

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1286/97
T.A. No.

199

DATE OF DECISION 31-12-97

Sh. Ashok Singh

Petitioner

Mrs. Meera Chhabber

Advocate for the Petitioner(s)

Versus

U. C. I. & Ors.

Respondent

Sh. Arun Bhargava

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S. P. Biswas, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes,*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Signature)
(S. P. Biswas)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No.1286/97

Hon'ble Sh. S.P. Biswas, Member(A)

New Delhi this the 31st day of December, 1997.

Shri Ashok Singh,
S/o Sh. Mahender Singh,
R/o 3-C Police Colony
Model Town, New Delhi.

..... Applicant

(through Mrs. Meera Chhibber, advocate)

versus

1. Union of India through
Lt. Governor,
Raj Niwas, Govt. of NCT
of Delhi, Delhi-54.

2. Deputy Commissioner of Police,
Headquarters III, Police
Head Quarter, MSO
Building, I.P. Estate,
New Delhi-2.

..... Respondents

(through Sh. Arun Bhardwaj, advocate)

ORDER

Heard rival contentions of the learned
counsel for both the parties.

2. The basic issues that fall for
determination are:-

- (i) Can a written undertaking taken
from a Government servant at the
time of his/her joining another
Government organisation "on
deputation basis" be a valid ground
for dispensing with the legal
requirements of servicing a formal
advance notice for vacation of the
Government premises under P.P.E.
Act, 1971?

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(ii) Does the law permit cancellation of allotment with retrospective effect without prior warning?

(iii) Can an order, having adverse civil consequences, be implemented without fulfilling the requirements of natural justice?

3. The factual matrix of the case is hereunder:-

The applicant, a Sub-Inspector of Delhi Police was sent on deputation to the Intelligence Bureau (IB for short) for a period of 3 years vide order dated 9.1.96. When in Delhi Police he was allotted Qr.No.3-C (Type-III), Police Colony, Model Town, Delhi belonging to Delhi Police Pool. While being relieved for deputation he was made to give an undertaking that he would vacate the quarter within a period of 2 months or stipulated period. On joining the I.B. on 2.2.96, the applicant also become eligible for an alternative accommodation from the general pool under the control of Directorate of Estates.

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The applicant put up an application to the appropriate officials in I.B. on 12.2.96 requesting them to allot a quarter to him to enable him to vacate the Delhi Police pool quarter presently under his occupation. As he was eligible for an alternative accommodation, the authorities in I.B. forwarded the application dated 26.3.96 to the Directorate of Estates for allotment of an alternative Government accommodation under rules in lieu of the departmental pool. This was followed by reminder dated 13.9.96. There was, however, delay in vacating the quarter and the allotment authorities of Delhi Police cancelled the allotment with effect from 1.4.96 and directed the applicant to pay damages under Section 27(2) of Delhi Police Act, 1978. As per respondents, the applicant was allowed to retain the quarter at a flat rate for a period of 2 months from 3.2.96 to 2.4.96. The applicant is aggrieved by P-1 order dated 10.2.97 by which I.B. has been asked to deduct the damage rent from the applicant's salary at the rate of Rs.2994/- P.M. from 3.4.96 to 14.1.97 i.e. when he vacated the said quarter.

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4. The respondents have sought to justify charging of penal rent on the basis of the standing order No.3 of 1991 passed by Commissioner of Police (CP for short) Delhi. It has been contended that the allotment of the quarter has been rightly cancelled after allowing 2 month's concessional period after the applicant's deputation to I.B. Since he did not vacate the quarter, as promised by him in writing, he was liable to pay penal rent as in aforesaid P1 order. The C.P. has issued the Standing Order No.3 of 1991 under powers vested in him under Section 19(c) and 27(i)(b) of Delhi Police Act, 1978. The respondents rely on clause 19 of this Standing order which provides as follows:-

"The following procedure shall be observed for getting Govt. accommodation, if any, vacated from a government servant, who is to be relieved for deputation to a Deptt. not under the charge of the Commissioner of Police, Delhi.

Deputation

Notices inviting volunteers for deputation, shall specifically contain a clause that the selected official shall have to vacate Govt. accommodation within two months from the date of his proceeding on deputation. A written undertaking in the sub-joined proforma (Appendix VI) duly attested by a gazetted officer shall be obtained alongwith such applications before the names are forwarded to the borrowing departments. After the selection has been made, the official who is in occupation of Govt. residential accommodation and had volunteered himself for deputation shall be called upon to vacate the government quarter in his possession by stipulated date after giving two months period as permissible under the rules and vacation ensured by the quarter

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allotment cell of PHQ failing which the allottee concerned shall be liable for payment of licence fee at damage charges and action u/s 27(i) (b) and 27(2) of Delhi Police Act, 1978 shall also be initiated."

