

Date	Office Report	Orders
		<p>OA-2393/93</p> <p>27.04.94</p> <p>Present: Sh. G. D. Gupta, counsel for the applicant.</p> <p>Sh. M. K. Gupta, counsel for the respondent.</p> <p>As prayed by the learned counsel for the applicant, list on 18.5.94.</p> <p>Interim order already passed to continue till then.</p> <p><i>Sh (B.N. Dhoundiyal)</i> Member (A)</p> <p>1/1 A.2. 18-5-1994</p> <p>Present - Counsel for parties.</p> <p>Heard in past. Call on 30.5.1994, by which time the respondent shall produce the relevant case records. This will be treated as part heard.</p> <p><i>Arif Ali (S. R. Adige) MLA</i></p> <p>As,</p>

Date	Office Report	Orders
	1. O.A.2393/93	<u>31.5.94</u>
		Present: Ms. Monika Puri, proxy counsel for Shri G.D. Gupta, learned counsel for the applicant. Shri M.K. Gupta, learned counsel for the respondents. This is a part-heard case. Let this case be put up on 3.6.94 at <u>3 p.m.</u> for conclusion of arguments. On that date, Shri M.K. Gupta, will produce the relevant record, which he states, is in his possession. Interim order, already passed, will continue till that date.
		<i>R. Adige</i> (S.R. ADIGE) MEMBER (A)
	<u>3.6.94</u>	Shri G.D. Gupta, Counsel for the applicant. Shri M.K. Gupta, Counsel for the respondents. Present. Heard both the counsels on today. Order required. Judgment will be pronounced on 30th May 30th May. <u>1994</u>
Record	Return to Sh. M.K. Gupta + one copy on 3.8.94. <u>Li</u>	<u>3.8.94.</u> (S.R. ADIGE) Member (A)
		ORDER pronounced today.
		<u>130</u> <u>1</u> <u>February</u>

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2393/93

New Delhi this the 3rd day of ^{August} ~~July~~, 1994.

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Ajit Kumar Senapati S/O Late Shri
Bishnu Pada Senapati,
R/O Village Gobind Nagar,
Post Sekandari,
Distt. Midnapur (West Bengal).
Presently residing at
Qr. No. 197/II, N.H. IV,
Faridabad.

... Applicant

By Advocate Shri G. D. Gupta

Versus

1. Union of India through the
Secretary to the Govt. of India,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.
2. The Director of Estate,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.
3. The Assistant Estate Manager,
Ministry of Urban Development,
N.H. IV, Faridabad (Haryana).
4. The Plant Protection Adviser to
Govt. of India, Directorate of
Plant Protection, Quarantine &
Storage, N.H. IV, Faridabad,
Haryana.

... Respondents

By Advocate Shri M. K. Gupta

O R D E R

In this application, Shri Ajit Kumar Senapati,
UIC, Directorate of Plant Protection, Quarantine &
Storage, Department of Agriculture & Cooperation,
Faridabad, has prayed for quashing the order dated
10.9.1990 cancelling the allotment of quarter No.
197/II, N.H. IV, Faridabad (Annexure A-4); the order
dated 29.10.1992 rejecting the applicant's appeal
(Annexure A-8); and the order dated 1.12.1992 (A-10)

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ordering recovery of damages for alleged unauthorised occupation of the quarter amounting to Rs.29,455/-.

2. In February, 1989, the applicant was allotted quarter No. 197/II, N.H. IV, Faridabad out of the Central Government general pool. A spot inquiry of the said quarter was conducted on 12.7.1990, at 9.00 a.m. by staff deputed from the office of the Assistant Estate Manager, Faridabad, namely, S/Shri T. Mins and Isher Singh, who reported that the quarter was in the occupation of one Smt. Lata Devi and the quarter had been fully sub-let. I have perused the inspection report contained in the relevant departmental file maintained by the respondents on the subject, which was produced for my inspection during the hearing, and in the inspection report there is an endorsement that when the two inspecting officers went to the quarter, they found it occupied by the said Smt. Lata Devi. When they asked who she was, she declined to say anything, upon which they asked her to produce documents in support of her entitlement to reside in that quarter, but it appears that she failed to produce any documents either. Accordingly, the two officers reported that the quarter had been fully sub-let. On that basis, notice dated 24.7.1990 was issued to the applicant directing to show cause by 7.8.1990 why action should not be taken against him for contravening Rule SR 317-B-20 of the Allotment Rules and giving him opportunity to appear in person on 16.8.1990 along with such evidence as he possessed, to establish that he had not contravened the rules.

