

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 159/91
T.A. No.

199

DATE OF DECISION 23.8.1991

<u>Shri Ved Kumar</u> <u>Shri B. Krishan,</u> <p style="text-align: center;">Versus</p> <u>Union of India & anr.</u> <u>Union of India & anr.</u>	<p style="text-align: right;">Petitioner Applicant</p> <p style="text-align: right;">Advocate for the Petitioner(s) Applicant</p> <p style="text-align: right;">Respondents</p> <p style="text-align: right;">Advocate for the Respondent(s)</p>
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The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K.CHAKRAVORTY, MEMBER(A)

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? */no*
4. Whether it needs to be circulated to other Benches of the Tribunal? */no*

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. D.K.CHAKRAVORTY, MEMBER)

The applicant, who is working as Accounts Officer in the Pay and Accounts Office, Ministry of Information and Broadcasting, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- " (i) cancellation of allotment in respect of premises No.B.255, Sarojini Nagar, New Delhi vide letter dated 23.7.1986 may please be set aside.
- (ii) the eviction order No.EC/714/ADP/LIT/86/TC dated 31.12.87 may also please be set aside.
- (iii) that the applicant be not made liable to pay any damage/market rate of Licence Fee in respect of the premises in question from the date of cancellation effective from 12.5.1986."

2. The facts of the case in brief are that the applicant was allotted Government accommodation at premises bearing No.73/208, Sector I, DIZ Area, New Delhi in Sarojini Nagar. He was allotted quarter No.8.255 Sarojini Nagar, New Delhi in change from Quarter No.73/208, Sector I, DIZ Area, New Delhi mentioned above with effect from 12.5.1986. The respondents have cancelled allotment of Quarter No.8-255 Sarojini Nagar, New Delhi with effect from 12.5.86 on the ground that he was found to have sublet Quarter No.73/208, Sector I, DIZ Area, New Delhi. The respondents have also passed an eviction order on 31.12.87 after the cancellation of Quarter No.8-255 Sarojini Nagar, New Delhi.

3. The contention of the applicant is that he could not surrender the previous quarter bearing No.73/208, Sector I, DIZ Area, New Delhi owing to reluctance shown by his sharer in the said accommodation.

4. The applicant challenged the eviction order before the District Judge, Delhi. By order dated 15.12.86, the Additional District Judge remanded the case to Respondent No. 2. The applicant, thereafter, contested the cancellation of allotment before the Estate Officer, Directorate of Estates (Respondent No.2). Thereafter, the impugned order was passed by Respondent No.2 on 31.12.1987.

5. The applicant again preferred an appeal against the aforesaid order before the District Judge, Delhi. During the course of arguments, it was observed that the cancellation of allotment was not open to judicial review. In view of this, the applicant has stated that

he sought leave of the Court to withdraw the said appeal. On 11.5.91, the Additional District Judge passed the following order:-

" In view of the statement the appeal is dismissed as withdrawn. Record be returned and appeal filed be consigned to Records."

The aforesaid order was passed on the following statement made by the applicant:-

" I may be permitted to withdraw the appeal. I shall have my redress in the High Court if any."

6. The applicant has also stated that Respondent No.2 is simultaneously adjudicating upon other matter pertaining to recovery of damages in respect of premises in question on the basis of the impugned cancellation of allotment. The applicant has been directed to pay damages at the rate of Rs.20 per square meter in terms of Office Memorandum dated 27.8.87.

7. The applicant has challenged the impugned order of cancellation on the ground that it was based on the alleged ground of suspicion of subletting of the previous accommodation which had been vacated by him on 19.11.1986. At the time of taking over possession of the present accommodation, no subletting case was pending in respect of the previous allotment of accommodation.

8. We have carefully gone through the records of the case and have heard the learned counsel of both parties. The learned counsel of the applicant stated that the applicant had shared the previous accommodation

with an eligible officer and he had sent the intimation about the same to the authorities concerned. A copy of the intimation, said to have been sent by him, has not been annexed to the application. The respondents have also not chosen to file a counter-affidavit controverting the averments made by the applicant.

9. The learned counsel of the respondents contended that the application is not maintainable on the ground that it is barred by limitation. This contention is opposed on the ground that the applicant had withdrawn the appeal filed by him before the District Judge on 11.1.1991. The order passed by the District Judge did not in turn give an opportunity to the applicant to seek redress in appropriate form.

10. In our opinion, the preliminary objection of the respondents is not very forceful or convincing. The applicant had prayed before the learned Judge that he may be allowed to withdraw the appeal so that he could seek his redress in the High Court. The fact that the District Judge did not state in his order that the withdrawal is with a view to seek redress in the High Court should not be construed against the applicant.

11. The learned counsel for the applicant stated that the applicant has vacated the old premises on 19.11.1986. In case he had intimated to the respondents that the previous accommodation had been shared by the applicant with an eligible officer, the cancellation of the present accommodation, given to the applicant at B-255 Sarojini Nagar, New Delhi, by the impugned order dated 23.7.86 cannot be sustained in law. The recovery of damages or market rate of licence fee on that ground

would not also be legally sustainable.

12. In the light of the above, the application is disposed of with the following orders and directions:-

- (i) the cancellation of the allotment in respect of premises No.8-255 Sarojini Nagar, New Delhi by the impugned order dated 23.7.86 and the eviction order dated 31.12.87 are hereby set aside and quashed;
- (ii) the respondents are directed to consider the case of the applicant in the light of the observations contained in this order. In case the applicant had intimated to the respondents that he had shared the previous accommodation at 73/208, Sector I, DIZ Area, New Delhi and this is in accordance with the relevant rules, the respondents shall not levy any damages or market rate of licence fee in respect of the premises at B-255 Sarojini Nagar, New Delhi.

There will be no order as to costs.

D.K. Chakravorty
(D.K.CHAKRAVORTY)
MEMBER(A)

P.K. Kartha
(P.K.KARTHA)
VICE CHAIRMAN(J)