IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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13

OA 1969/91 10.04.1992

SMT. NEELAM CHIBBER ...APPLICANT

VS.

UNION OF INDIA ...RESPONDENTS

CORAM :

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

FOR THE APPLICANT ...SH.S.S. TIWARI

FOR THE RESPONDENTS ...SH.K.C. SHARMA, PROXY COUNSEL FOR SH.JOG SINGH

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes

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

The applicant, working as UDC in the Office of Regional Provident Fund Commissioner at Faridabad is in occupation of a Government accommodation in Bhavishyanidhi Enclave, Sector 29, Faridabad. The applicant was served with an order dt.11.7.91 issued by respondent No.3 cancelling her allotment of the aforesaid premises on the ground mentioned therein. The applicant has assailed this order on the ground that no allegations taken as proof or established as mentioned in that impugned order. The applicant has also been issued another order whereby the rent of the premises has been calculated at the penal rate of rent as prescribed under the Extant Rules. The applicant has,

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therefore, prayed in this application that these impugned orders be set aside as well as the order of cancellation.

The respondents contested the application and filed the counter taking a preliminary objection that the applicant has not exhausted the departmenjtal remedies as provided under Section 20 of the Administrative Tribunals Act, 1985. It is further stated that the applicant has not come with clean hands and the provisions of Rule 20 of EPF Central Board of Employees (Allotment of Residences) Rules, 1972 where the consequence of breach of rules and conditions is provided and the penalty of cancellation of allotment can be imposed. In the counter, the various averments made in the application have also been refuted.

I have heard the learned counsel of the parties at lengthh. As regards the preliminary objection under Section 20 of the Administrative Tribunals Act, 1985, I do find that the applicant himself in column 6 of the application mentioned that there is no statutory remedy available. However, it is in the discretion of the Bench to consider the matter as the words in the Section are ordinarily, "In a case where the person is faced with an order whereby the very existence of that person is likely to be disturbed and that apprehension may prompt the person to come directly to the Court under

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15

the relevant provision instea of again moving the department." However, this should not be taken as a precedent. But the facts of the present case are that the applicant appears to have been penalised for the vicarious acts of her husband and that too, beyond the premises in the park.

As regards on merits, it shall not be proper to deal with the matter on the various averments made on one side and refuted by the other side because the present order dt.11.7.91 as well as the subsequent order dt.13.8.91 have been passed without issuing any show cause notice to the applicant. Only on this ground as the principle of natural justice, if not, the requirement under Article 311 is, therefore, required that any order condemning a person should not be passed without giving him an opportunity of being heard and to show cause against a proposed action likely to be taken in the matter. The impugned order does not show that before passing this order, the respondents have resorted to the issue of the show cause notice. The respondents have taken for granted as established that the husband of the applicant firstly was drunk and secondly, that in that state of intoxication he has done some act by uprooting the swing in the closed by park of the enclave where children used to play. In fact, there is no document on record except thle argument of the learned counsel for the respondents to substantiate this order.

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16

The learned counsel for the respondents, however, urged that there was an enquiry and after that this order was passed. Even if there is an enquiry, the proceedings of that enquiry have not been referred to in the counter nor there is a mention of any such thing in the order itself. Thus this argument of the learned counsel cannot be accepted as based on certain acceptable evidence.

As stated above, the application is disposed of on the technical ground that the respondents have not given any hearing and notice to the applicant. So the matter is not probed further. The learned counsel for the applicant, however, has placed reliance on the authority reported in 1990(2) ATLT CAT Short Notes p-31. However, since the matter is not taken up on merits, the cited law is also not discussed whether applicable to the present case or not.

In view of the above observations, the impugned orders dt.11.7.91 and 13.8.91 are quashed and set aside with the liberty to the respondents, if they are so advised, to proceed according to the Extant Law. In the circumstances, the parties to bear their own costs.

(J.P. SHARMA)
MEMBER (J)
10.04.1992

AKS