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3. From the written statement dated 16.8.1990 furnished by the applicant to the authorities, which is available in the departmental file of the respondents, it would appear that the applicant gave details of his ration card No. 24899 dated 12.2.1990; his CGHS card No. 461370, both of which showed his address as quarter No. 197/II, N.H. IV, Faridabad. His savings bank account No. 12975 and vehicle registration also showed his address as qr. No. 197/II, N.H. IV, Faridabad. Against the column marked for colleges and schools where the children were studying, the applicant stated he was unmarried but claimed that he had received letters frequently at the said address, i.e., qr. No. 197/II, N.H. IV, Faridabad. The Assistant Estate Manager, who heard the applicant in person on 16.8.1990 has made an endorsement at the bottom of the allottee's statement, in which he has stated that the applicant appeared before him in person on 16.8.1990 and stated that he was a bachelor and that the lady residing in his quarter Smt. Lata Devi was related as a cousin sister. He, however, failed to mention where her husband was working. He also produced an inland letter in support of his claim to be residing in that quarter, but that letter was dated 6.8.1990 while the alleged sub-letting was conducted on 12.7.1990. The Assistant Estate Manager noted that Smt. Lata Devi's name was not a Bengali name and her husband was working in Faridabad in a State Government school. He held that this was a case of full sub-letting and hence the allotment was to be cancelled by giving 60 days' notice. Accordingly,

memorandum dated 10.9.1990 was issued to the applicant holding that the applicant had sub-let the said quarter to unauthorised persons in contravention of SR-317-B-20 of the Allotment Rules, cancelling the allotment from the date of vacation of the quarter or the expiry of 60 days from the date of issue of the memorandum, whichever was earlier; declaring the applicant ineligible for Government residential accommodation for a period of five years, and charging full flat rate of licence fee under FR-45-A from the applicant with effect from the date of issue of the orders till the date of vacation of the quarter, if the same fell within the period of 60 days and in case the quarter was not vacated within that period, it was ordered that the allotment would stand cancelled from the 61st day and from that day to the date full vacant possession was handed over, the applicant would be liable to pay licence fee at damage rates. The said memorandum further stated that in case the applicant was aggrieved by the said orders, he could prefer a representation to the Directorate of Estates, New Delhi within the period of 60 days of the date of communication of the order to him, through proper channel.

4. In response to the said memorandum dated 10.9.1990, the applicant submitted a representation which was forwarded by his superior on 8.10.1990. In that representation, the applicant claimed that he had all along been residing in the said quarter and had not sub-let to any unauthorised person as alleged and further submitted that he had produced evidence in proof of his residence, namely, ration card, CGHS card, letters addressed to him, bank pass book, registration

book etc. He further stated that during the period from 23.6.1990 to 15.7.1990, he was on leave for availing LTC to his home town and had asked a friend (emphasis supplied) to reside in the said quarter during the aforesaid period as a temporary arrangement for care taking purposes, during the course of which perhaps the inspection had been conducted. He prayed for favourable consideration of his representation and early decision for withdrawal of the notice dated 10.9.1990. The applicant attached a copy of the office order No.237 dated 26.7.1990 granting him earned leave from 23.6.1990 to 15.7.1990 and permitting him to avail LTC to visit his home town. Photo copies of evidence of his occupation of the said quarter, such as ration card entries, savings bank entries, vehicle registration certificate, application for allotment of a plot of land, all of which contained his address, namely, qr. No. 197/II, N.H. IV, Faridabad, were also enclosed. In response to this appeal, the applicant was informed vide Directorate of Estate's letter dated 29.8.1991 that the same had been considered by the appellate authority who had rejected the appeal and the applicant was directed to hand-over the vacant possession of the said quarter immediately failing which action would be taken for physical eviction under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Upon this, the applicant addressed an appeal dated 9.9.1991 to the Minister of State, Urban Development, New Delhi praying for re-inspection/fresh inquiry into the matter. It is not very clear whether the applicant

