

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

No. O.A. 2571/1989.

DATE OF DECISION: February 14, 1990.

K.M. Nagar	Applicant.
Shri S.P. Sharma	Advocate for the Applicant
	V/s.	
Lt. Governor, Delhi & Others	Respondents.
Shri M.M. Sudan	Advocate for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).

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 his Lordship wishes to see the fair No. copy of the judgement?
4. To be circulated to all Benches of the Tribunal? No.

(S.C.J.
(P.C. JAIN)
MEMBER(A)

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

No. C.A. 2571/1989.

DATE OF DECISION: February 14, 1990.

K.M. Nagar Applicant.

Shri S.P. Sharma Advocate for the
Applicant.

V/s.

Lt. Governor, Delhi
& Others Respondents.

Shri M.M. Sudan Advocate for the
Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who is working as Supervisor Instructor in the Industrial Training Institute, Arab Ki Sarai, New Delhi, has prayed for quashing order dated 19.12.1989 issued by respondent No.3, viz., Principal of the said Institute, by which he has been informed that a complaint against him for sub-letting Government accommodation allotted to him has been established in an inquiry by the Anti Corruption Branch, Delhi, and that they have suggested to recover market rent from him from the date of allotment, i.e., 1.8.1981 to date and also to initiate action under Rule 3 of the CCS (Conduct) Rules, 1964. It has also been mentioned that the recovery is to be made from the Selection Grade arrears of the applicant and balance, if any, is to be recovered from his regular monthly salary bills.

2. The relevant facts, in brief, are that the applicant was allotted Quarter No.1989, Lodi Colony, New Delhi with effect from 1.8.1981. The applicant, however, asserts that he was allotted a Quarter bearing this number in Lodhi Road Complex and not in Lodi Colony. This aspect, however, is not very relevant for the disposal

.....

of this application. In their report on complaint No. 49/86 against a number of Instructors, including the applicant, Anti Corruption Branch, Delhi, came to the conclusion that the applicant had sublet Quarter No. 1989, Lodi Colony, New Delhi to one Shri Jagmohan Joneja on a monthly rent of Rs. 675/-. They also recommended that the amount of market rent may be recovered from the applicant from the date of allotment, i.e., 1.8.1981 and departmental action may be taken against him for violating the provisions of Rule 3 of the CCS (Conduct) Rules, 1964 and other rules in force pertaining to unauthorised subletting of Government accommodation. It is in pursuance of the above that the impugned order has been admittedly issued by respondent No. 3 on the direction of respondent No. 2, viz., the Director, Directorate of Training & Technical Education, New Delhi.

3. The applicant's case, in brief, is that he has been in occupation of the quarter since the date of allotment; the investigation by the Anti Corruption Department has been conducted at his back; no inquiry has been held as the inquiry by the Anti Corruption Branch is an investigation and not inquiry; he has been given no notice to show cause against the proposed action; the Anti Corruption Branch has no power to investigate or any authority to recommend any action against him; the impugned order is malicious with a view to depriving him of his arrears of pay on account of his getting the Selection Grade; and the action of the respondents amounts to denial of natural justice.

4. The case of the respondents, in brief, is that the applicant appeared before the Anti Corruption Branch and made a statement on more than one occasion and, as such, there is no denial of opportunity. It is admitted that the impugned order has been passed on the basis of the report submitted by the Anti Corruption Department through the Directorate/Vigilance, Delhi Administration.

5. I have gone through the material on the record

(Signature)

of this case and have also heard the learned counsel for the parties.

6. A copy of the Inquiry Report has been filed by the respondents. As far as it relates to the applicant, it shows that he made statements before the Inquiring Officer of the Anti Corruption Branch on 10.11.86, 12.8.88, 4.11.88 and filed photostat copies of certain documents with his application on 13.12.88. According to his statement, he was living in Quarter No.1989, Lodhi Road Complex, New Delhi, but his family (including three children) was residing in 196/C, Garhi, New Delhi, in a house which is in the name of his father. He had stated that as all the three children were studying in various classes, the accommodation allotted to him was inadequate. He has a separate ration card but he takes his food at 196/C, Garhi. As per the official record, his residential address is of 1989, Lodhi Road Complex, New Delhi and his Identity Card also shows the same address. He also filed a copy of Electricity Bill for this residence. In his statement on 4.11.88, he stated that his friend Shri Jagmohan Joneja with his family consisting of his wife and two children were with him in Government accommodation and that Shri Joneja is the brother-in-law of one of his close friend Shri Y.P. Narang, who has since gone to USA after leaving his department in January, 1988. He also stated that Shri Joneja was living with him as a paying guest and his contribution towards kitchen expenses and the maintenance of house was an amount of Rs.500 or Rs.600 approximately, but this amount is not the rent. Shri Joneja was stated to be living with him since January, 1988. He admitted that he did not obtain any prior permission from the Department for allowing Shri Joneja to share the Government accommodation. He promised to submit documentary evidence to show that Shri Joneja was sharing the accommodation since January, 1988. Shri Jagmohan

