

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

C.A. NO. 2290/1990

DATE OF DECISION : 13.3.92

SMT. PUSHPA DEVI MONGIA

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI SANT LAL

FOR THE RESPONDENTS

...SHRI P.P. KHURANA

1. Whether Reporters of local papers may be yes allowed to see the Judgement?

2. To be referred to the Reporter or not? Yes

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant in this case is the wife of X-Central Government employee, who had to retire because of being physically handicapped. The applicant was, therefore, given an appointment as LDC in the Office of Commission for Scientific and Technical Terminology. Her husband, while in service as Central Government employee, was in occupation of the quarter No.D-245, Sarojini Nagar, New Delhi. The same quarter was regularised in the name of the applicant after she got appointment on compassionate ground. The applicant joined in 1984. The Directorate of Estate gave

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a notice dt.19.10.1987 (Annexure A4) asking the applicant to show cause that she is using the said allotted premises for commercial activities as her husband has started some typing work there. By the order dt.29.10.1987, the regularisation of the allotment in the name of the applicant was cancelled and that is the impugned order (Annexure A1). The applicant made a representation on 4.11.1987 (Annexure A5) and admitted that her husband having become physically handicapped was doing some typing work in order to pass his time. On the representation of the applicant on certain conditions, the Directorate of Estates by the letter dt.25.11.1988 (Annexure A6) again regularised the said quarter in the name of the applicant w.e.f. 24.6.1988 on three conditions mentioned in the said letter and it was also stated that failure to fulfil any of these conditions will be considered as unwillingness to accept the offer and will ultimately lead to eviction of the family from the premises as already intimated in the Directorate's letter dt.29.10.87. The applicant again made a representation against this letter on 13.12.1988 (Annexure A7) requesting that she is poor lady and she cannot manage to pay the damages calculated at market rate from 19.10.1987 to 24.6.1988 amounting to Rs.8,131.90. Directorate of Estates served another order dt.1/6th December, 1989 cancelling the allotment in the name of the applicant on the ground that the applicant failed to stop the commercial activities going on in her premises D-245 Sarojini Nagar and the allotment was cancelled w.e.f. 15.6.1989. 1e

2. In this application under Section 19, the applicant has prayed that the impugned orders dt.29.10.1987, 1/6th December, 1989 as well as the letter dt.10.4.1990 be quashed and a direction to the respondents to regularise the allotment of the said quarter in the name of the applicant from the date of its original cancellation. The grounds taken by the applicant are that the impugned orders are arbitrary, illegal and discriminatory and violative of Articles 14 and 16 of the Constitution and principles of natural justice. It is further stated that the respondents have passed the order without proper enquiry and without giving any opportunity to show cause against the same. The husband of the applicant was doing some typing work to share the heavy burden of the expenses of the family and by that she and her husband did not commit any offence or violated any law of the land.

3. The respondents did not file any counter, but orally contested the application and the arguments have been heard in the case on merits. It is evident that the earlier notice dt.29.10.1987 was given to the applicant cancelling her allotment of quarter No.D-245 Sarojini Nagar on the ground that her husband has been carrying on commercial activities in the said quarter. However, subsequently

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it appears that on the representation of the applicant dt.4.11.1987, wherein, she has clearly stated that her husband has stopped the work in the said premises, the respondents by the letter dt.25.11.1988 regularised the accommodation w.e.f - 24.6.1988 again in the name of the applicant levying damages to the tune of Rs.8,131 as per Extant Rules. Though the applicant had made representation, but again without any enquiry, the respondents have issued the letter in the form of notice dt.1/6th December, 1989 again cancelling the allotment and threatening action under P.P. Act. In fact, the Memo dt.10.4.1990 (Annexure A3) goes to show that no further notice was given to the applicant as to whether her husband has again started doing the work in the said premises. Unless there is an enquiry and there was a notice given to the applicant, the applicant cannot be condemned and hurt basically on the point that her husband has again started doing some commercial activities against the same. In the Memo dt.10.4.1990, there is a mention of the representation of the applicant dt.27.12.1989 where she said that she is not running any commercial typing at her residence. This letter also shows that there can be misunderstanding because typewriters and photostat machines were lying there and her husband had not found any customer for selling these items. When the Assistant Directorate of Estates, TG(A) Section observes that there is a misunderstanding, so the

issue of Memo to the applicant dt.1/6th December, 1989 cancelling her allotment w.e.f. 15.6.1989 becomes almost unjustifiable. At least the applicant should have been given some opportunity to meet the same. Any order passed without hearing the applicant will be against the principles of natural justice.

4. The learned counsel further argued that without giving a notice under PP Act, 1971, the applicant could not have been asked to pay damages, but in fact that is not the issue in this case nor any relief has been asked for in that regard nor there is any prayer regarding the letter dt.25.11.1988 in which the applicant has been called to pay the rental dues for the period ending 24.6.1988, i.e., the date of regularisation. She has been adjudged to pay penal/market rent of licence fee in respect of the entire premises for the period from 29.10.1987 to 24.6.1988. Since there is no specific prayer regarding the cancellation of the letter dt.25.11.1988 nor that order has been assailed, so in view of this fact, the argument of the learned counsel has no basis.

5. In view of the above discussion, the application

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is disposed of in the manner that the impugned order of cancellation of allotment dt.1/6th December, 1939 as well as the order dt.10.4.1990 are quashed. The respondents shall, however, be free to give a show cause notice to the applicant and to proceed in an enquiry under the law, if so desired, regarding the use of the premises under allotment for purposes other than residence of the applicant and her family. In the circumstances, the parties to bear their own costs.

J. P. Sharma,
(J.P. SHARMA) 13.2.92
MEMBER (J)

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