



applicant should take over possession of the quarter and vacate quarter no.T-IB occupied by him; that on 15.1.1987 the applicant received a letter from the Station Superintendent(copy Annexure-D1)directing him to vacate Bunglow no.T-IB and to hand-over possession to Sri M.H.Khan,StationSuperintendent, Pratapgarh.

3. The applicant has alleged that he requested the Senior Divisional Safety Officer, N.R.Lucknow vide his letter dated 3.3.87(annexure-D) that Quarter No.T.III-A had not been vacated and that essential repairs may be carried out ^{with vacation} so that the petitioner may arrange for his shifting or some alternative better accommodation may be provided to the applicant; that the Senior Divisional Safety Officer,N.R.Lucknow neither arranged for repairs, nor for alternative accommodation and instead exerted pressure and coercion to get the applicant ejected from Quarter no.T-I-F and to be thrown on road; that the applicant was served with a letter dated 18.3.87 by the Senior Divisional Safety Officer,Lucknow mentioning therein that the petitioner had not moved to Quarter no.T-II-A PBH inspite of his promise to vacate the same (annexure-F); that the applicant was placed under suspension w.e.f. ,1.4.1987 by an order passed by the Senior Divisional Safety Officer(copy Annexure-H) for not vacating quarter no.T-IB. The applicant has challenged the above mentioned order on the ground thatQuarter no.T.I-B was allotted to him and he was in lawful occupation of the same as the allotment order in favour of the applicant has neither been cancelled nor modified; that the failure to

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vacate an allotted quarter can not be a ground for disciplinary proceedings and the impugned order was a vindictive action taken at the initiative of Station Superintendent of Sri M.H.Khan who has made it a prestige point to get the quarter vacated. It is also contended that the impugned order has been passed by way of punishment in violation of the principles of natural justice.

3. In the reply filed on behalf of the respondents it is stated that on receipt of an intimation dated 19.3.1986 from Sri Gopi Singh, Traffic Inspector that the quarter has been vacated, the applicant was asked to occupy the quarter vacated by Sri Gopi Singh, but the applicant failed to do so; that vide letter dated 18.3.1987, the applicant was again requested to comply with the order, but the applicant tried to disobey the orders of the authority on one or another pretext and ultimately the authorities had to take action by suspending him from service w.e.f., 1.4.87 for non-vacation of Bungalow T-I-B; that a chargesheet was also issued to the applicant to which no reply has been received; that the application is premature as the suspension order was passed on 1.4.1987 and the representation of the applicant against the order of suspension received on 4.4.87 was under consideration; that the applicant was not entitled to occupy the Quarter which was allotted to him on provisional basis till he got the quarter of Sri Gopi Singh; that the allegations against Sri M.H. Khan are incorrect; that the applicant appears to have taken to ~~his~~ his head to defy the order passed by the authorities directing ^{vacate the quarter} him to / in question

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that the contention of the applicant that the quarter occupied by Sri Gopi Singh was not vacated on 19.3.86 or till 23.1.1987 is incorrect; that Sri Gopi Singh had vacated the Quarter on 19.3.1986 but the applicant failed to take possession of the same on one pretext or the other; that the applicant is habitual of disobeying the order of the superior officer and he has raised his finger against the authorities.

4. A rejoinder-affidavit was filed on behalf of the applicant, in which the averments made in the main application were re-affirmed and it was further stated that the letter dated 23.1.1987 (copy annexure-C) of Sri Gopi Singh would clearly prove that the quarter occupied by him earlier had not been legally or formally vacated by him; that by his letter dt. 17.3.1987 (copy annexure R-2) ^{applicant} the/had stated the circumstances preventing him from taking possession of the quarter occupied by Sri Gopi Singh; that the applicant never disobeyed any order of the Senior Divisional Safety Officer and that the impugned order had been passed mainly to harass the applicant.

5. We have heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant contended that the impugned order of suspension and the holding of disciplinary inquiry against the applicant was illegal and against the principles of natural justice. He invited our attention to a decision of the Ahmedabad Bench of this Tribunal in the case of Abdul Mohid Mustaq Khan Vs. Union of India, reported in ATR 1987 CAT, 567 in which the order of removal from service for failure to vacate the quarter after transfer from one station to another station was held to be uncalled for

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and the disciplinary proceedings were held to be not competent. In the above-mentioned case, the applicant while working at Bulsar as a Shunter was allotted^a quarter. On his transfer from Bulsar to Nandurbar he did not vacate the quarter. He was served with a standard form of chargesheet for major penalty for failing to vacate the railway quarter and^{an} order of removal from service was passed subsequently. Para 6 of the judgment reads as follows:

"6. In "Management of New Delhi Municipal Committee Vs. Asharam" (Delhi Gaz. dt. occupied a quarter without permission when his hutment was demolished and he had to keep his wife who was T.B. Patient under some shelter and he did so after informing the authorities and requested for allotment which was not formally rejected, then his conduct did not violate Rule 3 of the Central Civil Service (Conduct) Rules, 1964 which requires Government Servant to maintain absolute integrity or devotion to duty and not to do so anything unbecoming of a Government servant. His suspension during enquiry as well as termination of service was held to be unjustified. Further in the case of "B.R. Vengappaya Vs. State of Mysore and ors. (1972 Service Law Reporter, page 59)", Mr. Justice Narayana Pai (C.J. as he then was) while speaking for the Bench, held that the Government employee in occupation of the quarters, upon transfer, is bound by the rule to vacate the same on pain of coercive steps being taken to evict him and rents at penal rates being recovered from his salary. If it is not misconduct, it cannot be converted into misconduct by an unnecessary order being made to do something which the rule itself requires the person to do. It is to be regarded as misconduct, the rule itself prescribes the punishment, viz. forcible eviction and collection of rents at penal rates. It is, therefore, held that when the Government servant fails to vacate free accommodation on transfer, he is liable to pay the rent provided in the rules and hence the disciplinary proceedings are not competent. Now having regard to the facts and circumstances of this case which are very much identical, the impugned order of removal from service on the charge of the failure to vacate the quarter (annexure-A) is not sustainable and deserves to be set aside."

In the instant case, there is nothing on record to show that any order of cancellation of the previous allotment of the quarter in question was passed by a competent

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authority. There is also nothing on record to show that any action was taken under the provisions contained in Public Premises (Eviction of Unauthorised Occupants) Act 1971. Further the applicant has the right to occupy a government accommodation as he is posted at Pratapgarh and his occupation of the quarter has not been declared unauthorised occupation. We are, therefore, of the opinion that the action of the respondents in initiating disciplinary proceedings for nonvacation of the quarter and the order placing him under suspension is not sustainable and deserves to be set aside.

6. It is not necessary for us to consider any other aspect of the matter. We accordingly quash the order dated 1.4.1987 suspending the applicant and holding the disciplinary inquiry for nonvacation of the quarter. Parties shall bear their own costs.

A.M.
A.M. 29.6.87 *J.M.*
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