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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SHRI R.K. AHOOJA, MEMBER (A)

O.A. NO.593/1997

NEW DELHI, THIS 27 DAY OF AUGUST 1997.

HOSHIAR SINGH
S/o Lt. Shri Ghasi Ram
R/o 1122/7 M.B. Road,
NEW DELHI-17.

...APPLICANT

(By Advocate - Shri R.P. Sahi)

VERSUS

1. UNION OF INDIA, through
The Secretary to the GOI
Ministry of Urban Development
Moulana Azad Road
Nirman Bhawan
NEW DELHI-11

2. The Director
Directorate of Estates
Moulana Azad Road
Nirman Bhawan
NEW DELHI-11.

3. The Estate Officer
Directorate of Estates
Nirman Bhawan
NEW DELHI.

..RESPONDENTS

(By Advocate - Shri R.V. Sinha)

ORDER

The applicant is aggrieved by the order A-1 whereby he has been directed to vacate the government quarter allotted to him within 60 days from the date of issue and also to pay four times the flat rate of licence fee as the allotment in his favour has been cancelled on account of unauthorised subletting.

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OA NO.593/97

2. The applicant is working as a Group 'D' employee in the office of Union Public Service Commission and was allotted government accommodation 1122/7 M.B. Road, New Delhi, and occupied the same w.e.f. 6.7.1995. He submits that the impugned order of cancellation of allotment dated 17.7.1996 (A-1) has been issued despite the explanation given by him in response to a notice dated 10.1.97. He denies that he has sublet the accommodation in question. He got the electricity connection on 25.7.95, and ~~that~~ he and his family were transferred to the new dispensary No.78, M.B. Road.

3. The respondents in their counter reply have stated that a team of officers of the Ministry of Urban Affairs made a door-to-door survey in pursuance of the directions of the Hon'ble Supreme Court in S.S. Tiwari's case. When the house allotted to the applicant was inspected on 21.12.1995, one Smt. Chatro Devi was found and she could not produce any documents. The applicant was issued a show cause notice dated 23.1.1996 to appear before the Deciding Authority, where he stated that his sister was sharing the accommodation with him. However, he could produce no evidence to prove that the woman found at the time of inspection was his sister. Only the CGHS card was produced by him to show that his address had been changed on 30.8.1995. The applicant also could not explain his absence at the time of inspection and the Deciding Authority came to the conclusion that the quarter was sublet and accordingly the impugned order of cancellation of allotment was issued. No appeal against the order of cancellation was preferred by the applicant and on the cancellation order becoming final, the case

was referred to the Estate Officer for initiation of proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act 1971. The Estate Officer thereupon issued the impugned eviction order (A-1) dated 3.3.1997.

4. I have heard the counsel on both sides. Shri R.V. Sahi, ld. counsel for the applicant, sought to point out a number of lacunae in the case of the respondents regarding the alleged subletting. Drawing my attention to the copy of the inspection report (R-1), he stated that the report itself was incomplete as many other columns had not been filled in. Even in ~~the~~ column No.8, initially it has been noted that "may be sublet" but later the word "may" was cancelled and substituted with the words "seems to". Further, even though the inspection team consisted of two Assistant Directors, the report had been signed by only one of them, Shri A.D. Mandan. The other Assistant Director Shri R.P. Yadav, had not signed the inspection report. This clearly showed that Shri Yadav was not convinced of the conclusion of his colleague that the accommodation seemed to have been sublet. The ld. counsel submitted that Smt. Chatro Devi belonged to the village of the applicant and she had come as a guest. It was the custom that women belonging to the same village were regarded as sisters even if they were not blood relations. The applicant had an electricity connection and a CGHS card with the address of the allotted accommodation and the address on the CGHS card had been changed much after the inspection in question. It is also argued that the show cause notice issued to the applicant gave no details of the evidence against him and a bald allegation that he has

sublet the house was made and afforded no proper opportunity to rebut the allegation made against him. Citing the judgement of the Supreme Court in STATE OF ORISSA VS. DR. (MISS.) BINAPANI DEI & ORS. AIR 1967 SC 1269 he argued that even administrative orders which involve severe consequences have to be passed consistent with the principles of natural justice. In that case, when the petitioner had not been given the report of the enquiry officer who conducted the enquiry, it was held by the Supreme Court that the order violated principles of natural justice. The ld. counsel also relied on the judgement of this Tribunal in SHEORAJ SINGH VS. UOI (1994) 26 ATC 293, wherein it was held that when the notice did not at all indicate the nature of the enquiries conducted and the substance of the report arising out of such enquiry, the principles of natural justice were violated and the order is vitiated. Finally, he cited the case of M/s. J. Mahabir Prasad Santosh Kumar Vs. State of U.P. & Ors. AIR 1970 SC 1302, in which it was held that recording of reasons in support of a decision of a quasijudicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. He stated that the impugned order was liable to be set aside as no reasons for passing the order of cancellation or eviction were given and a mere statement that the allotment was being cancelled for subletting giving no reasons for the conclusion was bad in law.

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5. The respondents in their reply affirmed that the impugned eviction order is based upon evidence on record. The applicant stated before the Deciding Authority that Smt. Chatro Devi was his sister but could not produce any proof in support of his claim. Under the rules, an allottee has to obtain permission for sharing the accommodation in case that person is not a part of the immediate family. The applicant had also not filed an appeal against the order of cancellation and the same had thus become final. It was not open to him therefore to now come before the Tribunal. The ld. counsel for the respondents also argued that it was not for the Tribunal to reappreciate the evidence since in judicial review all that is to be seen is whether the procedure had been properly followed and proper opportunity was afforded to the applicant to show cause.

6. I have carefully considered the arguments advanced on behalf of the parties and have also gone through the pleadings on record, as well as the record of the Directorate of Estates. It is not denied that at the time of inspection, the applicant or any member of his family were not at the allotted premises and a lady by the name Smt. Chatro Devi was present. This lady has also signed the inspection report. The applicant has also stated before the Deciding Authority that this lady was sharing the accommodation being his sister. It has been admitted that she is not a blood relation of the applicant. Therefore, the respondents are right in asserting that if she was sharing the accommodation, the applicant was required to obtain permission, which he did not do. The argument of the applicant's counsel that the applicant was handicapped in showing cause because since the show cause notice did not contain the particulars of evidence on the basis of which the allegation of

subletting was made, does not hold water. As the record of the proceedings before the Deciding authority show, the applicant was fully aware that the inspection team had found the applicant and his family absent from the premises and instead had found Smt. Chatro Devi living there. The applicant in fact had tried to defend this position by submitting that Smt. Chatro Devi was his sister, which it comes out was not correct at all.

7. The ld. counsel for the applicant has urged that the duty and burden of proving that the house had been sublet was entirely upon the respondents and it was not the responsibility of the applicant to show that he had not sublet the house. I am in agreement with the ld. counsel but I find that the respondents through the inspection report quite clearly established that there was a basis for the charge of subletting the house. The applicant sought to rebut this by producing the CGHS card and the receipt of Delhi Electric Supply Undertaking. I do not consider that it is necessary for me to go into the question as to whether the evidence was sufficient or not. Suffice it to say ~~that~~ the only material evidence which he produced was the CGHS card which cannot by itself be a conclusive evidence. Insofar as the procedure is concerned, I find that full opportunity was given to the applicant to show cause, and there~~is~~ also some evidence available to the respondents to come to the conclusion that they did. There is ^{thus} no scope for interference by the Tribunal.

The O.A. is therefore dismissed. No costs.

R.K. Ahooja
(R.K. AHOOJA)
MEMBER (A)