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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.1088/88

Dated: 8th October, 1993

S.P. Singh

Applicant

Vs.

Union of India & Anr.

Respondents

Shri S.S. Tiwari, Counsel for the Applicant

Shri J.C. Madan, Proxy Counsel for Shri P.H. Ramchandani,
Senior Standing Counsel for the Respondents.

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1. Hon'ble Mr. C.J. Roy, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT

(Delivered by Hon'ble Mr. B.K. Singh, Member (A))

This OA No.1088/88 has been filed under Section 19 of the Central Administrative Tribunal Act 1985 by Shri S.P. Singh, A.F.O.(G) as applicant Vs. Union of India through Deputy Director (E), S.S.B., New Delhi against the order No. 3/Estt./SSB/A/1/65 (23)/II dated 24.11.1987 passed by the Respondent No.2, Deputy Director (E), SSB working in the Directorate General, Security Block-V, R.K. Puram, New Delhi. In the amended OA it has been prayed that Rule 14(F), which reads as under, does not apply in the present case *as it is arbitrary and unreasonable to be set aside*.

"Non-implementation of the orders passed by the competent authority including non-vacation of allotted accommodation under the allotment of residential accommodation rules shall amount to a misconduct under the relevant service conduct rules."

This rule was issued by Government of India, Cabinet Secretariat (E-II Section) vide O.M. No.D.11030/87/27/EA-II dated 8.10.87 and it has been prayed that this should also be declared ultra vires and should be set aside along with quashing of the charge-sheet served on the applicant under this rule by the Directorate General, S.S.B.

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2. We have heard the learned Counsels, S/Shri S.S. Tiwari for the applicant and Shri J.C. Madan, Proxy Counsel for Shri P.H. Ramchandani, Senior Standing Counsel for the respondents, and have also perused the records of the case.

3. The applicant is working as A.F.O.(G) in the Special Security Bureau under Directorate General of Security in Delhi. He was allotted special pool quarter No.362, Sector-V, R.K. Puram on 4.1.76. The applicant was allotted general pool quota quarter No. 6/11, M.B. Road, Sector 1, Saket on 11.9.87. He collected the letter of allotment of the general pool quarter from the office of Director General, SSB, on 14.9.87. Consequently his allotment of special pool quota quarter No.362, Sector-V, R.K. Puram was cancelled by SSB vide order No.2/SSB/B-II/87(III) dated 23.9.87 and the applicant was directed to vacate the said special pool quota quarter within three days. Two more letters, dated 25.9.87 and 4.10.87, were also issued in continuation of this letter and since the quarter was not vacated the charge-sheet was served on the applicant for contravention of provisions of Service Rule 370-B-12(2) (annexure-I of OA) as incorporated under Allotment of Government Residence (General Pool) Rules 1963 which is also applicable to Special Pool Quota quarters, and thus it has been alleged that the applicant violated Rule 3 of the CCS(Conduct) Rules 1965 by his conduct unbecoming of a government servant and accordingly an inquiry was ordered against the applicant under Rule 14 of the CCS(CCA) Rules 1965 vide Memo No.3/Estt./SSB/A-I/65(23)-II dated 23.4.87 and disciplinary proceedings were initiated against the applicant as per the amended Rule 14(F) issued vide Cabinet Secretariat's O.M. No. D/11030/87/27/EA-II dated 8.12.87.

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4. Being aggrieved by the aforesaid order the petitioner has filed the present application. We have heard the learned counsel Shri S.S. Tiwari for the applicant. He has challenged the Memo. of charge-sheet served on his client as bad in law, arbitrary and unreasonable. He argued that the applicant continued to occupy SSB pool quarter only for a couple of months after taking possession of the general pool accommodation and penal rent has already been recovered for the said period. The Deputy Director, SSB, cannot be allowed to draw proceedings for misconduct on the grounds of unauthorised occupation when penal rent had already been recovered from the applicant. The learned counsel further argued that it will amount to double jeopardy and as such the order being bad in law is liable to be quashed and set aside. He further argued that the circular of the Cabinet Secretariat for treating unauthorised occupation as misconduct under Rule 3 CCS(CCA) Rules 1965 coupled with Rule 14(F) of the same Rules in addition to cancellation and eviction as envisaged under Section 4 and 5 of the P.P.E. Act 1972 was issued on 8.10.67 and cannot be applied retrospectively to cover the case of the applicant. In support of his argument he cited the judgment of CAT Ahmedabad in the matter of Nawal Singh as petitioner Vs. Union of India & Ors. as respondents in which retention of quarter on transfer in an unauthorised manner was considered as a misconduct by the Railway Authorities and the petitioner was removed from service. The Hon'ble Tribunal held that the said instructions were only as advisory in nature. It was meant for recalcitrant elements where in addition to recovery of penal rent punitive action could also be thought of. The order of removal of the petitioner from service was set aside and the petitioner was restored in service by the Hon'ble CAT, Ahmedabad Bench. This judgment relied on ATR 1817(1) CAT 567 where it was also held that government are competent to evict a person using

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force if after recovery of penal rent and cancellation of allotment the premises are not vacated under PPE Act 1972 and as such disciplinary proceedings are not competent.

