
(2000) 05 CAL CK 0004
In the Calcutta High Court
Case No : W.P.C.T. No. 134 of 1999

Pravash Prasun Pandey

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-05-2000

Acts Referred:

Citation : 105 CWN 908

Hon'ble Judges : S.B. Sinha, J;M.H.S. Ansari, J

Bench : Division Bench

Advocate : Madan Lal, for the Appellant; Tarun Kr. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

M.H.S. Ansari, J.—The instant writ application is filed questioning the judgment and Order dated 15th January, 1999 passed by the Ld. Central Administrative Tribunal, Calcutta Bench, whereby the original application filed by the petitioner was dismissed with certain observations. Brief facts of the case are that the petitioner is a Class-I Officer and he had been allotted a quarter No. 246/D, Railway Officers" Bunglow, Sealdah and he occupied the same since December, 1995. Thereafter, petitioner on his request was allotted another quarter being No. 208/ F (Type IV Special) at Officers" Colony Sealdah. We are concerned in this proceeding with the said allotment letter dated 21st November, 1996 in respect of the Quarter No. 208/F (Type IV Special).

2. The grievance of the petitioner was that the very same quarter was allotted in favour of another person Private Respondent No. 5 herein which the petitioner came to know from the letter dated 1st July, 1997. It was the contention of the petitioner that the allotment made in his favour vide letter dated 21st November, 1996 could not have been cancelled and no allotment could have been made In favour of the Private Respondent without cancelling the order of the earlier allotment made in favour of the petitioner. The petitioner had not been afforded any opportunity of hearing before the letter dated 1st July, 1997 was passed

making the allotment of the same quarter in favour of the Private Respondent.

3. The contention of the petitioner as regard the violation of principles of natural justice found favour with the Ld. Tribunal and it was held as under: "it is found that he took possession of the quarters from Shri V. P. Panjiar who occupied the same before his allotment. At the same time it is found that the quarters was subsequently allotted to Mr. M. S. Pal vide letter dated 1.7.97. Case of the respondents as I find is that due to administrative exigency they allotted the quarters in favour of Shri M. S. Pal since it was found vacant on 10.6.97. But facts remain that before cancellation of the quarters no opportunity of being heard was given to the applicant. On the basis of the said facts I am of the view that respondents cancelled the allotment order on 1.7.97. Such action appears to be arbitrary, irregular and in violation of principles of natural justice."

4. Having held thus, the Ld. Tribunal, however, found that as the petitioner had in the meantime been transferred and is working at Kanchrapara Workshop which is 40 K. Ms from Sealdah declined to issue any orders as prayed for by the petitioner for the following reasons: "However, I find that applicant is working at Kanchrapara Workshop which is 40 K.Ms from Sealdah. But Ld. Advocate Mr. Lal on behalf of the applicant could not produce any rule before me to show that he is entitled to get the quarters at Sealdah after his transfer from Sealdah to Kanchrapara which is 40K.Ms from the Sealdah Station. It is found that Mr. Pal respondent No. 6 occupied the quarters as per letter of allotment. However, I find that applicant sought declaration to that effect that order of allotment in favour of Shri Pal is illegal and arbitrary. At the same time he also sought direction to retain the quarters and that he should not be disturbed to take possession of the quarters bearing No. 208/F. I find that such declaration cannot be granted under the aforesaid circumstances in view of the fact that he is not in possession of the quarters. Thereby, the relief sought for is redundant. Accordingly, application is dismissed with the aforesaid observation. Aggrieved against the above judgment and Order of the Tribunal instant writ application has been filed.

