

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1177 of 1997

New Delhi, this the 11th day of February, 1998.

Hon'ble Mr. N. Sahu, Member(A)

Prem Sukh
S/o late Shri Badan Singh
Wireman Gde.-I, Electrical
Division-V, CPWD
Enquiry Office,
Laxmi Bai Nagar
New Delhi and
R/o Qr.No.F-95, Nanakpura
New Delhi ,

Applicant

(By Advocate : Shri S.C. Saxena)

versus

1. The Secretary
Ministry of Urban Development
Nirman Bhawan, New Delhi
2. Estate Officer
Dte. of Estate,
Nirman Bhawan, New Delhi
3. The Executive Engineer
Electrical Division, CPWD
Laxmi Bai Nagar,
New Delhi

Respondents

(By Advocate : Shri R.V. Sinha)

ORDER

By Sh. N. Sahu, Member(A) -

The applicant joined the service of the respondents as a Khalasi w.e.f. 14.10.1960 and at present is working as a Wireman Grade-I at Inquiry Office, Laxmi Bai Nagar Electrical Division-V, CPWD. He was allotted Qr.No.M-919, Sector-piv, M.B. Road, New Delhi. In lieu of this quarter he was allotted another Govt. accommodation F-95, Nanakpura, New Delhi at his request for change of quarter. He formally occupied the Nanakpura quarter on 17.04.1996



(V)

but did not release the M.B.Road quarter. He states that his parents were ill at the M.B.Road quarter and eventually expired during December, 1996 and January, 1997. It was only after this that he surrendered the M.B. Road quarter on 26.01.1997. The respondents imposed Rs.18,121/- as penalty for overstaying in the quarter beyond the permissible period. This amount was directed to be recovered in eighteen instalments by the order dated 22.02.1997. The applicant accepted this but his grievance now is that the respondents ordered to evict him from his present allotment at Nanakpura quarter as well. This would leave his large family of eleven members without any shelter to live in. It is against this arbitrary order dated 24.07.1997 (Annexure-1) that the applicant is aggrieved.

2. The impugned order is passed under Section 5, sub-section(1) of the Public Premises(Eviction of Unauthorised Occupants) Act 1971 (to be hereinafter noted as PP Act).

3. After notice, the respondents state that since the applicant did not appear before the Deputy Director of Estates to explain the reasons for not vacating the M.B. Road quarter, the Nanakpura quarter was cancelled in accordance with the instructions contained in OM dated 04.10.1988 and the case referred to the Litigation Section of Estate Office who after hearing the allottee passed the eviction order dated 29.04.1997. The allottee vacated the previous quarter

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on 29.01.1997 and approached the CAT, Principal Bench for staying of evication order in respect of the Nanakpura quarter. According to the respondents, there is no scope for indulgence because there is no power of judicial review as held by the Delhi High Court in Talwar's case - AIR 1979 Delhi 1989. It is stated that since the applicant was in possession of two quarters, as per rules a notice dated 26.09.1996 asking him to surrender the earlier quarter was issued. The grievance of the respondents is that the applicant had kept both the quarters with him for a period of more than nine months and did not respond to the notice of the Deputy Director (Estates) dated 26.09.1996. As per SR-317-B-12, the previous quarter can be retained only for eight days after receiving the allotment offering another quarter in change.

4. The applicant impugns the action of the respondents on the ground that there was no need to issue a notice dated 26.06.1996 to surrender the earlier quarter when the allotment of the Nanakpura quarter was made on 17.04.1996. He denies service of this notice. He only states that he received the letter dated 29.11.1997.

5. With regard to the relief No.8.2, I do not think there is any case for the applicant. He having accepted that he overstayed without securing any further extension of time and as he, does not dispute that the quantification of the penalty was in accordance with rules for charging penal rent, there is no case for interference. With regard to relief

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No.8.1 against the impugned order of eviction, there is no evidence that the respondents have first issued a notice treating the applicant as an unauthorised occupant under Section 4(1) of the PP Act. This notice is a condition precedent before passing an order under Section 5(1). On the ground that no proper show cause notice was issued and served, the impugned order of eviction is bad in law.

6. The respondents should be consistent in their conduct. They have already punished the applicant for overstay in the M.B. Road quarter. The punishment was accepted. He has offered to pay the penal rent in eighteen instalments. The said recovery is going on, thus, the infraction if any committed by the applicant with regard to the M.B. Road quarter stands requitted by the proceedings of the department levying a penal rent of colossal amount. The alternative is to consider the applicant's new allotment as rightfully his own. The applicant never said that he disowned the change. Due to certain family circumstances he was not in a position to move over to the new allotment. The respondent, Estate Officer, cannot make a grievance of the fact that simply because the applicant did not respond to an alleged notice whose service is disputed, the respondents could act irrationally by issuing an eviction order thereby rendering a family of eleven members utterly homeless. The applicant had explained at length that his parents were seriously ill and bed-ridden and as a dutiful son, he and his wife would serve their parents in the evening of their



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lives. It so happened that after remaining ill, for several months they ultimately expired. No doubt has been cast as to the genuineness of the applicant's claim. It is nobody's case that the applicant had utilised Nanakpura quarter for any other malafide purposes or collatorial purposes i.e. for subletting or hiring or utilising for any commercial purpose. He did not gain any undue benefit personally out of keeping the Nanakpura accommodation vacant. Annexure-1 is quashed.

7. OA is partly allowed. No costs.

Kant
(N. Sahu)
Member(A)

11.3.98

/Kant/