Joneja's statement was also recorded in inquiry on 15.11.88 and he stated that he was residing at 1989, Lodhi Road Complex, New Delhi and that he is doing business at 8695 Area Kasan Road Pahar Ganj. He also stated that he was residing in this quarter from January, 1988 and that Shri K.M. Nagar, the applicant, was not residing in this quarter. He further stated that the applicant takes from him Rs.675 per month as house rent; he gave him this quarter for some time and he lives with his family.

7. From the above statements in the report of the Anti Corruption Branch, the fact of subletting of Government accommodation allotted to the applicant at least from January, 1988 cannot be disputed. The applicant did not show either to the Anti Corruption Branch that he had any sharing permission, nor any such permission has been filed by him in this case. His averment in para 4(b) of the application that he was summoned in the Anti Corruption Branch about three four times, who directed him to write down on a piece of paper under threat and duress, cannot be taken as correct, because if it were so, he would have certainly brought this to the notice of his Principal or to the Senior Police Officers of Delhi Administration. The respondents have stated in their reply that such a fact was never brought to their notice. The applicant has also not filed any proof in support of this contention. The fact that Shri Joneja was staying in the quarter allotted to the applicant as paying guest itself is an admission of subletting, because the applicant himself stated that he was having his food with his family at another place and as such he would not be running any kitchen in the quarter allotted to him.

8. In the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, which are reproduced

under S.R. 317-B, 'sub-letting' is defined to include sharing of accommodation by an allottee with another person with or without payment of licence fee by such other person. However, sharing of accommodation by an allottee with close relations is not deemed to be sub-letting. In the facts of this case, as witnessed from the Inquiry Report of the Anti Corruption Branch, and the application, Shri Jagmohan Joneja is neither claimed nor established to be a close relation of the applicant. Sharing of accommodation also does not appear to be in dispute, though the period of sharing may be disputed.

If an allottee sublets the accommodation allotted to him, his allotment is liable to be cancelled under sub-clause (1) of S.R. 317B-21. Under sub-clause (2) of the Rule *ibid*, without prejudice to any other action that may be taken, the allottee may be charged enhanced licence fee not exceeding four times the standard licence fee under F.R. 45A. The quantum of licence fee to be recovered and the period for which the same may be recovered in each case is to be decided by the Director of Estates on merits. The allottee may also be debarred from sharing the residence for a specified period in future. Sub-clause (5) of the Rule *ibid* further provides that the Director of Estates shall be competent to take all or any of the actions under sub-rule (1) to (4) of this Rule and also to declare the officer who commits a breach of the rules and instructions issued to him to be ineligible for allotment of residential accommodation for a period not exceeding three years.

9. In view of the provisions of the relevant rules quoted above, it will be seen that the authority competent to assess the amount to be recovered from the applicant and the period for which it is to be recovered vests in the Director of Estates. As such, the impugned

(See)

order which has been issued by the Principal, I.T.I., cannot be upheld. Moreover, the inquiry conducted by the Anti Corruption Branch cannot be deemed to be an inquiry under the C.C.S. (C.C.&A.) Rules, 1965. The applicant did make statements before the Inquiring Officer of the Anti Corruption Branch, but he cannot be taken to have participated in the inquiry inasmuch as he does not appear to have been allowed to cross-examine the witnesses against him. The plea of the applicant, however, that the Anti Corruption Branch was not competent to inquire into the complaint or make their recommendations is not tenable. Their recommendations had, of course, to be further dealt with in accordance with the relevant rules. The respondents are also free to initiate action under the C.C.S. (Conduct) Rules, 1964, if so advised.

10. In view of the above discussion, the impugned order dated 19.12.89 passed by the Principal, Industrial Training Institute, New Delhi is quashed. The Director of Estates or any other authority who may be assigned or delegated these powers will be free to take appropriate action in accordance with the provisions of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, as amended from time to time and the competent authority will be free to take action under the C.C.S. (Conduct) Rules, 1964 and C.C.S. (C.C.&A.) Rules, 1965. The application is allowed in terms of these directions. However, there shall be no order as to costs.

(P.C. JAIN)
Member (A)
14/2/1990