5. The learned counsel for the respondents contended that these rules are not relevant to the present case. The applicant continued to occupy two government quarters -- one of the SSB Pool allotted to him in 1976 and another of General Pool accommodation allotted to him in September 1987 and he intentionally and wilfully defied the orders of superior officers and as such disciplinary proceedings were initiated.

6. We have perused the records of this case. The applicant was directed to vacate the quarter of SSB Pool within three days. The applicant represented against this order and wanted some more time since his school-going children were likely to be disadvantaged in their studies if they were shifted from the premises immediately. The two reminders for vacation were in quick succession. There was over-stayal of two months for which penal rent was charged. This is admitted by the respondents' counsel also who, however, contended that issue of Memo. for disciplinary proceedings on ground of misconduct and recovery of penal rent for unauthorised occupation of SSB Pool accommodation after the applicant had taken possession of the general pool accommodation did not amount to double jeopardy. He further argued that the quarters are in the same station, in the same town and in Delhi distances do not matter. There was a wilful disobedience of the orders of the superior officers and as such he was liable for being proceeded under Rule 3 coupled with Rule 14(F) of CCS Rules 1965 in addition to recovery of penal rent.

7. The fact that the applicant continued to occupy SSB Pool accommodation in R.K. Puram despite his taking possession of general pool accommodation in Saket is not in dispute. Moreover, the fact

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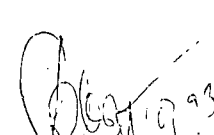
that the disciplinary authority has passed the impugned order as he found the petitioner guilty of misconduct as he violated Rule 3 read with amended Rule 14(F) of the Central Civil Service Rules 1965 and that he continued to remain in SSB Pool quarter in R.K. Puram in spite of repeated orders issued in this regard has also not been controverted. According to the learned counsel for the applicant, Shri Tiwari, O.M. of Cabinet Secretariat was issued on 8.10.87 and as such the applicant's case is not covered by it, whereas the learned counsel for respondents Shri J.C. Madan argued that the unauthorised occupation was vacated much after the issue of the circular of Cabinet Sectt. and as such it did apply to the applicant's case, and therefore these instructions deserve consideration while deciding the issue.


8. We have carefully considered the instructions contained in Cabinet Secretariat's Memo. No.D-11030/87/27/EA-II dated 8.10.87. These instructions authorise the competent authority to take punitive action if a situation so warrants in addition to recovery of penal rent and cancellation of allotment and eviction proceedings. The opinion of the SSB authorities and the instructions issued by Cabinet Secretariat will not make an act of unauthorised occupation of public premises an act of misconduct. It has been held in Abdul Mohit Mushtaki Khan (supra) when that/a government servant fails to vacate government quarter he is liable to be charged penal rent which is far in excess of the normal license fee and he is also liable to be evicted under Section 5 of the P.P.E. Act 1972 and hence disciplinary proceedings are not competent. The issue raised in the present case though not identical to the case of Abdul Mohit Mushtaki Khan wherein the

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impugned order of removal from service was passed on the charge of failure to vacate government quarter, is similar. In the present the applicant is case/charged/of continuous occupation of SSB Pool accommodation for a couple of months in R.K. Puram when the applicant had already taken possession of general pool accommodation in Saket. In Abdul Mohid Mushtaki Khan case there was transfer from one station to the other and in the instant case it involved shifting from one place to another in the same station but the issue of remaining in unauthorized accommodation for a couple of months and recovery of penal rent and service of Memo of charge-sheet are identical. In the present case the Hon'ble Tribunal has stayed the proceedings on 7.6.88 and status quo has been maintained by the respondents.

9. The ratio established in Abdul Mohid Mushtaki Khan's case is that disciplinary proceedings are not competent when authorities are competent to realise penal rent, cancel allotment and start eviction proceedings and to that extent, this case is covered by that judgment. In the light of the principles governing Abdul Mohid Mushtaki Khan's case (supra) this application is partly allowed and the impugned order dated 24.11.1987 at annexure-A of OA is hereby quashed and set aside. In the facts and circumstances of the case, we pass no orders as to costs.


(B.K. Singh)
Member (A)


(B.J. Roy)
Member (J)

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