

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

7

DA No.1362/93

Date of decision: 18.08.93.

Smt. Neelam Malik

...Petitioner

Vs.

Union of India through the
General Manager, Northern
Railway, Baroda House, New
Delhi & Anr.

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner

Shri B.S. Mainee, Counsel.

For the respondents

Shri Shyam Moorjani, Counsel.

1. Whether Reporters of local papers may be allowed
to see the judgement? *Ans*

2. To be referred to the Reporter or not? *Ans*

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.1362/93
MP 1952/93

Date of decision: 18.08.93.

Smt. Neelam Malik

...Petitioner

Versus

Union of India through the
General Manager, Northern
Railway, Baroda Hose, New
Delhi & Another

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner

Shri B.S. Maine, Counsel.

For the respondents

Shri Shyam Moorjani, Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

We have heard the learned counsel for both the parties. The petitioner in this O.A. is in occupation of quarter No.20/2, Railway Colony, Delhi Kishanganj since September, 1989. A vigilance check was carried out when it was found that the petitioner allegedly had sublet the said quarter to Shri Atul and also constructed an unauthorised hut on the roof of the said quarter where one Mrs. Shobha Pandey was allegedly found to be residing. In consequence the respondents cancelled the allotment in favour of the petitioner and directed her to "vacate this quarter within seven days from the date of issue of this notice and hand over its vacant possession to IOW/Estate, DRM Office, New Delhi, failing which this office will be compelled to initiate Eviction Proceedings against you under PPE Act, 1971 at your risk, cost and responsibility."

d

2. Aggrieved by the above order the petitioner filed this petition under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned order dated 11.6.1993, cancelling the allotment be quashed and set aside.

3. When the case came up for hearing at the admission stage, an interim order was granted to the petitioner to the following effect:-

"In the meanwhile, status quo in regard to the occupation of the railway quarter shall be maintained."

The respondents have filed their counter-affidavit and the petitioner has filed her rejoinder. The petitioner has also filed MP-1952/93, praying that the Tribunal may restrain the respondents from making recovery of market rent from the applicant till the final disposal of this application.

4. The respondents have contested the pleas taken by the petitioner in the OA by filing their counter-affidavit and the prayer for restraining the respondents from recovering market rent, in the reply filed to the MP. The petitioner has filed rejoinder in respect of the OA and MP. Shri B.S. Maine, learned counsel for the petitioner submitted that the petitioner has been served a charge memo by the respondents (page 10 of the paperbook) on the charge that "Mrs. Neelam Malik, Steno subletted her Railway quarter No.20/2, Delhi Kishanganj to Shri Atul, Sr. Clerk, Stores Branch, Baroda House, New Delhi on rent @ Rs.300/-(Rs. three hundred only per month). By the above act of omission and commission, Mrs. Neelam Malik, Steno has failed to maintain absolute integrity and acted in a manner of unbecoming of a Railway servant thereby contravened Rule 3.1(1) and (iii) of Railway Service Conduct Rules, 1966."

2

Having charged the petitioner for subletting, the respondents should not have taken the action by cancelling the allotment in favour of the petitioner till the charge against her was proved in the disciplinary proceedings. The learned counsel further submitted that till the disciplinary proceedings are completed and the charge proved the respondents cannot also recover the rent, as contemplated by them. He, however, submitted that no recovery of market rent has been made so far.

5. Shri Shyam Moorjani, learned counsel for the respondents submitted that the order cancelling the allotment has been made to proceed against the petitioner under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the P.P. Act). These proceedings have nothing to do with the disciplinary proceedings initiated against the petitioner. The disciplinary proceedings are initiated for misconduct by subletting the Railway quarter which a Railway servant is not permitted to do unless such a sanction is obtained from the competent authority. The proceedings under the P.P. Act are to secure eviction from the quarter for its misuse. While admittedly the foundation of both the proceedings viz. under P.P. Act and disciplinary proceedings is the same, the objective of both the proceedings is different. The learned counsel, therefore, contended that the petitioner cannot come to the Tribunal at this stage and perempt the proceedings initiated against her under P.P. Act. The respondents have proceeded in accordance with law and, therefore, they should not be stopped from completing the proceedings.

d

6. We have considered the submissions made by the learned counsel for both the parties. In this O.A. we are concerned with the impugned order only, according to which the allotment made in favour of the petitioner has been cancelled. The learned counsel for the petitioner had contended that the petitioner has the right to approach the Tribunal in accordance with the Full Bench judgement in the case of Rasila Ram and Ors. v. Union of India & Ors. OA No.89/88 etc. decided on 5.5.1989 - Full Bench Judgement (CAT) 346 according to which "If the Government employee is aggrieved by the orders of the Estate Officer, he can approach the Tribunal at that stage, but if he chooses to file an appeal before the District Judge, he may not file any application before the Tribunal until completion of his case before the appellate authority (District Judge). This would provide an opportunity to aggrieved Government employee to argue their cases before one more authority before approaching the Tribunal. To the basic question, whether the Tribunal has jurisdiction over eviction proceedings, our answer is in the affirmative." The learned counsel, therefore, submitted that since the Tribunal has jurisdiction over eviction proceedings, he has rightly approached the Tribunal to seek relief.

7. The said judgement, in our view, is not of any help to the petitioner, as this only affirms that the Tribunal has jurisdiction over the eviction proceedings. In this case the eviction proceedings are yet to start, no order has been passed against the petitioner except the one, cancelling the allotment of the quarter. The eviction proceedings under P.P. Act are under contemplation. Unless the respondents cancel the allotment they cannot proceed under the P.P. Act in terms of Section 5 readwith

d

Section 7 of the P.P. Act, 1971. The petitioner will have full opportunity to defend himself in the eviction proceedings which have to follow the provisions made in the P.P. Act, 1971. We further find that the respondents are entitled to effect recovery of the rent subject to certain conditions in terms of paragraph-1711 of the I.R.E.M. Vol.II, the extract of which is reproduced below:-

"1711. Recovery of rent.-(a) The rent charged to a railway servant in respect of quarters supplied should not exceed 10 per cent of his/her monthly emoluments irrespective of the scales of pay allotted.

(b) Notwithstanding anything contained in subparagraph (a). Railway Administration may, by general or special order, provide for charging a rent in excess of 10 per cent of the emoluments from a railway servant-

.....
.....
.....

(iv) who sublets without permission the residence supplied to him, or

(v) who does not vacate the residence after the cancellation of the allotment.

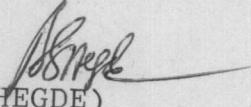
Note.--Rent will be recovered from such railway servants who sublet their quarters without permission of the competent authority at the rate of $7\frac{1}{2}$ per cent of the total outlay of the quarter including the cost of land."

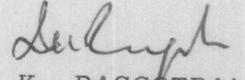
8. In the above facts and circumstances of the case, we are not inclined to interfere in the matter at this stage. The petitioner will be at liberty to approach

d

the Tribunal when the final order is passed under the P.P. Act, 1971. While the respondents are within their right to effect recovery at the inflated rate in accordance with the provisions made in I.R.E.M., reproduced above, we are of the opinion that at the present stage it will cause a lot of hardship to the petitioner if she is compelled to make payment of license fee at market rate, particularly when proceedings against her under the P.P. Act, 1971 are being initiated. Accordingly we direct the respondents that till the proceedings under the P.P. Act are completed, they should recover the normal license fee from the petitioner. They, however, shall be at liberty to recover the market rent in case the charge against her in the said proceedings is proved and an adverse order is passed.

9. The O.A. is disposed of, as above. No costs.
10. MP stands disposed of accordingly.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

San.