

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

425

1989

DATE OF DECISION 3.11.1989.

Amin Chand

Applicant (s)

Shri Sant Lal

Advocate for the Applicant (s)

Versus

Union of India & Ors

Respondent (s)

Mrs. Raj Kumari Chopra

Advocat for the Respondent (s)

CORAM :

e The Hon'ble Mr. D.K. CHAKRAVORTY, 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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

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JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Amin Chand, Jamadar, working in R.M.S. - 'D' Division, New Delhi, against order No. Bdg/Qr.Cancell (33/86-87) dated 8.7.86 and F.6/14/Complaint dated 20.4.87 (Annexure A-1 and A-3 to the application) issued by the respondent Nos. 2 and 3 respectively. These orders relate to cancellation of P&T Qr.No. 88/8 Pankha Road, New Delhi, and recovery of penal rent at the rate of Rs. 852/- per month for the period from 1.10.1985 to 4.11.1986 amounting to Rs. 11,189.60. The facts of the case, as stated by the applicant, are that he has been residing with his family members in the P&T Quarter allotted to him from 8.9.83 which has been cancelled under the PMG's memo dated 8.7.86 w.s.f. the date of allotment on the plea of alleged subletting. Recovery of damages at the market rate for the entire period has also been ordered. The applicant's

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representation dated 15.7.86 to the P.M.G, Delhi Circle denying the charge of subletting ^{not} has been replied to but in the meanwhile Respondent No. 3 started recovery of Rs. 284/- per month as penal rent from the pay of the applicant w.e.f. October, 1986. Being perturbed with the imposition of penal rent the applicant vacated the quarter on 4.11.1986. A sum of Rs. 2326.75 have already been recovered upto 30th April, 1987. The applicant further representations dated 30.5.87 to the Director General, Department of Posts against the imposition and recovery of penal rent has not been replied to despite the reminder dated 15.2.88.

2. The applicant prays that the cancellation of allotment with retrospective effect from the date of allotment which was later modified to 1.10.85 and imposition of market rent as damages was illegal and against principle of natural justice as no Show Cause Notice was given before the issue of these orders. There is a contradiction in the memo dated 8.7.86 ordering recovery of market rent and subsequent order dated 21.11.86 which orders recovery of penal rent. Further, making of recoveries from the salary of the applicant without any intimation or notice, particularly when the representations submitted by him to the Competent Authority were still pending, are illegal. These orders are also violative of the Provisions of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, because the prescribed Show Cause Notices were not issued.

3. The Respondents have opposed the application on various grounds indicated in the counter. On physical checking of the quarter on 28th June, 1986, it was found that it had been unauthorisedly sublet to one Shri Madan Lal who had stated that he was living in that quarter

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for about last nine months, while the allottee of the house was living with his family in his own house in Palam Colony. On the above facts the competent authorities decided to cancel the allotment of the house and recover penal/market rent. The cancellation was done after issuing the show cause notice on 8.7.86 and after consideration of the applicant's explanation. The applicant did not appear for personal hearing inspite of two opportunities given to him. The relief claimed by the applicant are not admissible and the application may be rejected.

4. I have heard the learned counsel for the applicant Shri Sant Lal as well as learned counsel for the respondent Mrs Raj Kumari Chopra. Learned counsel for the applicant sedulously argued that no damages or penal rent can be levied without following the procedure prescribed in Section 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Since the provisions of law were not complied with in this case the recovery of penal rent is illegal. It is quite clear that the enquiry made by the respondents was behind the back of the applicant, who was not given opportunity at any time to properly defend his case. The reply of the respondents does not establish as to the period for which the alleged subletting was done and at what rent to prove that the same was sublet for the purpose of profiteering. The learned counsel for the applicant cited the following cases:-

(i) Shri Sita Ram Vs. Union of India
O.A. No. 1046/88 decided by the Principal Bench
on 16.11.88.

(ii) Shri O.P. Gandhi Vs. Union of India
O.A. 1081/87 decided by the Principal Bench
on 13.11.1987.

D.S.M.S.
In the cases cited supra, it has been held that recovery of penal

rent cannot be made without proper notice to the party and without hearing.

5. In the present case also neither proper notice nor opportunity for hearing was given to the applicant. The notices dated 22.12.86, 27.1.87 and 11.9.87 issued by the Respondents are not relevant as these were issued under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupant) Act, 1971 and that too long after the cancellation of allotment under order dated 15.7.86 and even vacation of the quarter on 4.11.1986. Since proper procedure has not been followed by the respondents, the impugned orders are hereby quashed and the application is allowed. The recoveries of penal rent already made from the salary of the applicant shall be refunded to him within a period of two months from the date of receipt of this order.

There will be no orders as to costs.

D.K.Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)
3-11-1988