

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~T.A.~~ No.1857 of 1995 Decided on: 27/6

Shri A.K. KaulApplicant(s)

(By Shri B.B. Raval Advocate)

Versus

U.O.I. & OthersRespondent(s)


(By Shri N.S. Mehta Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1857 of 1995

New Delhi this the ^{1st} day of July, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri A.K. Kaul
R/o B-10, Patel Dham,
Sardar Patel Marg,
New Delhi-110 023.

...Applicant

By Advocate Shri B.B. Raval

Versus

1. Union of India through
The Secretary,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.
3. The Assistant Director and
Estate Officer,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.

....Respondents

By Advocate Shri N.S. Mehta

ORDER

Hon'ble Mr. K. Muthukumar

This application filed under Section 19 of the Administrative Tribunals Act, 1985, is directed against the order dated 27.9.1995 issued by the respondent No.3 under sub-section (I) of Section 5 of the Public Premises (Eviction

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of Unauthorised Occupants) Act, 1971. The applicant has assailed this order on several grounds. Before I deal with these grounds, a short narration of the facts of this case will be relevant.

2. The applicant while working as Deputy Central Intelligence Officer was dismissed from service under Article 311(2)(c) of the Constitution of India on 26/27-12-1980. This order of dismissal was challenged by him and two other similarly placed by means of a Writ Petition before the Supreme Court under Article 32 of the Constitution of India. The Apex Court by their order dated 13.2.1981 restrained the respondents from dispossessing the petitioners from the accommodation allotted by the respondents. Subsequently, these Writ Petitions were transferred by order of this Court dated 15.11.1991 to the Principal Bench of the Central Administrative Tribunal. These transferred applications were dismissed by the Tribunal by its judgment dated 17.2.1993 in respect of T.A. No. 1-2/1992. Against this judgment, the applicant filed a Special Leave Petition before the Hon'ble Supreme Court. The Apex court was pleased to pass an interim direction as follows:-

"Pending notice, petitioner No.1, namely, Shri A.K. Kaul, is permitted to continue the possession of the quarter and to that extent the order of the Tribunal directing to vacate the quarter is stayed by this interim order".


The Special Leave Petition was treated as

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Civil Appeal and the Supreme Court by its order and judgment pronounced on 19.4.1995 dismissed the appeal. Pursuant to the aforesaid dismissal of the appeal by the Apex Court, the respondents by their order dated July 20, 1995 informed the applicant that the cancellation order dated 19.4.1993 in respect of the allotment of the I.B. Pool quarter held by the applicant would stand and the applicant was directed to vacate the said quarter. The applicant made a representation against this order.

Subsequently, the respondent No.3 served a notice on the applicant under sub-section (I) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 calling upon the applicant to show cause on or before 21.8.1995 why an order of eviction in respect of the premises allotted to him should not be made and he was asked to appear in person at 11.00 A.M. on 21.8.1995 and he was informed that in case he failed to appear on the said date and time, the case would be decided ex-parte. This order was signed by Shri V.P. Khurana, Estate Officer and his address is shown as V.P. Khurana, Assistant Director in the office of the Intelligence Bureau, Ministry of Home Affairs, North Block, New Delhi.

Subsequently, the respondent No.3 passed the impugned order dated 27.9.1995 under sub-section (I) of the Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which is under challenge.



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3. The applicant has adduced the following grounds in assailing the impugned order:-

(i) Since the applicant was under protection of the Hon'ble Supreme Court till 19.4.1995, the date of the judgment in the Civil Appeal, he could not be termed as illegal occupant of the premises under reference and, therefore, the cancellation of the allotment with effect from 17.5.1993 is bad in law.

(ii) The applicant's right to shelter had been unceremoniously taken away by the impugned order thereby violating the fundamental right to life and livelihood as guaranteed under Article 21 of the Constitution.

(iii) As he is a kashmiri migrant, he has been discriminated against in consideration of the fact that his co-religionist kashmiri migrants have been given shelter and protection.

(iv) The notice served upon him by the respondents' by their order dated 7.8.1995 was actually received by him only on 17.8.1995 and there was no mention in the aforesaid order as to the place and time when he had to appear before the authority and the said order was also issued by the office of the Director of Intelligence Bureau although the proceedings are supposed to be under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to be issued only by the designated Estate Officer.

(v) The impugned order of eviction is also vague inasmuch as, it does not direct him to

do anything specific and, therefore, the order should be treated as nonest in the eyes of law.

4. The applicant has also referred to his representation dated 21.8.1995 on receipt of the notice dated 7.8.1995 and without considering his representation, the respondent No.3 had passed the impugned order.