submitted another representation to the Minister of State, Urban Development dated 19.11.1991 or not, but at any rate by the Directorate of Estate's letter dated 29.10.1992 (Annex. A-8) he was informed that his appeal dated 19.11.1991 addressed to the Minister of State (M.O.S.), Urbad Development had been carefully considered by the competent authority and had been found to be without any merit. Accordingly, the applicant was directed to hand-over vacant possession immediately failing which action would be taken against him for physical eviction. It is significant that in his representation dated 9.9.1991 addressed to the M.O.S., Urbad Development, the applicant again claimed that during his absence on leave for the period from 23.6.1990 to 15.7.1990, he had asked a friend (emphasis supplied) to take care of the quarter in his absence.

5. Upon receipt of letter dated 29.10.1992 rejecting his appeal, the applicant addressed another representation dated 6.11.1992 to the Directorate of Estate alleging that no reasons had been given while rejecting his appeal, claiming that he had produced all documentary evidence in support of his bona fide residence in the said quarter, stating that on his representation, the M.O.S., Urbad Development, ordered re-inspection of the quarter in December, 1991, which was carried out and in the said re-inspection, the applicant had been found to be in occupation of the said quarter ever since its allotment to him, and prayed for communication of the reasons for rejecting his appeal.

6. It appears that soon after submitting his representation dated 6.11.1992, the applicant vacated the said quarter on 9.11.1992. On 1.12.1992, the Assistant Estate Manager, Faridabad in his letter to the Accounts Officer, PPQ & S, Faridabad, with copy to the applicant (Annexure A-10) intimated that the allotment of the quarter had already been cancelled w.e.f. 9.11.1990¹, and the applicant was liable to pay damage charges for the period of unauthorised occupation of the quarter w.e.f. 9.11.1990 to 9.11.1992. A sum of Rs.29,455/- was outstanding against him, and a request was made to recover the outstanding dues from the applicant's pay in monthly instalments and his final dues not be settled till a no-demand certificate was obtained from the office.

7. Upon this, the applicant submitted another representation through proper channel, addressed to the M.O.S., Urbad Development dated 29.12.1992 reiterating his earlier averments and protesting against the recovery of damage charges amounting to Rs.29,455/- for the period from 9.11.1990 to 9.11.1992. He stated that he had been given 60 days w.e.f. 10.9.1990 by the Assistant Manager to represent against the decision of cancellation and the applicant accordingly represented to the Directorate of Estate on 8.10.1990, but the Directorate took an inordinately long time of about one year and rejected his representation only on 29.8.1991. The applicant further stated that aggrieved by that decision he had represented to the M.O.S., Urbad Development on 9.9.1991 for review of

the Directorate's decision rejecting his appeal and the M.O.S. had ordered re-inspection of the quarter in December, 1991 which was carried out and the applicant had been found residing in the quarter, but the Urban Development Department took another 11 months to consider the matter and in spite of the favourable inspection report his representation had again been rejected vide Directorate of Estate's letter dated 29.10.1992. The applicant averred that as the delay in disposing of his appeal and representation was caused not by him but by the Directorate of Estate, he was the bona fide occupant of the said quarter and, therefore, the period from 9.11.1990 to 9.11.1992 should be treated as authorised occupation of the quarter for which only normal licence fee, and not damage rate licence fee amounting to Rs.29,455/- should be levied.

8. There is a further letter dated 17.9.1993 from the Assistant Estate Manager, Faridabad addressed to the ~~accounts~~ Officer, PPQ & S, Faridabad reiterating the contents of his letter dated 1.12.1992 and stating that Rs.29,455/- were still outstanding against the applicant which should be recovered from his pay bill in lump sum and final account should not be settled without obtaining no-demand certificate from that office.

