

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2072/90
T.A. No.

199

DATE OF DECISION 18.1.1991

Shri Shupender Singh	Petitioner Applicant
Shri V.K. Jain	Advocate for the Petitioner(s)
Versus	
Union of India & Others	Respondent
Shri P.H. Ramchandani,	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *NO*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is working as a Constable in the Central Bureau of Investigation (CBI), filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned notice dated 16.8.1990 and the impugned order dated 20.9.1990 issued by the respondents, be set aside and quashed, and that he be allowed to retain the Government accommodation at 50-N, Type II, Vasant Vihar, New Delhi, which had been allotted to him.

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2. The impugned notice ~~xxxx~~ dated 16.8.1990 was issued to the applicant asking him to explain the reasons as to why he should not be declared ineligible for allotment of CBI-Pool residential accommodation for a period of five years w.e.f. the date of vacation of the accommodation, licence fee at market rate should not be charged from him from the date of issue of the notice, and he be debarred for sharing the Government accommodation for a specified period, as decided by the competent authority. It was further stated in the notice that if he wanted to be heard personally, he might appear before the Superintendent of Police, C.B.I. on 3.9.1990. He was also given opportunity to bring necessary documents like ration card, CGHS Card, envelopes of the registered letters, savings bank account pass-book, and certificates from the educational institutions where his children are studying to prove that he was exclusively residing with his family in the accommodation allotted to him.

3. The impugned order dated 20.9.1990 issued by the Estates Officer for CBI-Pool Quarters states that as a result of enquiries made, it had been proved that the applicant had sublet the quarter allotted to him to some unauthorised person in contravention of the

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provisions contained in the CBI Allotment of Residence (Revised) Rules, 1988. He was, therefore, directed to vacate the said premises immediately, failing which, it was stated that eviction proceedings under the Public Premises (Eviction of Unauthorised Occupance) Act, 1971, would be initiated against him. It was further stated that he would be liable to pay damages which had been calculated at the rate of Rs.1,149/- per month for the period of unauthorised occupation.

4. The quarter in question was allotted to the applicant on 8.12.1989. According to him, he had been in occupation of the said quarter since then. His aged mother was residing with him.

5. The applicant appeared before the Supdt. of Police on 3.9.1990 along with the written statement and other documents like ration-card, CGHS card, letters, and savings bank account pass-book to prove that he had been continuously/regularly residing in the quarter allotted to him and to prove that he had not sublet it to any unauthorised person.

6. On 10.9.1990, the Supdt. of Police called the applicant and enquired from him about a lady by name, Mrs. Arunima, who was present in the house on the day the C.B.I. had conducted an enquiry. In reply, he

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submitted that Mrs. Arunima was the wife of his friend, Shri Ajay Singh. During the aforesaid period, the applicant was totally upset due to the death of his brother and father. His brother died in April, 1990 and father, in November, 1989. His mother also was serious and she was admitted in Civil Hospital, Bhiwani. Due to these circumstances, the applicant used to feel sad and dejected. Shri Ajay Singh, along with his wife, came to his house to express their condolences. Shri Ajay Singh told the applicant that he himself with his wife, intended to visit Bhiwani where the applicant's mother was admitted in the Hospital and also requested the applicant to accompany them. The applicant requested Shri Ajay Singh to remain in his quarter till he returned from duty so that they could go together to Bhiwani.

7. Accordingly, Shri Ajay Singh and Mrs. Arunima remained in the quarter allotted to the applicant. When the applicant came back from duty, Mrs. Arunima mentioned to him that one, Mr. Sharma, visited his premises and enquired about him. The applicant states that probably the enquiry was conducted when Mrs. and Mr. Ajay Singh were at his residence and the officer who conducted the enquiry, might have formed the impression that he had

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sublet the house. He has denied having sublet the house and has stated that he has been staying there along with his mother.

