

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(10)

O.A.No.134 of 1993

New Delhi, this the 25th day of February, 1994.

Hon'ble Mr B.N.Dhondiyal, Member(A).

Dina Nath son of Shri Laxmi Chand
resident of flat No.616 Kalyanwas Delhi
Ambulance Driver in LNJP Hospital, New Delhi.

... Applicant.

(through Mr S.C.Jain, Advocate).

vs.

1. Lt.Governor, Delhi,
Rajniwas, Delhi.

2. Secretary(P&D),
Delhi Administration, Vikas Bhavan, I.P.Estate
New Delhi.

3. Assistant Collector I Ind Grade,
Room No.9, Old Civil Supply Building,
Tis Hazari Delhi.

... ... Respondents.

(none appeared)

ORDER(CRAL)
(delivered by Hon'ble Mr B.N.Dhondiyal, Member(A)

Shri Dina Nath is working as Ambulance
Driver in L.N.J.P.N.Hospital, New Delhi. Flat No.616
Kalyanwas was allotted to him in 1984. He is aggrieved
by the recovery order received in November, 1992 for
a sum of Rs.58543/- as damages. On receipt of
this impugned order, he had represented to the
Assistant Collector on 23.11.1992 that he has
never sub let the flat. A similar representation
was made to the Secretary(P&D), Delhi Administration
on 1.12.1992, alongwith copies of documents,
establishing that he was himself living in the flat.
He was assured that a fresh inquiry would be made.
He has prayed that the Recovery order of Assistant
Collector Grade-II for recovery of Rs.58543/- be
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quashed as also any order passed by the respondents for cancellation of allotment.

2. In the counter-affidavit filed by the respondents, the main averments are these. Flat No.616 Kalyanwas was allotted to the applicant when he was working as Ambulance Attendant Class IV. On the basis of the enquiry report dated 13.2.1985, a notice was issued to him to appear before the O.S.D. on 25.7.1985. The applicant admitted that he had sub let the flat to one Smt. Arti Bhattacharya and that his family was not residing in the said flat. On the basis of his admission, the allotment of the aforesaid flat was cancelled vide order dated 28.8.1985.

3. A docket order was passed on 9.2.1994 stating that if the counsel for the respondents or departmental representative on their behalf is not present on 21.2.1994, it would be presumed that the respondents are not interested in prosecuting this case. None was present on behalf of the respondents on 21.2.1994. As a matter of indulgence, the case was listed for final hearing on 24.2.1994. Even though the case has been called in the revised list, none appears on behalf of the respondents. The case is, therefore, being decided on the basis of pleadings on record and the submissions made by the learned counsel for the applicant.

4. The case of the respondents is solely based on the purported admission of the applicant regarding (Ann: R-1) sub-letting on 25.7.1985. This shows that he had produced his ration card, which carried his name and his brother's name and that his family was living in his Home Town. It has been mentioned

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that he had given this house to Smt. Arti Bhattacharya. It also mentions that no other papers were available with him except the possession slip. The applicant had appealed against the order of eviction and recovery to the Addl. District Judge, Delhi. In the judgment dated 13.1.1988, the learned Addl. District Judge made the following observations:

"5. Even if for the sake of arguments first contention is rejected I find no sufficient evidence on record of the case to prove that the quarter in question was sub let by the appellant. The appellant had placed on record of the Estate Officer file ration card showing his residence in the allotted quarter. The Estate Officer had not taken evidence of any neighbourer that it was in occupation of sub letters Shri Rana. The enquiry officer had also not noted down ration card No. of Shri Rana to satisfy that the quarter in question was in fact sub let by the appellant.

6. For the reasons mentioned above, the impugned order is set aside. Appeal is thus, accept leaving the parties to bearing their own costs."

5. The respondents should have taken initiative to cancel the order of eviction and recovery immediately after the above judgment was given by the Addl. District Judge, Delhi. The learned counsel for the applicant has stated that no appeal has been filed challenging the aforesaid judgment.

6. In the facts and circumstances of the case I hold that the applicant is entitled to succeed and the impugned order of recovery issued by the Assistant Collector-II Grade, relating to damages to the tune of Rs. 58,543/- from the applicant is hereby quashed.

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The order of cancellation has already been
quashed by the learned Addl.District Judge.

7. There will be no order as to costs.

/sds/

B.N.Dhondiyal
(B.N.Dhondiyal) 25/2/94.
Member(A)