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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2858/99

New Delhi this the 26th day of June, 2000.

Hon'ble Dr. A. Vedavalli, Member(J)

Jagdish,
S/o Sh. Rameshwar Dayal,
R/o H.No.17, Police Colony,
Sector-12, R.K. Puram,
New Delhi. Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. NCT of Delhi through
the Chief Secretary,
5, Sham Nath Marg,
New Delhi.
2. The Commissioner of Police,
Police Head Quarter,
Near ITO Building,
New Delhi.
3. The Dy. Commissioner of Police,
Quarter Allotment Cell,
Police Headquarters,
New Delhi. Respondents

(through Sh. Harvir Singh, proxy for Sh. Daves
Singh; Advocate)

O R D E R

The applicant, Jagdish, who is working as a Sweeper in Delhi Police is aggrieved by the cancellation of the government quarter which was allotted to him in the year 1986. He has impugned the order dated 28.10.99 (Annexure A/1) and show cause notice dated 09.09.99 (Annexure A/3) passed by Respondent No.3 in this O.A. He is seeking an order from this Tribunal quashing the aforesaid orders.

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2. The O.A. is contested by the respondents who have filed their counter to which a rejoinder has been filed by the applicant.

3. Facts of this case, briefly, are that the impugned show cause notice dated 09.09.99 (Annexure A-3) was issued by Respondent No.3 stating that in the course of surprise checking, the allottee of government quarter Jagdish (applicant) has been found sub-letting the government quarter as on 31.08.99, which is in contravention of SO No.3/98 and calling upon him to show cause why allotment of the said quarter should not be cancelled besides debarring him for a period of one year from further allotment. He was given 7 days time to file his reply to the said notice and also to appear in person before Respondent No.3 on 21.09.99. the applicant submitted his reply dated 16.09.99 (Annexure A/2) to the show cause notice wherein it was stated that the government quarter which was allotted to him was never sublet and only a guest alongwith his wife was staying with him for medical treatment of his wife in Delhi and left the quarter after the treatment and that no offence was committed by him. He prayed for vacation of the show cause notice.

4. Thereafter, the first impugned order dated 28.10.99 (Annexure A/1) was issued by Respondent No.3. It was stated, inter alia, in the said order that the allottee i.e. applicant himself has admitted the subletting of his quarter to his friend for the



last 6 months and sub-letting of the said quarter is fully proved. It was further stated that sub-letting cannot be tolerated in a disciplined force and that as per the provisions of the relevant SO, no government servant can share the residence allotted to him with any person other than his family or dependents without prior permission of the allotment officer. Cancellation of allotment of the said government quarter was ordered with immediate effect and the applicant was also debarred for further allotment for a period of one year. He was ordered to vacate the quarter within 60 days and hand over the vacant possession to SHO R.K. Puram, Delhi, failing which eviction proceedings will be initiated against him under Section 27(2) of Delhi Police Act 1978. A sum of Rs. 196/- P.M. (i.e. 4 times the licence fee) from 01.03.99 till the date of vacation also was levied upon him for unauthorised sub-letting.

5. Heard the learned counsel for both the parties. Pleadings and the material papers and the documents placed on record have been perused.

6. Learned counsel for the applicant Shri Yogesh Sharma submitted that the applicant has never admitted that he had sub-let the quarter as stated by Respondent No.3 in Para-2 of the first impugned order, namely, the cancellation order. It was also submitted that the respondents have never disclosed in the impugned orders as to whom the quarter was sublet.

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Moreover, no enquiry report or survey report was supplied to the applicant with the second impugned order. He contended that no evidence was produced by the respondents to come to the conclusion that the quarter was sub-let. Learned counsel also submitted that the applicant's ration card etc. annexed with the O.A. were enclosed with his reply to the impugned show cause notice also.

7. Learned counsel further contended that the action of the respondents is highly arbitrary, unfair and illegal and both the impugned orders deserve to be quashed and set aside. In this connection, he relied strongly upon the orders of this Tribunal in Bhupender Singh Vs. U.O.I. & Ors. (1993(23)ATC 113(PB)), Ved Prakash Vs. Directorate of Estates and Anr. (1998(1) AISLJ Page 1(PB) and Ram Kishan Vs. Joint Secretary & Ors. (1997(2) ATJ 19).