5. In the Affidavit-in-Opposition filed on behalf of the respondents and affirmed by the Divisional Personnel Officer, Eastern Railway, Sealdah, allotment of the quarter in favour of petitioner had not been disputed. It is, however, stated that Mr. Panjiar who was in occupation of the said Railway Quarter No. 208/F vacated the same on 10th June, 1997 and as per prevailing system after vacation the relieving Officer will hand over the key to the concerned CIOW who will hand over the key to the new allottee and on each occasion, a note to the effect of handing over and taking should follow. At the material point of time, it is stated, Ex. Sr. DEN/Cord. himself made an enquiry and it was seen by him that the said quarter was under lock and key and no one had occupied the said Quarter physically. The key of the said quarter was with ciow/sdah. It is, further, stated that on consideration of the report of the then Sr. DEN/ Cord, the then DRM had cancelled the allotment order issued in favour of petitioner/applicant and a

modified allotment order was issued in favour of the Private Respondent.

6. It is thus not in dispute that the Quarter No. 208/F was allotted to the petitioner herein vide an order dated 26th November, 1996. In modification of said allotment order, the quarter in question was allotted to the Private Respondent vide impugned order dated 1st July, 1997.

7. The question whether the petitioner herein as claimed by him had in fact taken possession of the Quarter from Shri V. K. Panjiar who was in occupation there is of no significance as even according to the procedure for taking over possession as stated in the affidavit-in-Opposition the CIO is required to handover the key to the allottee. Even if, the contention of the respondents is to be accepted with regard to the said procedure, the CIO was required to hand over the key of the said Quarter No. 208/F when it was vacated by Mr. Panjiar on 10th June, 1997 to the petitioner in terms of the allotment order dated 26th November, 1996. The said allotment as noticed supra had not been cancelled nor modified until the impugned order dated 1st July, 1997.

8. As regard the modification of the earlier allotment made in favour of the petitioner by the impugned order dated 1st July, 1997, it is not in dispute that the petitioner was not afforded an opportunity of being heard in the matter before cancellation of the order of allotment in his favour. We are in agreement with the view as expressed by the Ld. Tribunal that such action of the respondents authority is arbitrary, irregular and was in violation of principles of nature justice.

9. It is well settled that any action taken by a public authority which is invested with statutory power has to conform to the standard of reasonableness, compliance with the statutory provisions, rules and regulations and conforming to the principles of natural justice. It is, equally, well settled that a public authority is required all times to act in a fair reasonable manner.

10. In the instant case it has been found and rightly so, in our opinion, that the action of the respondent in cancelling the order of allotment made in favour of the petitioner was arbitrary, as it was in violation of principles of natural justice.

11. Despite such findings by the Ld. Tribunal, the petitioner had been denied the prayer for possession of the quarter on the ground that the applicant could not produce any rule before the Ld. Tribunal to show that he is entitled to retain the quarter after his transfer from Sealdah to Kanchrapara.

12. The Ld. Counsel for the petitioner has referred to, and a relied upon the Circular dated 23rd December, 1992 Annexure - "B" and paragraph 1.4 thereof which reads as under:

1.4 : An employee posted at a station in the electrified suburban area of a Railway may on transfer to another station in the same cletrified suburban area, may be permitted to retain the railway quarters at the former station on payment of normal rent/flat rate of licence fee/rent provided:

(i) the railway administration is satisfied and certifies that the concerned employee can conveniently commute from the former station to the new station for performance of duty without loss of efficiency; and

(ii) the employee is not required to reside in an earmarked Railway quarter.

13. Assuming that the said rule, as to the retaining of the said quarter by a transferred employee, applies to the instant case it is seen that the petitioner has not obtained the requisite certificate from the Railway Administration. In other words, the petitioner has not fulfilled the conditions requisite for retaining the quarter in question. We are, therefore, of the view that even as per the rule relied upon by the petitioners the condition prescribed therein, had not been fulfilled to enable this court to grant any relief with respect to the retention of the quarter in question by the petitioner. It is not in dispute that the petitioner has been transferred from Sealdah and is presently working at Kanchrapara.

14. For the reasons aforesaid, we are of the view that the petitioner is not entitled to the relief as prayed for and there is no ground to interfere with the order of the Ld. Central Administrative Tribunal impugned in the instant writ application.

15. Writ petition is accordingly dismissed. However, in the facts and circumstances of this case there will be no order as to costs.

S.B. Sinha, J.

I agree.