

Central Administrative Tribunal
Principal Bench

O.A.No.1320/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 15th day of January, 1997

Shri Birender Prasad
s/o Shri Krishanandan Prasad
aged 30 years
R/o Quarter No.23/1B, Sector-II
DIZ Area, Gole Market
New Delhi - 110 001. Applicant

(By Shri A.K.Behera, Advocate)

Vs.

Union of India through

1. The Secretary
Ministry of Works and Housing
Nirman Bhawan
New Delhi.
2. The Estate Officer
Directorate of Estates
Nirman Bhawan
New Delhi.
3. The Secretary
Union Public Service Commission
Dholpur House
Shajhahan Road
New Delhi. Respondents

(By Ms. Sumbul Rizvi Khan, Advocate)

O R D E R

The applicant who was appointed as a Lower Division Clerk in the Office of Respondent No.3 in the quota of handicapped person also obtained the allotment of quarter No.23-1B, Sector II, DIZ Area, Gole Market, New Delhi, which is a Type-II quarter in that capacity w.e.f. 23.8.1993. A notice was served upon him on 27.11.1995 to show cause as to why penalty should not be imposed on him for sub-letting the aforesaid quarter. A reply was given by the applicant stating that he along with his two brothers alone was residing in the said house except that occasionally some guests did stay with him. The explanation was not accepted and the allotment was cancelled by an order dated 13.12.1995 and the applicant was

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directed to handover vacant position peacefully within sixty days. It was also informed that in case the applicant was aggrieved by the aforesaid order, he may prefer an appeal within sixty days. The applicant is aggrieved that though he submitted various documents including the Ration Card, Electoral Identity Card, and Electricity Bills issued in his name as well as the report of the CPWD Enquiry, clearly establishing his residence in the aforesaid quarter, the respondents without any evidence to the contrary, rejected his explanation; the impugned eviction order was also issued without the disposal of his appeal. 12

2. The respondents controvert the above mentioned allegations. They state that they had received a complaint from one Shri Jyotirmoy Maiti against the applicant regarding sub-letting of the aforesaid quarter where upon an inspection was carried out by two Assistant Directors of Estates on 21.11.1995. The Inspection report (Annexure R-1) stated that the family of Shri Maiti, his wife and a boy aged about 11 years were found residing in the said quarter and hence whole subletting was suspected. They also state that the appeal was duly disposed of after giving the applicant an opportunity to be heard personally.

3. I have heard the learned counsel on both sides and besides the pleadings on record, I have also gone through the departmental file regarding cancellation of allotment and eviction proceedings. The learned counsel for the applicant relying upon the cases of K. Panduranga Nayak Vs. Jayashree, AIR 1990, Karnataka 236, and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, (1991) 1 SCC 212 submitted that where discretionary power is conferred by statute or by law to a competent authority, that authority has

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to exercise the discretionary^{power} judicially^{power} having regard to the facts and circumstances of the case. He submitted that in the present case all the evidence was in favour of the applicant and clearly established that the applicant was residing in the quarter along with his two brothers who were students. The only evidence to the contrary, on the other hand, was the inspection report of the Assistant Director, which merely stated that one Shri J.Maiti, his wife and a boy about 11 years old were found residing in the said premises. No statement by any of these persons was recorded in the Inspection Report. In the circumstances, the action of the respondents could only be recorded as arbitrary and illegal.

The learned counsel for the applicant also relied on the case of Bhupender Singh Vs. Union of India and Others, (1993) 23 ATC 113, in which it was held by a Division Bench of this Tribunal that the conclusion of subletting could be arrived at on the pre-ponderance of probabilities but the evidence must be adequate; it must be established that the allottee was residing at a place other than the accommodation allotted to him. The learned counsel for the respondents in reply submitted that on inspection carried out on receipt of a complaint from Shri J.Maiti through Respondent No.3, neither the applicant nor his brothers were found at the said premises. Instead, the family of Shri J.Maiti was found to be living in the said premises. The applicant had himself admitted during the personal hearing that he had allowed Shri J.Maiti and his family to stay in the said quarter. There was also a dispute between them which led to a complaint lodged by Shri J.Maiti with the Police Station accusing the applicant of misbehaviour with the wife of Mr. J. Maiti.

4. I have considered the matter carefully. A perusal of the departmental file shows clearly that the applicant had admitted that he had allowed Shri Maiti to stay along with his family though at the time the inspection was carried out they had left the place. There is also a copy of the report lodged by Shri Maiti before SHO, Mandir Marg Police Station on 4.9.1994 stating that Shri Maiti and his family had been living in the quarter but a dispute had arisen between the applicant and the complainant over the amount of rent and misbehaviour on the part of the applicant. It is clear that the applicant has not come with clean hands before the Tribunal as he claims that he along with his two brothers alone was residing in the said house except that occasionally some guests also stayed with him. Later, he claims in the rejoinder that his sister and brother-in-law had to come to stay for some time for medical treatment. On the other hand, he has admitted before the appellate authority that he had allowed Shri Maiti and his family to stay in the said premises for some period because of the illness of the wife of Shri Maiti. No relation ship has not mentioned. Thus it cannot be said that there was no evidence before the respondents inasmuch as Shri Maiti and his family did stay for some considerable period. It is also apparent that a dispute also arose between the applicant and Shri Maiti leading to a Police complaint. In the circumstances the respondents cannot be said to have taken the action in an arbitrary manner without any evidence whatsoever.

5. The learned counsel for the applicant vehemently argued that even if Shri Maiti was allowed to stay by the applicant, this does not show that any rent was charged and in any case the basis of the proceedings against the applicant did not exist as the inspection report was patently false because on that date, Shri Maiti and his family were no longer there and

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that is the reason no signatures of the alleged sublettees could be obtained. I do not consider that it is within the purview of the Tribunal to go into fact adjudication. In the matter of judicial review all that has to be seen is whether there was any evidence before the authority passing the impugned order and whether due opportunity to show cause was afforded to the applicant. The applicant, ~~the applicant~~ was duly given the show cause notice to produce his evidence. There was some evidence before the competent authority regarding the stay of Shri Maiti and his family in the said quarter. In the circumstances, it is not necessary for the Tribunal to go further into the circumstances in which Shri Maiti stayed in the house or for how long he actually stayed there.

6. For the aforesaid reason, I find no cause for interference. The OA is accordingly dismissed. No costs.

R. K. Ahooja
(R.K.AHOOJA)

MEMBER(A)

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