CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2389/2002

Friday, this the 13th day of September, 2002

Hon'ble Mr. Justice V.S.Aggarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member (A)

Sat Paul Malik
A-1/176, Safdarjung Enclave
New Delhi-110 029 (Ph:610-0767)

..Applicant

(By Advocate: Shri G.K.Aggarwal)

Versus

Union of India thro'
Secretary, Ministry of
Urban Development &
Poverty Alleviation
Nirman Bhawan, New Delhi-11

..Respondent

O R D E R (ORAL)

Mr. Justice V.S. Aggarwal:-

The applicant, Sat Paul Malik, had been allotted Government accommodation Quarter No.677, Sector-9, R.K. Puram New Delhi. He had since retired. Departmental proceedings had been initiated on the assertion that he had sublet his own house unauthorizedly to a third person. The findings of the inquiry officer were adverse to the applicant. The respondents, after following the procedure, had imposed a penalty of 30% cut in pension for a period of three years on the applicant.

2. The learned counsel, it must be stated in all fairness, urged all that could be stated and argued for the applicant. The impugned order has been assailed on the grounds (a) there is no finding recorded that it is a grave misconduct on the part of the applicant, (b) no subletting had been proved and in fact, in the opinion of the Union Public Service Commission, it had been recorded

that there was no subletting in terms that there was no evidence that the rent was being paid by a third person, (c) there is no application of mind in passing of the impugned order, (d) Rule 15-A has been incorporated in C.C.S. (Conduct) Rules, 1964 only w.e.f. 16.8.1996, while the applicant retired on 30.11.2000 and he had vacated the house in February, 1996. In other words, according to the learned counsel, before the incorporation of the said Rules, at best, if there was a subletting, it could not be a misconduct, (e) imposition of penalty of 30% cut in pension for a period of three years is an excessive penalty; (f) it has also been urged that the report had been given to the Supreme Court in pursuance of its directions.

3. We have carefully considered the submissions of the learned counsel and in our considered opinion on all the counts, the application must fail.

4. So far as the first submission is concerned, indeed in the impugned order, the word "grave misconduct" had not been used, but while construing any order in this regard, the net result has to be seen because the legalism is not verbalism. While construing such order, common sense cannot be left in cold storage. The word "grave misconduct", even if not used, can be implied from the tenor of the order in the present case. It had been opined by the Union Public Service Commission that the applicant had committed grave misconduct and when the disciplinary authority passes the order, after due consideration of the facts, necessary logical conclusion

would be that there was a grave misconduct of the applicant in the mind of the disciplinary authority while such an order was passed.

5. Reverting back to the second contention that there was no direct evidence of payment of rent by third person to the applicant and, therefore, there could be no subletting. Once again, we are not impressed by the said plea in the facts of the present case. The law is well settled that when a third person is in occupation, then the presumption of subletting would be obvious unless possession of that person is explained in the present cases. The direct evidence of payment of rent being paid by third person would only be possible in a very rare case. Keeping in view the above logic, it is patent that the concerned authority inquiring into the facts found that there was a third person in possession whose possession has not been explained. The conclusion, therefore, that there was a case of subletting, may not be held to be based on material on the record.

6. As already referred above, it had been argued that there had been no application of mind. The said contention can only be considered in light of the impugned order. Perusal of the same clearly shows that there had been due application of mind. The authority concerned was aware of the totality of fact and, therefore, further probing in the matter is not called for.

7. It is true that Rule 15-A has been incorporated in the CCS (Conduct) Rules, 1964 w.e.f. 16.8.1996 and it

is specifically now prohibits that no Government servant can sublet, lease or otherwise permit occupation the third person to occupy the premises. The argument advanced is that before the said date, the applicant had vacated the premises and subletting, therefore, was not a misconduct. However, what has not been disputed is that the property had been given on license to the applicant. Once the applicant was a licensee, it would be an implied condition in terms that the licensee cannot part with the possession or sublet the premises. That being the implied condition of the licensee, the argument at the first instance losses its thrust.

8. Lastly, it has been urged that imposition of 30% cut for three years in pension is excessive. Again, we are not impressed by the same for the reason that the applicant, who was a Government servant, could or should not have indulged in any such fact of subletting the same to a third person.

9. As regards the report sent to the apex court, we have no hesitation in holding that it is not a finding of the Supreme Court that the house in question had not been sublet. After the said report, the inquiry, as such, had been contemplated and had arrived at the conclusion mentioned above.

10. Resultantly, the OA fails and is dismissed in limine.

(V.K.Majotra)
Member (A)

(V.S.Aggarwal)
Chairman

/sunil/