant. In this regard, my attention has been drawn to SR 317-B-21.

7. On the other hand, learned counsel for the applicant while making compassionate plea on behalf of the applicant has submitted that as a matter of fact the applicant personally had at no time misconducted himself, but still as there was complaint against his brother, then he made him to vacate the premises as also got deleted his name from the Ration Card. Learned counsel further contended that even in a memorandum duly signed by 14 members of the applicant's neighbourhood, submitted before the Secretary, Residents Campus Welfare, NCERT Campus, New Delhi (Annexure A-9) they have stated that for the past three years the allottee, i.e. Shri Anil Kumar Tomar had been living with his family in the premises in question and none of his brother was now residing with him and further stated that they do not have any complaint against Shri Anil Kumar Tomar or his family members. And lastly, the learned counsel submitted that the applicant was only a petty LDC drawing meagre salary which was hardly sufficient to provide bread to the family members and during this long period he has also suffered a lot mentally as well as socially. He further submits that there was no violation of the Rules (SR-317-B-21) on his part. The learned counsel for the applicant has also drawn my attention to sub-clause (4) of SR-317-B-21 in support of his




submissions that instead of cancelling the allotment, the respondents should have done to allot him another premises in the same class in some other place. The said provision reads as under:-

"Where the allotment of a residence is cancelled for conduct prejudicial to the maintenance of harmonious relations with neighbours, the officer at the discretion of the Director of Estates may be allotted another residence in the same class at any other place".

The perusal of this provision reveals that instead of resorting to the extreme penalty of the cancellation of the allotment, the respondents would rather have done well in instead allotting an alternative accommodation away from the present premises.

8. Having regard to the totality of the facts and circumstances of the case, it is evident that there was no complaint of any nature against the applicant and the misconduct, if any was done only by the brother of the applicant and not by him. Hence, the action of the respondents in cancelling the accommodation of the applicant was illegal and improper. Hence, it cannot be allowed to sustain. Consequently, the OA needs to be allowed and is hereby allowed. ^{Consequently} ~~Hence~~, the orders dated 28.8.2000 (Annexure A-1), 05.9.2000 (Annexure A-2) and 07.08.2003 (Annexure A-3) and quashed and set aside. No order as to costs.


(Bharat Bhushan)
Member(J)

rb.