8. The respondents have stated in their counter-affidavit that complaints had been received that some of the allottees of the CBI-Pool accommodation at Vasant Vihar had sublet the CBI quarters to unauthorised persons. Following this, the investigating officer went to make enquiries in respect of quarter No.50-M, adjacent to quarter No.50-N, allotted to the applicant. When he found quarter No.50-M locked, he tried to ascertain the position from the occupant of quarter No.50-N. According to the report of the Investigating Officer, a lady present in quarter No.50-N, introducing herself as Mrs. Arunima, working in the Punjab National Bank, Parliament Street, New Delhi, informed the Investigating Officer that quarter No.50-M had been lying locked for about 1½ months and that she too was a tenant in quarter No.50-N and was residing there along with her husband.

9. It was on the basis of the above statement said to have been made by Mrs. Arunima that the impugned notice and the impugned order was issued to the applicant.

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10. We have carefully gone through the records of the case and have considered the rival contentions. The rules relating to the accommodation provide, inter alia, that the accommodation is liable to be cancelled in the event of unauthorised subletting of the same. Subletting has been defined in Rule II (r) of the Allotment of Residences (Revised) Rules, 1988 to include "sharing of accommodation by an allottee with another person with or without payment of licence fee by such other person, but does not include a casual guest".

11. The version of the applicant is Mrs. Arunima, who happened to be in the quarter in question, was a casual guest to pay condolence to the applicant on account of his bereavement which took place in November, 1989 and April, 1990. The applicant had also produced before the respondents the ration card, the savings bank account pass-book indicating that he was residing at the quarter in question. He had, however, retained his CGHS card at Kidwai Nagar, where he had resided earlier. He has, however, explained that he had made a request for the change of address to the authorities concerned.

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As regards letters being received at his quarter, the applicant has stated that he had received several letters but destroyed them except one which he could produce, if necessary. He also stated that the fact that he was residing in the quarter in question and had not sublet any portion of the same to anyone, could be verified from his immediate neighbours residing at quarter No. 50-P, 50-R and 50-M. He further stated that at the time of his brother's death on 20th April, 1990, his colleagues in the C.B.I. had visited the said quarter for paying condolence. He had also averred that he had been attending the office by travelling in chartered bus from Vasant Vihar to the knowledge of other C.B.I. employees.

12. The respondents have not duly considered the aforesaid evidence produced by the applicant. They have merely gone by the version given by Mrs. Arunima, who happened to be in the quarter at the time of the enquiry. It is not unlikely that a casual guest may visit the allottee and it so happened in the instant case that at the time of the enquiry, Mrs. Arunima, who was a family friend of the applicant, was present in the quarter. A one-time casual enquiry like this cannot render the other pieces of evidence submitted by the applicant irrelevant. The respondents should have enquired from the occupants of the neighbouring quarters

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about the true state of affairs before issuing the impugned orders. One clinching evidence in the case would have been to ascertain where the applicant had been staying during the period when the enquiry was conducted. If the respondents could have established that the applicant was staying not in the said quarter but somewhere else, that would have been a circumstance warranting the conclusion that the applicant might have sublet the premises.

13. During the hearing, the learned counsel for the respondents stated that in a case of this kind, what is relevant is preponderance of probabilities. This is true. However, the preponderances of probabilities in the instant case clearly indicates that there is no evidence of the applicant having sublet the premises in question. The respondents have not held that the ration card and the savings bank account pass-book produced by the applicant are not genuine ones. In our view, the cancellation of the quarter in question on the statement of a person who had ^{apparently} been on a casual visit at the quarter, would not justify the impugned action taken by the respondents.

14. In the light of the above, we allow the application and set aside and quash the impugned notice dated 16.8.90

and the impugned order dated 20.9.1990. The respondents are directed to allow the applicant to continue in the premises at 50-N, Vasant Vihar, New Delhi, which had been allotted to him. The interim order passed on 9.10.1990 is hereby made absolute.

There will be no order as to costs.

D.K. Chakravorty
(D.K. Chakravorty)
Administrative Member
18/11/91

P.K. Kartha
18/11/91
(P.K. Kartha)
Vice-Chairman(Judl.)