9. On behalf of the applicant, Shri G. D. Gupta has vehemently argued that the applicant had not sub-let the premises in question. He states that the applicant had proceeded to his home town, Calcutta, on leave and

had availed LTC for the said purpose, and had requested one of his friends to take care of his quarter during the aforesaid leave period. Upon a specific question put by me as to whether the person in occupation of the quarter, when the team from the Estates Office visited the same, was a friend or a relative (this question was put in view of the fact that the Assistant Estate Manager, Faridabad, in his note below the allottee's statement had said that the applicant had stated before him that the occupant was related as a cousin sister), Shri Gupta claims that the occupant was in fact a distant relative (he specified neither the distance nor the degree of that relationship). In this connection, Shri Gupta referred to the ration card, CGHS card, bank account pass book, registration book, motor cycle papers, and some personal letters, which the applicant had produced before the respondents, but stated that in spite of this evidence to show that the applicant was actually residing in the said premises, the respondents had illegally held that the applicant had sub-let the said premises. Furthermore, Shri Gupta stated that neither the orders of the Asstt. Estate Manager rejecting the applicant's assertion that he was the bona fide occupant and had not sub-let the premises, was a reasoned order, nor were any reasons given in the Directorate of Estate's appellate order rejecting the appeal, which he stated fatally vitiated the entire proceedings. In this connection, Shri Gupta relied on the ruling of the Supreme Court in Mahabir Prasad Santosh Kumar vs. State of U.P. : AIR 1970 SC 1302, which lays down that recording of reasons

in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater is the order is subject to appeal. Shri Gupta has also referred to the decision of the Supreme Court in 'The Siemens Engineering & Manufacturing Co. of India Ltd. Vs. Union of India & Anr. : (1976) 2 SCC 981, where in it has been held that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. The rule regarding reasons to be given in support of an order is like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process. Reference has also been made to the case Bhupinder Singh vs. Union of India & Ors. : (1993) 23 ATC 113, where in a Division Bench of this Tribunal held that conclusion of sub-letting can be arrived at on the preponderance of probabilities but the evidence must be adequate. It must be established that the allottee was residing at a place other than the accommodation allotted to him. Statements of neighbouring allottees have also been considered relevant. One-time casual enquiry cannot render other pieces of evidence irrelevant. The respondents should have enquired from the occupants of the neighbouring quarters about the true state of affairs before issuing the impugned orders. One clinching evidence would have been to ascertain where the applicant had been staying during the period when the enquiry was made

which was not done in that case. Shri Gupta also placed reliance on the judgment dated 18.5.1993 in O.A. No. 2367/90 - Santa Bahadur vs. Union of India & Ors., in which the order of cancellation of allotment was revoked on the ground that the grounds for cancellation were not communicated to that applicant which handicapped him in meeting the allegations of sub-letting in proper prospects.

10. As mentioned above, in the instant case a spot inquiry of the premises was conducted on 12.7.1990 by two officials from the office of the Assistant Estates Manager, Faridabad. The applicant has not alleged any mala fide or bias against the two officials who conducted the inquiry, and prima facie, there appears to be no reason for them to have reported an incorrect state of affairs. They found a lady in occupation of the said premises who signed the inspection report giving her name as Lata Rani but she refused to as per the inspection report, even after being questioned, to divulge any details of her relationship with the applicant. If the applicant had indeed asked her to look after the premises while he was away on leave, surely it would have been a simple matter for her to indicate her relationship with the applicant. When the applicant was issued notice dated 24.7.1990 to show cause why the allotment should not be cancelled, the applicant sent a reply on 7.8.1990 requesting to be heard in person, in which he stated that while he

