IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

OA 1258/90 with OA 2875/92 Date of decision: 6.8.1993.

Shri M.P. Gupta (Applicant is Name in both the Cases) Versus Union of India & Others

CORAM

Hon'ble Member (J) Shri C.J. Roy
For the applicant .. Shri S.S. Tiwari, Counsel
For the respondents .. Shri M.L. Verma, Counsel in OA 1258/90
Shri H.K.Gangwani, Counsel in OA 2875/92

J U D G E M E N T

The applicant is aggrieved against the order dated 2.9.1992 cancelling the Govt. accommodation No.50/1, Kabul Lines, Delhi Cantt-10 allotted to him and declaring him as unauthorised occupant of the said accommodation alongwith charing of damage rent. The applicant, employed as Upper Division Clerk in the Rajputana Rifles, Delhi Cantt. was allotted the Government accommodation in question in May, 1987. He was issued with a cancellation letter dated 25.11.87 on the ground that he sub-let the accommodation. He represented against the said order and the order dated 25.11.87 was cancelled and market rent recovered from the applicant was ordered to be refunded in July,1988. He was again issued with a cancellation letter on 18.6.90 and he challenged the same by filing OA 1258 in June, 1990. That OA was admitted and the respondents were restrained from implementing the cancellation order untill further orders. However, the respondents have issued the impugned order again on 2.9.1992 and the applicant has sent his representation on 18.9.1992. His representation was rejected by letter dated 21.10.92. Hence this application.

The respondents have filed their counter denying the contention of the applicant. They have stated that the application is barred by the Tribunal's jurisdiction under Section 15 of the PPE Act, 1971 and on this count it is liable to be dismissed. They have further stated that a surprise check was carried out by a Board of officers in November, 1987 which confirmed the sub-letting of the govt. accommodation by the applicant to one Shri Ram Pal. Accordingly, the applicant was asked to vacate the accommodation within 60 days and was charged market rent, without ordering any court of inquiry as it was not mandatory. The applicant pleaded for mercy and being the first offence, a lenient view was taken and he was pardoned. Another investigation was carried out in September, 1989 when again itwas found by the team of Board of officers, the accommodation was sublet to one Mrs. Manju, but in order to give enough opportunity to the applicant to defend himself, a court of inquiry was ordered on 29.9.89. However, due to uncoperative attitude of the essential witnessed, the court of inquiry had to be dispensed with. But it was confirmed by a senior staff officer of the department that the house was found sub-let. Based on this confirmation, the accommodation wascancelled in September, 1989 and the applicant was charged market rent. On receipt of another complaint in July, 1992, one more suprise check was carried by the boardod of officers on 27.7.92 which found that the accommodation was fully sub-let to one Mrs. Shobha by the applicant. Having found the applicant a habitual offender, the respondents aver that the accommodation has rightly been cancelled this time by order dated 2.9.1992. The representation of the applicant dated 18.9.92, which the respondents allege as false and far from facts, was not accepted because

the proof of subletting of accommodation by the applicant was established by three different board of officers on three different occasions. The respondents further claim that as per Para 17 of SRO 308/78, if any allottee sublets the residence to others, the allotting authority may, without prejudice to any other disciplinary action that may be taken against him, cancel the allotment of the residence. Therefore, they justify the action taken by them and pray for the dismissal of the application.

The applicant has filed a rejoinder denying the averments made by the respondents in the counter and reasserting the same points he has made in his OAs.

The respondents have filed an MP for an early hearing of the OA stating inter alia that they are in great hardships and inconvenience as the quarter has not been vacated by the applicant so far.

I have heard Shri S.S.Tiwari, learned counsel for the applicant and Shri H.K.Gangwani & Shri M.L. Verma, counsel for the respondents and perused the records.

In this case, there are three surprise checks and every time the respondents found that the relevant accommodation was being occupied by somebody other than the applicant. Therefore, they have cancelled the allotment made to the applicant on the ground that the applicant had sub-let the accommodation allotted to him.

The applicant had received cancellation order dated 25.11.87 wherein it was stated that on a surprise check, it was found that the house No.50/1, Kabul Lines, Delhi Cantt-10 was sublet by the applicant and he was given sixty days time to vacate the above said accommodation. The applicant claims that the enquiry has not been conducted properly since the prosecution witnesses did not turn up. The cancellation letter in that case is Annexure 'B'.

The case in this application and the OA 1258/90 is common and the OA 1258/90 was admitted and an interim order was granted and so the same is applicable in this case also. The applicant is same.

There was similar cancellation of allotment after surprise checks during the second and third time and on both the occasions cancellation was done without holding an enquiry and without giving an opportunity to the applicant to prove his innocence. In spite of the stay order given by the Tribunal in OA 1258/90, the respondents have cancelled the allotment on the same charges of subletting. The representation of the applicant is at Annexure 'C'. The applicant received a letter dated 18.9.92 from the respondents which he replied on 24.9.92 with so many details. In spite of this, the impugned order was passed against the applicant. Hence the applicant now claims to set aside the order of cancellation dated 2.9.92 and direct the respondents to charge normal licence fee.

The cancellation orders do not show that a show-cause notice was issued, as may be seen in Annexures A & B. In Annexure D, a cryptic notice was given by quoting extracts of Station Hqrs. letter No.202/6/A/P.50/I/KL/Q5 dated 10.9.92 asking the applicant to submit his reply within 7 days. The applicant states that he has replied to this.

In this connection the Tribunal's decision dated 10.4.1992 in OA 1969/91 was brought to my notice wherein it has been held that 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 orders have been passed without issuing any show cause notice to the applicant and the requirement under Article 311 is 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.

As stated supra, except for the cryptic notice, no show cause has been issued and no eviction order is passed. If there is no eviction order passed, cancellation order can not be passed.

Therefore, the petition is allowed and I direct the respondents to hold a proper enquiry after issuing a show cause notice and take action as per rules. This exercise may be completed by the respondents within three months from the date of receipt of this order. Until then, the interim order already passed is directed to continue.

प्रमाणित सत्य प्रतिलिपि
दिनांक.....
CERTIFIED TRUE COPY
Dt.....

(C.J. Roy)
Member(J)

Section Officer (J)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रधान न्यायपीठ, नई दिल्ली
Principal Bench, New Delhi