5. The respondents have strongly contested the grounds taken by the applicant and have averred that the Tribunal had directed that the petitioners who were in possession of the Government quarter on the strength of the interim orders were given three months' time to vacate the premises and the Apex Court by its interim order permitted the applicant to continue the possession of the quarter and to that extent has stayed the direction of the Tribunal. The respondents have contended that the Supreme Court by its final order and judgment dated 19.4.1995 dismissed the appeal and by this judgment, the interim order of the Supreme Court automatically stood vacated and, therefore, the cancellation order passed by the respondents would be valid. The respondents also averred that the applicant ceased to be a Government employee after the order of dismissal was passed which was also subsequently upheld by the Supreme Court. Even in the normal course had the applicant been in service, he would have superannuated on 30.10.1994 and as the

applicant failed to vacate the I.B. Pool accommodation, the Estate Officer served notice on him. The respondents contended that the applicant was very well aware of the address and place of the office of the Estate Officer of the department and in case he was not aware he would ^{not} have sent the telegram ^{seeking time.} On his failure to vacate the said premises in spite of the aforesaid notice, the respondent No.3 was quite within his powers to issue the impugned order of eviction. It is also contended by the respondents that the applicant had no right to retain the Government accommodation in the circumstances and he is only trying to gain time and take undue advantage of retaining the Government accommodation, which under the rules is not entitled to as he has ceased to be a Government employee. The respondents have also contended that no fundamental right of the petitioner has been violated by the passing of the impugned order. It is also contended that the applicant's representation dated 5.8.1995 was also considered and reply was sent to him on 17.8.1995 (Annexure A-5) and his subsequent representation was submitted after the initiation of the eviction proceedings. Respondents have also contended that insofar as the question of asking the petitioner to vacate the quarter and initiating the eviction proceedings was concerned, no policy decision was involved as the petitioner was asked to vacate the I.B. pool accommodation allotted

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to him to comply with the directions of the Tribunal as upheld by the Supreme Court in its final judgment.

In the light of this, the respondents contend that the application deserves to be dismissed.

6. I have heard the learned counsel for the parties and have carefully perused the pleadings on record.

7. In regard to the contention of the applicant on the nature of the impugned order at Annexure A, it is seen that there is some typographical omission in this order. From the later part of the order it will be clear to any person of ordinary prudence and reasoning that the applicant was to vacate the said premises within 15 days from the date of publication of the order although there is typographical omission in regard to the requirement of vacating the premises, it could be easily inferred and merely because of this typographical omission, it cannot be said that the intention behind the order is vague or ambiguous so as to defy any understanding of the order and, therefore, the order cannot be said to be illegal or nonest. Moreover, the order has been signed by V.P. Khurana by the seal of the Estate Officer and issued from the office of the Estate Officer. The mere fact that he is also an Assistant Director of I.B., it cannot be said that this is not an order properly issued under the provisions of the Public Premises (Eviction of Unauthorised

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Occupants) Act, 1971 particularly when the said accommodation is a departmental pool accommodation and the officer concerned has issued it in his capacity as an Estate Officer in the department. As regards the other contention of the applicant, the order dated 20th July, 1995 passed at Annexure A1 whereby it was ordered that the cancellation order dated 19.4.1993 would stand, is to be held to be illegal in as much as, the applicant was permitted by an interim order of the Supreme Court staying the order of the Tribunal directing the applicant to vacate the quarter. There is no force in this contention.

It may be stated that the Apex Court had only stayed the order of the Tribunal directing the applicant to vacate the quarter. The order of the Tribunal was passed on 18.2.1993. In pursuance of this order, the respondents had issued an order dated 19.4.1993 cancelling the allotment of the quarter w.e.f. 17.5.1993 or from the date he vacates the quarter. This order passed by the respondents regarding cancellation of the allotment was not assailed earlier. While the Apex Court's interim order stayed the eviction of the quarter, there is no specific direction in regard to the cancellation of the order passed by the respondent on 19.4.1993 and it is only this order, which has been allowed to stand by the respondents and in any case after the final judgment of the Supreme Court in Civil Appeal, the interim order passed by it earlier should be

8

deemed to have been vacated.


In view

of this, the contention of the applicant is not tenable. Regarding the show cause notice issued by the respondent No.3, it may be stated that admittedly the said notice had been received by the applicant on 17.8.1995 and as per the directions in the notice, he must have appeared in the office of the competent authority at 11.00 A.M. on 20.08.1995 as stipulated in the notice. The contention of the applicant that he is not aware of the office where it is located, is not acceptable. The fact remains that the applicant had not complied with the notice and intimated that he was awaiting response to his representation dated 5.8.1995 which is not a relevant consideration for the designated officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and, therefore, the impugned order passed by the competent authority ex-parte cannot be faulted.

8. The respondents have already given reply to the representation of the applicant dated 5.8.1995 and the other representations on the show cause notice dated 21.8.95 and 25.8.1995 addressed to the respondent No.2 and the Additional Director General, I.B. would not lie as they are not the competent authorities to deal with matters covered by the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In regard to the other representation dated 26.8.1995, this has been made as an appeal for retaining Government accommodation.

and will not lie particularly after the disposal of the appeal by the Supreme Court and also in the light of the eviction order passed by the respondents. In regard to his prayer for directing the respondents to treat the applicant as the migrant of Kashmir Valley and provide him ration etc., these matters are not within the purview of this Tribunal.

9. In the light of the foregoing, the application lacks merit and is accordingly dismissed. There shall be no order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)

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