himself was residing in the said premises "some times my relations from my home town in West Bengal come and stay with me temporarily for a week or so...." On 16.8.1990 the applicant presented himself before the Assistant Estates Manager and at the bottom of the allottee's statement as mentioned above, it is noted that the applicant claimed that Smt. Lata was related as a cousin sister. It is important to note here that while initially the applicant claimed that the occupant was his relative, in the O.A. itself that occupant becomes a friend (emphasis supplied). The Assistant Estates Manager noted that Smt. Lata's name was not a Bengali name and her husband was working in a State Government school at Faridabad. Learned counsel for the respondents has correctly pointed out that if Smt. Lata was indeed a relative or even a friend, no better evidence of the applicant's bona fides could have been produced than her evidence in person or an affidavit from her indicating her exact relationship with the applicant, but the applicant did not take any such action at all. The applicant has nowhere alleged bias or mala fides against the Assistant Estates Manager and there is nothing to indicate that his endorsement on the body of the allottee's statement, referred to above, was not factual or objective.

11. The applicant has claimed in the O.A. that he produced various documents including his ration card in support of his claim that he had not sub-let the quarter at the time of inspection on 16.7.1990. The respondents deny that the applicant did produce his

ration card at that time. The ration card was produced for my inspection, and it appears that there is a signature in the card on 4.7.1990 and again on 13.7.1990, during which time, the applicant on his own admission was away in Calcutta on earned leave. Hence, mere production of the ration card, or for that matter the other documents relied upon by the applicant does not by itself conclusively establish that the applicant was actually residing in the quarter on the date of inspection.

12. Shri G. D. Gupta has contended strongly that the reasons for rejecting the applicant's reply to the show cause notice were not communicated to him. As stated above, the applicant appeared in person on 16.8.1990 and tried to establish that he was in occupation of the quarter on the date of inspection, i.e., 16.7.1990, but after giving him a personal hearing, his version that the actual occupant Smt. Lata Rani was his cousin sister was not believed and the Assistant Estates Manager held that it was a case of full sub-letting. Accordingly, notice dated 10.9.1990 was issued to the applicant stating that as a result of inquiry made it had been proved that he had not been residing in the said quarter, and accordingly, the allotment was cancelled. Opportunity was given to him to make a representation to the Directorate of Estates within sixty days. In his response to that notice dated 10.9.1990 addressed to the Deputy Director of Estates which was forwarded through his superior officer on 8.10.1990 and which is on record, the applicant did not make any complaint

that he was handicapped in replying to the notice, because reasons for rejection had not been communicated to him, but merely reiterated his earlier stand that he was himself residing in the said quarter and had produced proof of the same and it was only during the period from 23.6.1990 to 15.7.1990 while he was on leave, that he had asked a friend of his to reside in the quarter as a temporary arrangement. If the applicant was handicapped in any manner in replying to the notice of cancellation, surely he could have taken that plea at that time itself, but he did not do so.

13. The Directorate of Estates in their letter dated 29.8.1991 informed the applicant that his appeal had been considered, but it had been found to be without merit and had been rejected, and he was directed to hand over the vacant possession of the said quarter immediately, failing which action would be taken to physically evict him under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Thereupon, the applicant addressed appeals to the Minister of State for Urban Development, a course of action which is not prescribed under rules, where he again took much the same stand which he had taken in his earlier appeal and was informed on 29.10.1992 that his appeal had been rejected. Upon receipt of that letter dated 29.10.1992, he again addressed another representation dated 6.11.1992 where for the first time he prayed for communication of the reasons for rejecting his appeal and soon after vacated the

quarter on 9.11.1992. In fact, the abrupt vacation of the quarter on 9.11.1992 itself indicates that the applicant was fully aware that he was retaining the quarter unauthorisedly.

