

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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C.A. NO.436/92

DATE OF DECISION : 06.03.92

SHRI KISHORI LAL

...APPLICANT

VS.

UNION OF INDIA

...RESPONDENTS

CORAM

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

FOR THE APPLICANT

...SHRI D.P. AVINASHI

FOR THE RESPONDENTS

...SHRI R.L. DHAWAN

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

JUDGEMENT (ORAL)

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

The applicant, Kishori Lal was working as Senior Khallasi and has been in occupation of an allotted Railway quarter No.4/11 Railway Colony, Sarojini Nagar, since November, 1977. The applicant was given a notice on a complaint lodged by one Dhani Ram that he has sublet the premises. On this, the applicant made a representation dt.12.7.88 (Annexure A). However, DAC, Estates by the letter dt.6.7.88 cancelled the allotment of the said quarter and an enquiry was also instituted against the applicant as in the said letter dt.6.7.88, the copy was also sent to the General Manager, Northern Railway, Baroda House informing

him about a disciplinary action for major penalty against the above named employee. A copy has also been endorsed to Assistant Commercial Officer who is the disciplinary authority of the applicant.

2. The applicant was served with an eviction order (Annexure 5) and as such the proceedings under PP Act, which were taken against him ended by the judgement of the Estate Officer dt. 3.5.91. The disciplinary authority appointed an Enquiry Officer, Shri Jagdish Roy, who conducted the enquiry and submitted his finding to the disciplinary authority by the report dt.28.2.91 (Annexure R2/1 of the counter).

The said report of the Enquiry Officer is reproduced below :-

"CONCLUSION

Charge one :-

It seems to be proved that a portion of the quarter was subletted for 21 days but there is no proof of any payment.

Charge Two :-

Not proved.

Charge Three :-

It seems to be proved that constructed structure of A.C. sheets in the said quarter exists. But it is not proved whether it was constructed before or after his occupation. This is illegal."

On this report of the Enquiry Officer, the disciplinary authority passed on 15.5.91 the order, which is also reproduced below :-

"Sh. Jagdish Roy, CRSS/JCA who was appointed as Enquiry Officer to enquire into the charges framed against you vide SF-5 issued to you vide memorandum of even number dt.26.7.88, has submitted his enquiry report. The undersigned being the disciplinary authority has considered

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the findings of the enquiry report vis-a-vis all oral, documentary and circumstantial evidence relevant to this case. In my considered opinion, the charges against you remain unsubstantiated and, therefore, you are exonerated."

The applicant after the enquiry in his favour on 15.5.91, informed the Estate Officer about the conclusion and the dropping of the proceedings against him as the charges of subletting have not been substantiated. In spite of the fact, the applicant appears to have been proceeded against for eviction and in view of this, he filed the present OA in February, 92. The Division Bench ordered the respondents to file the counter and also the matter be considered for grant of interim relief today, i.e., 6.3.92. The learned counsel has filed the counter. Both the counsel are prepared to argue the case on merit.

3. In the counter, the plea has been taken by the respondents that since the applicant sublet the premises allotted to him for his own residence, so he was proceeded under Section 5 of the PB (Unauthorised Occupants) Act, 1971 and the Estate Officer after drawing the proceedings and fixing several dates of hearing passed the judgement on 3.5.91 holding that the applicant has subletted the premises and ordered his eviction under Section 5(i) from the Railway quarter 4/11. The contention of the learned counsel for the respondents is that this order of the Estate Officer has become final, but in fact this is the order which has been challenged in the present Original Application.

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4. It is further contended by the learned counsel that the disciplinary authority has gone beyond his authority and the rules in exonerating the applicant because when the disciplinary authority disagreed with the finding of the Enquiry Officer, in that case, he should have adopted the procedure of remitting the matter again to the Enquiry Officer, rather than passing the clear order for direction. However, these facts have not been alleged specifically in the counter.

