

(2023) 01 CAT CK 0020

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00427 Of 2018

Iftakhar Ahmad

APPELLANT

Vs

Divisional Railway Manager (Personal) Eastern Central
Railway, Mugal Sarai & Ors

RESPONDENT

Date of Decision : 17-01-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 14

Citation : (2023) 01 CAT CK 0020

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : Arvind Srivastava, Sunil, Rachna Dubey

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. The present O.A has been filed by the applicant under section 19 of Administrative Tribunal Act, 1985 seeking following reliefs:-

“(a) to quash the order dated 21.3.2018 passed by the respondent NO. 3 in compliance of the order dated 22.09.2017 passed by this Hon’ble Court in OA No. 330/00839/2015 (Annexure No. A-1) to this original application).

(b) To set aside the order dated 22.5.2015 passed by respondent NO. 3 (Annexure No. 2).

(c) to direct the respondents not to interfere in the applicants possession over quarter No. 446 ABC Type III European Colony, Mugal Sarai, District Mugalsari.

(d) Any other relief as this Hon’ble Tribunal deem fit in the circumstances.

(e) award cost of the original application in favour of the applicant”.

2. The brief facts of the case are that at present the applicant is appointed as

Junior Engineer under the respondents since 2008. Applicant was initially allotted Quarter No. 453/AB Type III European Colony, Mugal Sarai but the applicant could not get the possession of the said quarter due to some legal reasons. Due to this reason, the respondents considered the matter and allotted the quarter No. 446/ABC Type III, European Colony, Mugal Sarai. The applicant handed over the possession of the aforesaid quarter. The respondent No. 3 has cancelled the aforesaid quarter vide his order dated 22.5.2015. Aggrieved against the order dated 22.5.2015, the applicant filed the OA No. 839/2015 assailing the aforesaid order. Vide order dated 10.07.2015, the Tribunal granted the interim order by which refraining the respondents from putting the impugned order into operation till the next date. Ultimately Tribunal disposed of the OA No. 839/2015 vide order dated 22.09.2017. The operative part of order is reproduced below:-

"9. In view of the above and as agreed by both the counsels, the applicant should be given an opportunity of being heard in the matter. Accordingly, the impugned order is set aside since it was issued without giving an opportunity to the applicant of being heard. Respondent No. 5/competent authority is directed to issue a show cause notice to the applicant indicating why the allotment of the quarter in question is proposed to be cancelled. The applicant shall submit his representation/reply to such show cause notice within time as would be stipulated in the show cause notice, on which the respondents shall pass an appropriate reasoned order as per existing rules on the issue of cancellation of the quarter in question. If the applicant fails to submit any reply to show cause notice within the stipulated time, the competent authority will be free to pass a reasoned order as per rules".

3. In compliance of order of the Tribunal dated 22.09.2017, the reasoned and speaking order has been passed by the respondents. Through this OA, the applicant is challenging the aforesaid order on the following grounds:-

(a) The impugned order passed by respondent No. 3 is not justified in the eye of law as cancellation of railway quarter No. 446/ABC Type III, European Colony, Mugal Sarai is against the provisions of Article 14 of the Constitution of India.

(b) Due to cancellation of quarter in question, applicant has no place to live with his family.

(c) The aforesaid quarter was allotted to the applicant after following the procedure prescribed under the law but the same was cancelled without assigning any reason.

(d) The act of respondent No. 3 is also barred by estoppels as he himself has allotted the house and now reverting back from his earlier stand, he has passed the impugned order.

4. The respondents have filed the Counter Reply, denying the allegations made in the O.A., mainly contending that the applicant having scale of pay PB-2 + GP Rs. 4200/- was allotted railway quarter No. 446/ ABC Type III, European Colony,

Mugal Sarai is a Type IV quarter and as per Railway Board letter No. 2008/LMB/10/16 dated 27.01.2011, an employee who is having more than Grade Pay of Rs.4200/- is not entitled for Type IV. Since applicant is having scale of Rs.4200/-, he is not entitled for Type IV accommodation. It was further stated that in the impugned order dated 22.05.2015, the said quarter has wrongly been mentioned as Type III quarter whereas it is actually a Type IV quarter. The mistake in mentioning the quarter number in the impugned order was a typographical mistake. As per direction given by the Tribunal in OA No. 330/00839/2015, the reasoned and speaking order dated 21.03.2018 was passed wherein it has been clarified that the cancellation order dated 22.05.2015 was appropriate and reasonable.

5. Rejoinder affidavit has also been filed in which the applicant has reiterated the facts as stated in the OA and denied the contents of the counter affidavit.