14. The applicant's claim that he was in occupation of the quarter on the date of inspection, and no unauthorised occupant had been inducted into it, does on the face of the record strain credulity. The fact that on 12.12.1991 when a re-inspection was carried out the applicant was found to be living in the quarter with other relatives, cannot be used to disprove the contents of the inspection report dated 16.7.1990, in which an unauthorised person was found in occupation of the quarter. The applicant's plea that he was unaware of the reasons for cancellation of the allotment and was, therefore, handicapped in submitting his appeal must also be rejected. No doubt quasi judicial authorities must give reasons in support of their orders, but as stated above, the applicant was given a personal hearing on 16.8.1990; on that date itself in his presence the grounds taken by him were considered and rejected, and he was informed of the cancellation vide notice dated 10.9.1990 giving him sixty days' time to appeal. He was aware ^{of the} reasons for cancellation and, therefore, did not express any difficulty when he submitted his appeal to the Dy. Director of Estates. Hence, the argument that the memo dated 10.9.1990 was infirm because it did not contain the reasons why his allotment was being cancelled, has no merit.

15. It is true that the Directorate of Estate's letter dated 29.8.1991 rejecting the applicant's appeal did not contain any reasons for rejection, but instead of seeking the reasons for rejection of that appeal from the Directorate of Estates itself the applicant chose ^{Re M} rather the unorthodox procedure of addressing ^{a m} representation ^m directly to the Minister of State for Urban Development on 9.9.1991, but even in that memorial, he did not seek the reasons for rejection of his appeal, or complain of any handicap in responding to the directions of the authorities to handover the vacant possession of the quarter, which he finally vacated on 9.11.1992. The stand taken that the non-communication of reasons for rejecting the applicant's appeal prejudiced the applicant, thus clearly appears to be an after thought. Under the circumstances, the rulings relied upon by the learned counsel for the applicant are of no help to him in the facts and circumstances of this particular case.

16. Learned counsel for the applicant has also argued that his appeal to the Directorate of Estate was forwarded on 8.10.1990, but the decision on that appeal was communicated only on 29.8.1991 and the decision on his memorials to the Minister of State were also communicated after great delay, and he should not have been held responsible for paying damages for retention of the quarter during this entire period, because the delay was caused by the respondents and was not attributable to the applicant.

17. S.R.317-B-22 which prescribes the penalties for over-stayal in a Government residence after cancellation of allotment, lays down that where an allotment

has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the officer to whom it was allotted or of any person claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges as may be determined by Government from time to time, or twice the licence fee he was paying, whichever is higher. The applicant has nowhere impugned this particular provision in the background of the fact that his appeal against the cancellation of allotment was pending, and under the circumstances, it must be presumed that the applicant was fully aware that even if his appeal was pending before the Directorate of Estates, he would be required to pay damages at the prescribed rate after the allotment had been cancelled by the Assistant Estate Manager on 10.9.1990.

18. To summarise, therefore, this is not a case where there is no evidence to substantiate the charge of sub-letting or that the evidence is based on conjectures or surmises, or that the findings recording sub-letting are perverse or mala fide. Furthermore, the grievance voiced by the applicant in his O.A. that he was not informed of the reasons for rejection of his reply to the show cause notice does not in any way appear to have been voiced at any previous stage of the proceedings, and in no way appears to have handicapped him in filing the appeal, because the reasons why his show cause reply was rejected were clearly known to him, as these reasons were recorded

in his presence after giving him a personal hearing on 16.8.1990. The non-communication of reasons rejecting his appear petition, also does not appear to have handicapped him in filing memorials to the Minister of State, and even in those memorials, he did not complain about non-communication of reasons for rejection of his appeal by the Directorate of Estate. It is just about the time he vacated the quarter that for the first time he voiced his grievance regarding non-communication of reasons for rejection of his appeal petition by the Directorate of Estates, and under the circumstances, this clearly appears to be an after thought.

19. In the facts and conspectus of the case, therefore, the impugned orders warrant no interference. The Interim orders staying the recovery of the damages, passed on 12.11.1993, and extended from time to time are vacated. If, however, upon any further representation filed by the applicant to the respondents, they decide to re-consider the recovery of damages and having regard to the circumstances in which the applicant is placed, choose to waive the recoveries in full or in part, it will be open to them to do so, and this judgment will not operate as a bar.

20. In the result, this application is dismissed.
No costs.

Antchig
(S. R. Adige)
Member (A)

/as/