5. The learned counsel for the respondents also argued that there is likelihood of the order of the disciplinary authority being the subject of suo motu review by the controlling/competent authority. However, this fact too has not been alleged or averred in the counter. What is said in the counter is only that the applicant has sublet and he has been rightly evicted by the Estate Officer by the impugned order dt.3.5.91.

6. I have heard the learned counsel at length. Basically, the charge against the applicant of subletting has been set at naught by the order of the disciplinary authority dt.15.5.91 and that order still exists. An order is a good order as well as valid one, unless and until it is said to be incorrect or in any way infirm or not enforceable in law by an authority superior to the one, who has passed the order.

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In this case, on the complaint of some person, the allotment of quarter in the name of the applicant was cancelled by the DAC, Estate by the notice dt.6.7.88 and in the same notice, it was endorsed that an enquiry be also held departmentally against the applicant and the copy was sent to the Secretary, Head Quarters Office, Northern Railway as well as Assistant Commercial Officer (Reservation). The latter is the disciplinary authority in this case. When the Estate Officer has reposed confidence in the disciplinary authority, thus there is no reason why the said notice dt.6.7.88 should be given a legal sanctity when the charge after due enquiry process has been found not substantiated by the disciplinary authority. The contention of the learned counsel for the respondents that the Enquiry Officer has held the charge proved is also basically wrong as is evident by the finding of the Enquiry Officer quoted above in the earlier part of the judgement. The Enquiry Officer said that the applicant has sublet the premises for 21 days, but there is no proof that he ever took payment on that account. Subletting is a form of lease which involves certain consideration. In this case, there is no finding by the Enquiry Officer that there is any payment of <sup>consideration</sup> by the applicant.

7. In the last para of the Enquiry Officer's report, this fact has also been negative because it was also alleged that

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the applicant has raised certain structures, but it could not be substantiated whether those structures were existing in the premises before the date of allotment in favour of the applicant. The disciplinary authority rightly exonerated the applicant discussing these facts. The Enquiry Officer was lukewarm in his own findings and the learned counsel wants me to believe that the disciplinary authority did not act on the finding of the Enquiry Officer. Thus the finding of the Enquiry Officer right or wrong has been considered by the disciplinary authority and who has finally exonerated the applicant. However, this observation in the judgement will not come in the way of any superior authority judging the validity of the order of the disciplinary authority. It is only to give boost to the fact that the applicant has been exonerated rightly or wrongly by the disciplinary authority and as such a notice of cancellation of the allotment dt.6.7.88 itself goes away. Any proceeding initiated on the basis of that notice also is not tenable under law and the order of eviction of the Estate Officer dt.3.5.91 also crumbles down.

3. Having given a careful consideration to all these aspects, there is substance in the contention of the learned counsel for the applicant that the order dt.3.5.91 passed by the Estate Officer becomes an order, which is

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unenforceable under law by virtue of the applicant having been exonerated on the same charge by the disciplinary authority, who duly appointed the Enquiry Officer under law to go into the details of subletting. The allotment order, therefore, still remains in favour of the applicant and notice issued to the applicant dt.6.7.88 cancelling the allotment also goes away.

9. The Original Application, therefore, is disposed of in the following manner :-

(a) The order of eviction dt.3.5.91 is set aside and quashed.

(b) The Railway quarter No.4/11 Railway Colony, Sarojini Nagar, New Delhi shall remain allotted as usual to the applicant except till it is cancelled under due process of law, not on the charge of subletting in October, 1987, but that on any other ground.

(c) The applicant shall be restored to the possession of quarter No.4/11 Railway Colony, Sarojini Ngr. if he has been evicted, as it has been alleged, in pursuance of the order of the Estate Officer dt.3.5.91.

(d) The respondents are directed only to charge the licence fee under rules of the said quarter No.4/11 Railway Colony, Sarojini Nagar.

The respondents are directed to comply with the above order

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within a period of one month from the date of receipt of a copy of this Judgement. In the circumstances, the parties shall bear their own costs. A copy be given dasti to the learned counsel for the parties.

*J. P. Sharma*  
(J.P. SHARMA) 6.3.92  
MEMBER (J)  
06.03.92