8. Learned proxy counsel Sh. Harvir Singh appearing on behalf of respondents counsel Sh. Davesh Singh submitted that the sharing and sub-letting of the quarter was admitted by the applicant himself in his reply to the first impugned order i.e. the show cause notice and no further evidence is required to prove the same. He contended that it is for the applicant to give the names and particulars of his guests. He referred to certain provisions of the relevant SO No.3/98 extracted in the counter and argued that the impugned orders are in accordance with the said

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provisions and hence are valid in law. However, on a specific question put to him as to whether any survey report or enquiry report is available in the records he submitted that no such report is available in the records.

9. I have considered the matter carefully.

The second impugned order i.e. show cause notice dated 09.09.99 (Annexure A/3), it is seen that a surprise check was done and the allottee of the quarter i.e. applicant was allegedly found to be sub-letting the said quarter as on 31.08.99 which is in contravention of SO No.3/98. However, neither any survey report/enquiry report nor any other relevant material and documents were enclosed with the said notice by the respondents. No details were given in the said notice as to the factual basis or evidence which led to the conclusion that the sub-letting was done by the allottee i.e. the applicant. The show cause notice alleging or charging contravention of any statutory provisions or rules etc. by a person, it is well settled should be very clear and specific and should contain all the relevant facts and material on which the allegation or charge which is proposed to be proved. While so, in the present case as noted supra, none of these principles have been followed by the respondents and I find that the show cause notice is very vague and is also unsupported with any survey report/enquiry report and the relevant factual material

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which is necessary to be supplied to the allottee to enable him to give an appropriate reply to the said notice. The impugned show cause notice, in view of the above discussion is not sustainable under the law.

Re the first impugned order i.e. cancellation of the allotment order dated 28.10.99 (Annexure A/1) it is seen that it does not make any mention about the personal hearing, if any, given to the allottee i.e. applicant. It is not known as to the basis or the foundation on which the finding was given by Respondent No.3 in the said order that the applicant himself admitted that the quarter is under subletting to his friend for the last 6 months and that the sub-letting is fully proved. It is not known as to whether the said finding is given on the basis of the statement made by the applicant during the personal hearing, if any, given to him or in his reply dated 16.09.99 to the show cause notice (Annexure A/2). Though the respondents in their counter have stated that a personal hearing was given to the applicant, there is absolutely no indication about the same in the impugned cancellation order. It is also seen from the extract of the relevant provisions of SO No.3/98 given in the counter that Rule XXXVIII of the said SO deals with "sharing" of government quarter and Rule XXX of the said SO deals with "sub-letting". "Sharing" and "subletting" obviously are two different concepts and the relevant provisions under the SO regarding them are also distinct and separate. The allegation or charge against the applicant as per the

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impugned show cause notice is "sub-letting". While so, in the second para of the impugned cancellation order both the concepts and provisions are thoroughly mixed up. In the said para, there is no specific and clear indication as to whether the basis for cancellation is the "sharing" or "sub-letting" by the applicant. It is only in the third and the last para of the said order that a mention is made in connection with the penal rent that it is being levied for unauthorised subletting. Moreover, the said impugned order has not given any factual data regarding sub-letting and there is nothing to show that any enquiry or survey report was ever demanded by the concerned authorities or submitted by the Inspecting staff. Learned counsel for the respondents' statement noted supra that no enquiry report/survey report is available on record also makes it clear that there was no such report.

10. In the above facts and circumstances of this case and in the light of the above discussion, I find that the impugned cancellation order is not only vague but is also absolutely unsupported by any evidence or material to come to the conclusion as to the "sharing" or "sub-letting" of the government quarter in question by the applicant. The said order is also untenable under the law.

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11. In the result, the impugned orders dated 28.10.99 (Annexure A/1) and 09.09.99 (Annexure A/3) are quashed and set aside and the O.A. is allowed accordingly. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)

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