6. Heard Shri Sunil, learned counsel for the applicant and Ms. Rachna Dubey, learned counsel for the respondents and perused the pleadings available on record as well as written submissions filed by the both the parties.

7. Submission of the learned counsel for the applicant is that the respondents is well known the quarter in question is Type IV in place of Type III and when the mistake of respondents came out, they in place of rectifying the same, imposes false and fabricated allegations for misleading the respondents and cancelled the said allotment without giving any notice or opportunity of hearing. Learned counsel further argued that the cancellation order of aforesaid quarter allotted to the applicant was passed without allotting any other accommodation to the applicant or without providing proper opportunity of hearing to the applicant. Learned counsel also argued that the impugned order dated 21.03.2018 has been passed without considering the actual facts and was passed in a hurry manner with ulterior motive just to make the applicant guilty for no fault of him. The acts of the respondents are not only illegal but also abuse of power which is not only harassing the applicant but also make the applicant's victim for the illegal mistakes of the respondents. Learned counsel for the applicant argued that applicant is still in possession in the aforesaid accommodation on the strength of interim order dated 26.04.2018, which is continuing till today.

8. Learned counsel for the respondents argued that on the false declaration of the applicant, the respondents have allotted the quarter vide order dated 18.4.2015. He further argued that allotment of railway quarter was not as per guidelines of Railway Board's letter dated 27.1.2011 as such the applicant is not entitled for allotment of aforesaid official accommodation. Learned counsel for the respondents argued that as per direction of this Tribunal, a show cause notice was issued to the applicant and after careful perusal of reply to the show cause notice, the authority concerned found that the order of cancellation dated 22.5.2015 is appropriate and reasonable.

9. The respondents have also placed reliance on some documentary evidence,

filed along with the Supplementary Counter Reply which reflects the entitlement of staff for allotment of railway accommodation.

10. I have gone through the submissions advanced by the learned counsel for the parties and also written submissions filed by them.

11. What transpired from the pleadings of the parties is that applicant was working as Junior Engineer under the respondents. It is evident from the record that initially one quarter was allotted by the respondents to the applicant but the applicant could not take possession over it because of litigation. Thereafter an application dated 11.12.2014 (Annexure A-4) was moved by the applicant for allotment of quarter wherein Type III of the quarter is mentioned. Respondents department have also allotted quarter No. 446/ABC Type III, European Colony, Mugal Sarai disclosing it as Type III. Later-on on detection of mistake, allotment was cancelled on the ground that quarter allotted to the applicant was Type IV category and applicant was not entitled for Type IV quarter. It is also evident from the record that as on date, applicant has been promoted in the Grade Pay of Rs. 4600/- and at the time of allotment of aforesaid quarter, the applicant was working in the Grade Pay of Rs. 4200/-.

12. It may be mentioned at this juncture that department had knowledge about the category of quarters. For the sake of argument, if this fact is taken into consideration that the applicant had mentioned in his application the disputed quarter as Type III quarter then also department concerned ought to have verified this fact whether the quarter in question was Type III or Type IV. Merely mentioning in the application as the quarter in question Type III, department concerned cannot take plea that there was misrepresentation on the part of the applicant. Applicant is continuously residing in the same quarter allotted to him on the basis of interim protection granted to him in this O.A. Department is not realizing rent amount from the applicant's salary. Since the allotment has been made on the part of the department showing the quarter in question as Type III, therefore, department/respondents on detecting of the mistake ought to have allotted another quarter according to the entitlement of the applicant. Department did not allot another quarter to the applicant rather cancelled the allotment of the quarter in question. Since the applicant has been promoted in the Grade Pay of Rs. 4600/-, quarter in question which is Type IV quarter can be allotted to the applicant because now he is entitled for Type IV quarter. Thus, at this juncture when applicant has been promoted in the entitled class, it will not be proper to legalize the cancellation order passed by the respondents regarding the quarter in question. Thus, the pleas taken by the applicant are liable to be accepted. Impugned orders passed by the department concerned are liable to be set aside. Accordingly, OA is allowed and impugned orders dated 22.03.2018 (Annexure A-1) and 22.05.2015 (Annexure A-2) are set aside. Since quarter in question remained in possession of the applicant, respondents are hereby directed to realize the arrears of amount from the applicant dividing it into 24 installments without interest because applicant is residing in quarter in question

on the basis of interim order granted by this Tribunal. However, applicant will be at liberty to deposit arrears of rent amount at any time before the expiry of aforesaid period. No order as to costs.