

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1037/93
T.A. No.

199

DATE OF DECISION 10.6.93

Shri Nirbhay Singh

Petitioner

Shri J.P.Verghese

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Advocate for the Respondent(s)

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The Hon'ble Mr. N.V.Krishnan, Vice Chairman (A)

The Hon'ble Mr. B.S.Hegde, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

ORAL ORDER

(Hon'ble Shri N.V.Krishnan, Vice Chairman (A))

The applicant is aggrieved by the letter dated 3-3-93 issued by the second respondent to the Supdt. of Police Meerut (U.P) which reads as follows:-

" I am directed to refer to CBI/MO letter of even number dated 11-8-1992 on the subject mentioned above and to say that the allotment of CBI-Pool Qr.No.54-P, Vasant Vihar, New Delhi stands cancelled in the name of Sh.Nirbhay Singh, Constable w.e.f. 30-9-92. Accordingly he was due to vacate the Qr. by 30-9-92 which he has not vacated so far.

In view of the above it is requested that he may be directed to hand over the vacant possession of the Qr.54-P, Vasant Vihar, New Delhi immediately without any further delay. Also effect recovery of Damages/market rate @ Rs.1149/- p.m. + Rs.20/- as water charges for the unauthorised period of retention of Qr. from 1-10-92 to the date he vacates the Qr.

His account may not be settled finally without obtaining a 'No Demand Certificate' from this office."

A copy of this letter was also endorsed to the applicant as follows:-

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"Copy to Shri Nirbhay Singh, Constable, Qr.No.54-P

CBI Colony, Vasant Vihar, New Delhi for information and necessary action. He is further informed that in case he fails to vacate the Qr. latest by 15-3-93 necessary action to evict him under the prevailing rules will be taken against him."

2. This DA was filed on 7-5-83. When it came up for admission, the learned counsel for the applicant stated that this case is linked with DA No.2077/92 filed by the same applicant which has been admitted. Accordingly, the matter was finally heard by us today after obtaining the records of DA 2077/92.

3. The applicant is an employee of the Police Deptt. of the Govt. of Uttar Pradesh. He was taken on deputation by the Central Bureau of Investigation (CBI) of the Govt. of India some time in 1978. He continued to be on such deputation until 1992. When the applicant apprehended his repatriation to his parent department, he filed DA 2077/92 on 11-8-92 for a direction to the CBI to absorb him in that organisation from 1983 or from the date on which his junior was absorbed and to give him promotion in that organisation. He also prayed that, pending the disposal of that application, an interim direction be given to the CBI not to repatriate him and to restrain the CBI from dispossessing him from the quarter occupied by him. Subsequently, the applicant received a copy of the letter dated 11-8-92 addressed by the CBI to the Supdt. of Police Meerut, U.P. This is more or less similar to the letter dated 3-3-93 impugned in the present DA. It intimated him of the cancellation of the allotment of house because of his repatriation and threatened him with eviction if he did not vacate the quarter. Therefore, the applicant prayed for an interim direction in that DA for not implementing the said letter dated 11-8-92. In that DA the CBI pointed out in its reply that by office order dated 31-7-92/3-8-92, the applicant was relieved of his duties from CBI on the afternoon of 31-7-92 on his repatriation to his

9

parent department and he was directed to report to the Sr. Supdt. of Police, Meerut. The applicant therefore filed a miscellaneous petition to amend OA 2077/92 appropriately. Separate orders are being passed in that OA today.

4. In the present O.A. the grievance has arisen by the receipt by the applicant of the impugned letter dated 3-3-93 addressed by the CBI to the Supdt. of Police, Meerut. This letter is self-explanatory as can be seen from para (1). The applicant is aggrieved because he feels that he is being evicted illegally and the eviction cannot be resorted to when OA 2077/92 challenging his repatriation is pending and hence he has prayed to restrain the respondents from taking action to evict the applicant from the premises of Qr. No. 54-P (Type II) Vasant Vihar, New Delhi, without taking appropriate action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

5. We have heard the learned counsel on admission.

6. The learned counsel for the applicant has drawn our attention to the decision of the Full Bench of the Tribunal in the case of DN Singh and Ors. Vs. UOI & Ors. (Full Bench Vol. II p.1).

