CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1023 of 1990

This 19th day of August, 1994

Hon'ble Mr. B.K. Singh, Member (Admn.)

M.R. Khan,
Quarter No.114/19 (Type I)
Railway Colony,
Kishan Ganj,
Delhi. ..... Applicant

By Advocate:ShriO.P. Gupta

VERSUS

Union of India, through:

The General Manager,
Northern Railway,
Baroda House,
New Delhi. ..... Respondents

By Advocate: Shri P.S. Mahendru

ORDER

This OA has been filed against the order of recovery of rent/arrears vide CSI (PS) letter dated 22.4.90 and also the order dated 30.1.90 cancelling the allotment of Railway Quarter No. 114/19, Kishan Ganj, Delhi. These impugned orders have been marked as annexure 'A' and annexure 'B' respectively of the paper-book.

2. The admitted facts of the case are these. The applicant joined the Railways in the year 1964 under CSI (PS), Delhi, in the scale of Rs.196-232. He was promoted to the post of ESM Grade-III w.e.f. 1988 in the scale of Rs.950-1540 (RPS). While working as Helper, the applicant was allotted Railway Quarter No.114/19, Kishan Ganj, Delhi in 1979.

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3. The applicant was served with a show-cause notice dated 1.12.1989 as to why the above Railway quarter allotted to him and sublet to one Smt. Kiran Arora for monetary gain, be not cancelled and further why action under DAR 1968 may not be initiated against him. This notice is marked as annexure 'C' of the paper-book. He submitted a show-cause denying the charge of subletting.

4. Reliefs sought by the applicant contain a prayer to hold that the order of cancellation of the allotment of Railway quarter dated 30.1.90 and the order dated 22.4.90 for effecting recovery from May 1990, are illegal, punitive and have been passed without following the principles of natural justice and as such should be quashed and set aside.

5. A notice was issued to the respondents who contested the application and grant of reliefs prayed for.

6. Heard the learned counsel, Shri O.P. Gupta for the applicant and Shri P.S. Mahendru for the respodnents.

7. The learned counsel for the applicant argued that Smt. Kiran Arora was a guest for a fortnight living in the said quarter on the recommendation of the relation of the applicant who is residing at Bhilai (MP). In this connection he also referred to the various representations filed by the applicant in response to the notices issued to him (annexure 'A' & 'B') denying the charge of subletting. The reply of the applicant is marked as annexure 'E' of the paper-book. Relying on these representations the learned counsel for the applicant said that the said Smt. Kiran Arora came to stay only for a fortnight and that no detailed enquiry was conducted by the respondents and that the provisions of PPE Act 1971 were not followed in this regard. He said that before eviction can be resorted to, Sections 4,5 & 6 of the PPE Act, 1971, have to be followed and if these provisions had been followed, the applicant would have preferred an appeal to the

who is his appointing authority, against the order of the Estate Officers. The applicant thus, was deprived of an opportunity to defend himself. The main thrust of the arguments of the learned counsel was that the principles of natural justice have not been followed in this case and as such the proceedings have been vitiated and therefore the impugned orders cannot be sustained.

8. The applicant filed representation on 12.2.1990 against the show-cause notice served on him for cancellation of the allotment and also for recovery of penal rent from him, but without waiting for a reply from the respondents and without filing an appeal against the said order, he approached this Tribunal in May 1990. Thus the remedies available to him under Section 20 of the CAT Act 1985 were not exhausted. Though the application was premature, but by an interim order dated 29.5.90 granted by this Tribunal, proceedings for recovery of penal rent and eviction from the accommodation were stayed. The proceedings for eviction and recovery of penal rent are still pending before the Estate Officer. A perusal of the reacord shows that the show-cause notice was served on the applicant on the basis of an enquiry conducted by the Internal Vigilance Department of the Railways and it is stated that one Smt. Kiran Arora and her two children were found to be living in the house No.114/19 Kishan Ganj Railway Colony, which was allotted in the name of the applicant. The enquiry was conducted twice -- one on 24.2.89 and the other on 6.7.89. The intervening period between these two enquiries is of about 5 months. Thus the contention of the learned counsel for the applicant that Smt. Kiran Arora stayed only for a fortnight is totally wrong and controverted by annexure R-I filed with the counter affidavit. Smt. Kiran Arora is an educated lady and she has signed on this report (R-I) on her behalf and on behalf of her children who

