

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2052/90

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DATE OF DECISION 11.11.91

BIRI SINGH	Petitioner APPLICANT
SHRI B. KRISHNAN	Advocate for the Petitioner(s) APPLICANT
Versus	
UNION OF INDIA & OTHERS	Respondent _s
SHRI P.P. KHURANA	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE RAM PAL SINGH, VICE CHAIRMAN

The Hon'ble Mr. I.P. GUPTA, ADMINISTRATIVE MEMBER.

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. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Delivered by Hon'ble Mr. I.P. Gupta,
Administrative Member)

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who has been in Government service since 3.12.1962, and who is presently working as Electrician/Wireman in CPWD, was allotted government residence No. Sector II/782, R.K. Puram, New Delhi, in December, 1979.

2. In the month of October, 1989, the applicant was called upon by the Director of Estates for an inquiry about the suspected subletting ^{of the} said premises. The applicant denied the alleged charge of subletting and showed all documents, testimonials and proofs like Ration Card, CGHS Token Card, certificates from Schools of Children, in support of his contention. The applicant also denied the

allegations of subletting of the said premises to one Shri Trilok Chander whose wife was alleged to have been found in the premises at the time of inspection. The applicant, however, admitted that the said Shri Trilok Chander was his colleague in CPWD but he had nothing to do with the applicant's house and occupation of the said premises.

3. The applicant received an order dated 30-10-89 from the Deputy Director of Estates stating that as a result of inquiries, it had been proved that the applicant had not been residing in the Government quarter allotted to him and had completely sublet the same to some unauthorised person in contravention of the provisions contained in SR 317-B-20 of the Allotment Rules. Therefore, it was decided to make him ^{ineligible} ~~ineligible~~ for Government accommodation for a period of five years and to cancel the allotment from the date of vacation of the quarter or the expiry of a period of 60 days from the date of the issue of the Memo. dated 30th October, 1989, whichever is earlier. The applicant was, therefore, directed to vacate the quarter and in case he was aggrieved by the Order, he could prefer an appeal within 60 days. The above directions were issued in accordance with the provisions of SR -317-B-21.

4. The applicant has mentioned in the application that he moved an appeal to the Director of Estates which was rejected by a letter dated 14-1-1990. However, in the course of hearing when it was pointed out that the appeal and rejection orders were not available on records, the learned counsel for the applicant could not confirm moving of the said appeal. However, he pointed out that a letter in the form of appeal was sent by the applicant to the Hon'ble Minister in the Ministry of Urban Development on

26-3-1990. The learned counsel for the applicant said that no reply thereof has been received. The learned counsel contended that:

(i) while the representation of the applicant dated 15-3-1990 (it should actually be 26-3-90) was under consideration an ex-parte eviction order dated 27-3-90 under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was issued.

(ii) The principle of natural justice was violated. Attention in this connection was drawn to para 5 of the Order of Central Administrative Tribunal, Bangalore Bench in S.Gulab Jan V. The Estate Officer/Executive Engineer - ATLT (Vol.II) (1990) CAT 152, wherein it was observed that Section 4 of the PPE Act requires that a notice be issued to a person alleged to be in unauthorised occupation of any public premises. The notice should specify the grounds on which eviction is proposed and require all persons concerned to show cause against the proposed order and to appear before the Estate Officer on the specified date along with evidence in respect of their case. They are also to be given a personal hearing if they ask for it. Under Section 5 of the said Act, after considering the cause shown by the persons concerned in pursuance of a notice under Section 4 and any evidence produced by ~~XXXXXXXXXX~~ him in support of their case, the Estate Officer, if satisfied that the public premises are in unauthorised occupation, may make an order of eviction for reasons to be recorded in writing. The case of the learned counsel for the applicant is that proper opportunity was not given before issue of the order of eviction under Section 5 of the PPE Act.

5. The relief sought is that the order dated 30-10-89

Minister on 26.3.1990, i.e., after more than four months. This letter to the Minister cannot be considered as an appeal within the stipulated period of 60 days to the Director of Estates who is competent to take or all or any of the actions under sub-rules 1 to 4 of SR -317-B-21. Before issuing the Order of 30th October, 1989, the applicant was called upon in connection with the inquiry about the suspected subletting. The documents produced by him were duly examined, but the concerned authorities, after inquiries, found that the subletting of the Government quarter was proved and, therefore, the order of 30th October, 1989, was issued. Eviction proceedings were also taken and thereafter the Eviction Order of 27th March, 1990 was passed. The appeal was rejected by the Additional District Judge, New Delhi. Regarding damages or recovery of licence fee, the Rules enjoin that any officer who sublets his residence shall do at his own risk and responsibilities and shall remain personally responsible for any licence fee payable in respect of the ~~damages~~ residence and for any damage caused to the residence. Further, the Rules enjoin the enhanced licence fee should not exceed four times the standard licence fee under FR 45.A.

11. In the conspectus of the above facts in the case, we do not consider any good ground to interfere with the Order dated 30th October, 1989 giving directions to the applicant to vacate the quarter and the Eviction Order dated 27th March, 1990 calling upon the applicant to vacate the premises within 15 days. Regarding recovery of licence fee and damages, the respondents are within their rights to ask for such payments as are consistent with the provisions of SR-317-B-20. and SR-317-B-21.

With the aforesaid observations, the application is

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cancelling the allotment be set aside and so also the eviction order issued on 27-3-1990. The applicant has also prayed that he may not be charged any damages in respect of unauthorised use and occupation of the quarter.

6. The learned counsel for the applicant also moved MP 3381/91 praying that the recovery of damages @ Rs.864/- p.m. was illegal and should be stayed.

7. The learned counsel for the respondents brought out that on a surprise inspection of quarter No.782/II, R.K. Puram, New Delhi, it was found that the said quarter was in occupation of one Smt. Maya Devi, wife of Shri Trilok Chander, her son and three daughters. The said Smt. Maya Devi gave a signed statement to the Inspection Team that she was residing in the said quarter along with her husband and four children for the last five years.

8. Due notice of 60 days as provided in the Rules was given in the Order dated 30th October, 1989. Eviction proceedings were taken and eviction order was passed by the Estate Officer duly on 27-3-1990. The applicant also sought an alternative remedy of an appeal under Section 9 of the Public Premises Act, 1971, which was rejected by the Additional District Judge, Delhi.

9. The learned counsel for the respondents also pointed out that the MP filed by the applicant was not maintainable since the question of waiver or staying of damages was not a subject matter of MP but for an OA itself.

10. Analysing the facts of the case, it is seen that notice for 60 days was given in the Order dated 30th October, 1989. This was consistent with the provisions of SR -317-8-21 (3). In the order, the applicant was told that he could prefer an appeal to the Director of Estates but he did not prefer any such appeal. Instead, he wrote to the Hon'ble

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dismissed with no order as to costs.

I.P. Gupta
(I.P. GUPTA)
MEMBER (A) 11/11/91

Ram Pal Singh 11.11.91
(RAM PAL SINGH)
VICE CHAIRMAN

/PKK/