5. The position of law on the subject is as under:-

The standing order issued by C.P. under Section 19(c) of Delhi Police Act itself provides that such orders is subject to the approval of the administrator i.e. administrator of Delhi under Article 239 of the Constitution. The letter from Delhi Administration dated 1.11.78 provides that under Delhi Administration allotment of Government Residence (general pool) Rules, 1977 (amendments), when an employee of Delhi Administration proceeds on deputation on a higher post in another department under Delhi Administration and is in occupation of residential accommodation, he/she is entitled to retain the same on payment of licence fee at normal rate till an alternative accommodation is allotted to him from the department where he has been posted. As per allotment rules of Directorate of Estates, the applicant is eligible for an alternative accommodation from general pool on priority basis to vacate the departmental pool.

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6. To our specific question as to whether any show cause notice has been issued to the applicant before the allotment of the quarter was cancelled vide letters at P1, P6 & P7 dated 10.2.97, 20.6.96 and nil² respectively, the learned counsel fairly admitted that no such prior notice was issued. We also notice that respondents had earlier allowed retention of Government accommodation till an alternative accommodation was provided in the case of other deputationists to the Central Government vide their orders issued in October, 1991 as is evident in pleadings in OA 1526/94 decided on 23.11.94. The records made available before us indicate that the Directorate of Estates, on being altered, made a back reference to the respondents asking certain clarifications as at P5 dated 1.5.96. The authorities in I.B. had also requested the respondents that the applicant may be allowed to retain the Delhi Police quarter till an alternative accommodation was made available to the applicant as per rule by the Directorate of Estates. Instead of clarifying the position, the respondents decided to issue PVI notice dated 20.6.96 saying:-

"The SI Ashok Kumar, D/2021 should vacate the Govt. Qr. on or before 2.4.96 and handover the vacant possession of the quarter to SHO Model Town, Delhi under intimation to all concerned failing which licence fee at damage charge besides taking legal action u/s 27(2) of P.P. Act, 1972 for eviction."

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PVI was not preceded by any communication whatsoever and, therefore, a letter of that nature, cancelling allotment with retrospective effect, could not have been issued by anybody unless one has taken leave of common sense.

7. Communication at PVI dated "nil" meant for the applicant is equally untenable. It says:-

"called upon to vacate the premises within 10 days failing which further action under Section 67(2) of Delhi Police Act, 1978 shall be initiated against you."

Such a communication cannot serve the purpose of law as nobody would understand when will the 10 days' period be over as the letter does not have any "date" to indicate the day from which counting of 10 days would start. Mere undertaking cannot substitute the legal requirements under P.P.E. Act, 1971.

8. We now come to the second part of PI order which mentions:-

"It is, therefore, requested that the above mentioned amount may kindly be deducted from his salary and deposited with DCP/Special Branch Delhi at the earliest."

The above order contains adverse civil consequences for the applicant. Any dues from a Government servant, including penal rent, are surely

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recoverable but subject to the procedures having been followed. "Even God himself did not pass sentence upon Adam before he was called upon to make his defence."

This is how natural justice has been taken as defined the eternal law. (Pl.see R.V. University of Cambridge (1723) Istr 557 (Fortesque J).

A system governed by the rule of law reckons no decision, without an adjudication. A decision which affects rights of parties, envisions pre-decisional hearing. Executive authorities cannot approximate themselves to oracles, or arrogate to themselves ordinances. This is a basic requirement of natural justice, which has always been part of adjudicatory process.

The Supreme Court of India has highlighted this requirement in a long line of decisions e.g. State of Orissa Vs. D. (Miss). Bina Pani Dei (AIR 1967(SC) 1269).

Administrative and quasi-judicial authorities will do well to remember, that a decision made in contravention of principles of natural justice, cannot stand in the eye of law. Pl order suffers from the above legal infirmity.

9. The issue ultimately boils down to this: Is the damage rent claimed by the respondents payable or not. And this basic issue as to whether it is payable or not in the facts and circumstances of this case is no more a resintegra. The Hon'ble Supreme Court in the case of S.C. Bose Vs. Comptroller and Auditor General of India & Ors. (1995 Suppl.(3) SCC 141), has laid down the law that would govern such

cases. It has been held that:-

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".....we are of the view that since the officers were entitled to allotment of accommodation from the General Pool and they had to stay in accommodation from the Departmental Pool on account of non-allotment of the accommodation from the General Pool, the department was not justified in recovering penal rent and damages for occupying the accommodation from the Departmental Pool."

The applicant's case is well covered by the ratio arrived at by the Apex Court in the case cited above.

10. For the reasons afore-mentioned, the O.A. succeeds on merits and is accordingly allowed with the following orders:-

(a) The P1 order dated 10.2.97 and P6 order dated 20.6.96 shall stand quashed.

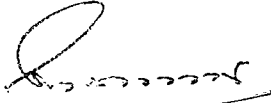
(b) The respondents shall recover licence fee from the applicant at the flat rate (or normal licence fee under FR45A) from 3.4.96 to 14.1.97 i.e. the date when he vacated the premises.

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(c) Our orders shall not include the dues from the applicant to the respondents on account of water and electricity charges etc.

(d) There shall be no order as to costs.


(S.P. Biswas)
Member (A)

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