7. We have carefully perused the application and considered the contention of the learned counsel of the applicant. We have also seen OA 2077/92 filed by the applicant. It is seen from that OA that the applicant has been repatriated to the parent department i.e. State Police Department of Govt. of Uttar Pradesh from 31-7-92 and he has been directed to report to the Sr. Supdt. of Police, Meerut. That order is already under challenge. An interim direction for non-eviction has also been prayed for in that O.A which is still pending. For that reason alone, this OA is not maintainable for in this

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O.A. also a similar order is sought though in the context of a later order. It is also seen that on repatriation, the allotment of house has been cancelled and the applicant has been asked to hand over possession. We are of the view that no objection can be taken to this step because as soon as the repatriation order is passed, the applicant loses the right to hold the official accommodation in the CBI pool.

8. We also do not find any merit in the contention that action is being taken contrary to the provisions of law. This is not correct. The impugned letter dated 3-3-93 is addressed to the Supdt. of Police, Meerut because the applicant was asked to report for duty before that official. A request has been made to the Supdt. of Police to direct the applicant to hand over vacant possession of the house. This cannot be objected to. In the endorsement to the applicant it has been mentioned that in case the applicant fails to vacate the house before 15-3-93, necessary action to evict him under the prevailing rules would be taken against him. It is thus clear that the respondents do not intend to take any highhanded, illegal action against the applicant and that they intend to evict the applicant, if it becomes necessary, only in accordance with the law.

9. In so far as the Full Bench decision is concerned, we are of the view that the ratio of that judgement is quite different. No doubt, the Full Bench has directed in that case that the petitioners therein should be permitted to retain their quarter, subject to/^{the} payment of such rent as was paid by them before their dismissal from service and in that context the following

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observations were made:-

"The second request of the applicants must, however, be upheld. Even the standing orders direct that if the dismissal or removal of a government servant is questioned, the order to vacate the quarters need not be issued. In several cases where public servants are removed or dismissed from service, when those orders are challenged before the Appellate Authorities or before this Tribunal, they are being allowed to retain the quarters until the appeals are disposed of by the Appellate Authority and until the applications are disposed of by this Tribunal. Unless such an order is made, applicants would be exposed to great hardship. It would also be difficult to secure allotment of quarters even if their appeals are allowed."

We are of the view that this decision will not apply to the present case. In the case before the Full Bench, the applicants had been dismissed from service and that too in exercise of the powers conferred by the second proviso to article 311 (2) of the Constitution. In the present case, the applicant has not been dismissed. He has only been repatriated to the parent Department. He has therefore necessarily to report for duty at Meerut and can seek accommodation there. Therefore *prima facie*, the respondents were perfectly justified in cancelling the order of allotment and issuing a letter dated 11-8-92 to the Supdt. of Police, Meerut which is the subject matter of OA 2077/92 followed by the impugned letter dated 3-3-93.

10. The learned counsel for the applicant contended that the balance of convenience lies in staying the implementation of the impugned letter. If not, a question would arise as to what would happen if OA 2077/92 was allowed and the order of repatriation was quashed and how the applicant would be compensated in respect of the accommodation from which he is evicted. This is a hypothetical situation. If such a situation arises in OA 2077/92, the applicant would be at liberty to seek from the Bench such orders as he considers necessary

to enable the Bench to pass an appropriate order.

11. The applicant has not made out any prima facie case to admit this O.A. Hence it is dismissed.

B.S. Hegde
10/6/93

(B.S. HEGDE)
Member (Judicial)

N.V. Krishnan
10/6/93

(N.V. KRISHNAN)
Vice Chairman (A)