were found living in the said premises. The affidavit filed by Smt. Kiran Arora states that the enquiry took place in the year 1988 when she was on a short visit to Delhi and stayed as a guest of the applicant. This affidavit has been filed on 20.6.90 without specifying the place from which she filed this affidavit and where she was living when the affidavit was sworn in by her. This means that she had been continuing in the premises during the time of the two inspections, i.e. on 24.2.89 and 6.7.89 and also in 1990 when she has filed the affidavit. In the affidavit it has been stated that she was on a short visit in the year 1988 and it was during that year that she stayed with the applicant in the said quarter. The vigilance enquiry was conducted not in 1988 but twice in 1989 as mentioned above. This means that the affidavit itself corroborated the facts that she had been living in the quarter in question from 1988 itself and continued to stay there in 1989 and 1990 when she filed this affidavit. It is proved that the premises were illegally sublet by the applicant to Smt. Kiran Arora who had also signed the vigilance enquiry in token of the correctness of the facts recorded therein as is evident from annexure R-I of the paper-book. Thus the argument advanced by the learned counsel for the applicant are falsified by proforma statement of the Railways and the affidavit filed by Smt. Kiran Arora.

9. The principles of natural justice imply only three things, i.e. (i) the charges against the applicant should be stated precisely, (ii) he should be given an opportunity to state his case, and (iii) the respondents should pass a speaking order in the light of the extant rules in vogue. Subletting of government premises is against the rules and the respondents are fully competent to cancel the allotment under the terms and conditions of the allotment itself. The respondents are also competent to realise penal rent for the period the premises are sublet to an outsider. For cancellation of public premises no enquiry under DAR 1968 is required. The

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eviction proceedings have to be initiated by the Estate Officer once it is found that the premises have been sublet and are not in bonafide use of the occupant. For this, the provisions of Section 4,5 & 6 of the PPE Act 1971 are to be followed. The proceedings were about to start when these were stalled by a stay order granted by this Court on 29.5.1990. As stated above, the applicant, before coming to the Tribunal, did not avail of the remedies available to him under Section 20 of CAT Act, 1985.

10. The learned counsel for the applicant cited the following two rulings: (i) SLR Vol. 59 page 80, Sivasankara Pillai P. vs. Union of India, and (ii) AIR 1988 Vol. 75 SC 145, M/s Shalimar Tar Products Ltd. vs. H.C. Sharma & Ors.

(i) The first ruling cited by the learned counsel for the applicant has no application to the present case. The facts of the case are totally distinguishable. In this case, the applicant was transferred from Trivandrum to another station and he went on medical leave and subsequently he was retransferred to Trivandrum and for the intervening period between these two transfers penal rent was charged from him. The order of recovery of penal rent from the applicant was set aside by the Tribunal (Ernakulam Bench) in its judgment dated 16.12.1988 and the applicant was asked to pay only normal rent even for the period he was on medical leave. There was no question of subletting the government accommodation to anyone. Therefore the ratio established in this ruling cannot be applied to the present case at all.

(ii) As regards the other ruling, the Hon'ble Supreme Court was dealing with only the Delhi Rent Control Act (59 of 1958), Sections 14(1)(b), 16(2) (3) where for subletting the consent of the landlord must be in writing and must be to the specific

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subletting. It was held that under the Delhi Rent Control Act (59 of 1958) the requirement of consent cannot be treated as directory in nature as it is in public interest and therefore under the Evidence Act (1 of 1972) Section 115, it was held that the requirement is mandatory and it cannot be waived. This rule is also not applicable in the present case because it relates specifically to the Delhi Rent Control Act where consent for subletting is a mandatory requirement and this has to be in writing. This cannot be followed in the instant case because in PPE Act 1971 the house is alloted to a civil employee of the Central Government or a Railway employee by the Railways for his bonafide use and the occupant is not permitted to sublet it and therefore the question of subletting the house in question by the applicant to somebody by consent in writing does not arise. Subletting to anyone is totally against the rules and the terms and conditions of the allotment and if one sublets the government premises allotted to him, leave aside by consent in writing, even if he does it orally, it is an offence and the allotment is liable to be cancelled under Sections 4,5 & 6 of PPE Act, 1971, and he is liable to be evicted / by using minimum force after proceedings have been completed and the charge of subletting is proved. Thus, this ruling cited by the learned counsel for the applicant has also no bearing on the present case.

11. In the conspectus of the facts and circumstances of this case, I do not find any merit or susbtance in the application and the same is dismissed. The stay order passed by this Tribunal on 29.5.1990 is vacated. There will be, however, no order as to costs.

19/8/94

(B.K. Singh)
Member (A)

vpc