

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A.598 of 1996

Present : Hon'ble Mr.D.Purkayastha, Judicial Member.

TAPAN KUMAR DE S/o
Late B.N.De, working for
gain as U.D.C. in the Office
of the Deputy Commissioner
of Income Tax, Aayakar Bhawan,
P-7, Churingha Square,
Calcutta-69, residing at
K.B.606, Salt Lake, Calcutta-91.

... Applicant
Vs.

1. Union of India through the Secretary, Ministry of Urban Affairs & Employment, New Delhi.
2. Director, Directorate of Estates, Govt. of India, New Delhi.
3. The Assistant Director of Estates(R), Directorate of Estates, New Delhi.
4. The Estate Manager, Govt. of India, 5, Esplanade East, Calcutta-69.

... Respondents

For the applicant : Mr.Samir Ghosh, counsel.

For the respondents: Mr. Madhusudan Banerjee, counsel.

Heard on : 1.5.1998

Order on : 20.5.1998

ORDER

The applicant, Shri Tapan Kumar De, at present holding the post of U.D.C. in the Office of the Dy.Commissioner of Income Tax, Calcutta, has sought for cancellation of the order issued vide memo dated 22.9.1995 (annexure 'F' to the application) and another order dated 5.2.1996 (annexure 'K' to the application), as well as the order dated 6.2.1996 contained in annexure 'L' to the application, on the ground that all the orders are violative of the principles of natural justice, illegal and unwarranted by the facts and circumstances of the case.

2. The grievance of the applicant as agitated in this application is that the applicant was allotted a Type-II quarters being no. KB 606, Salt Lake, Calcutta-91 in the month of August, 1987. The applicant took possession of the said quarters on 22.8.1987 and has been paying licence and other requisite fees as charged by the authority from time to time against that quarters. It is stated that by the memo dated 12.10.1993 (annexure 'B' to the application), the applicant and other staff were transferred to New Delhi from the Office of D.G.T.D., Calcutta, as the said office was abolished, to the D.G.T.D., New Delhi, and was posted in the Headquarters. Before joining D.G.T.D. New Delhi, ~~the~~ ~~representative~~ the applicant made a representation to the authorities concerned for retention of his quarter at Salt Lake, Calcutta, to enable his family members to stay in the said quarters. The said representation is dated 31.10.1993 (annexure 'C' to the application). It is the contention of the applicant that the said representation has not been disposed of. After abolition of D.G.T.D. Calcutta, the applicant was posted in the Ministry of Chemicals & Fertilisers, New Delhi, as an U.D.C. and he worked there for a period of six months. Thereafter, the applicant was again transferred back to Calcutta and posted in the Office of the ^{Chief} Commissioner of Income Tax, Calcutta, and he joined the said post on 3.10.1994 and was also absorbed. The applicant retained the quarters at Salt Lake, Calcutta, from 1.11.1993 to 2.10.1994, but suddenly the Estate Manager, G.B.I., Calcutta (respondent no.4) cancelled the allotment of the quarters occupied by the applicant vide memo dated 22.9.1995 (annexure 'F' to the application) with retrospective effect w.e.f. 30.11.1993 in violation of the existing rules and provisions and without any rhyme or reason and without considering the fact that the applicant had made a representation to the concerned authorities for retention of the quarters at Salt Lake with grounds stated therein. In pursuance of the said cancellation order, the applicant made

a representation again on 2.11.1995 (annexure 'G' to the application) for regularisation of the quarters in his favour but to no effect. By the letter dated 15.12.1995, the respondents issued a show-cause notice upon the applicant for eviction of the said quarters and in pursuance to the said notice, the applicant filed an appeal to the authorities on 2.1.1996 but the said appeal has been disposed of by assigning any reason thereof and the applicant made a further appeal on 17.1.1996 to the Joint Secretary, Ministry of Urban Affairs & Employment, New Delhi, for regularisation of the quarters in question, but to no effect. He has, therefore, filed this application alleging that the show cause notice dated 15.12.1995 (annexure 'H' to the application) and the order of eviction vide the notice dated 5.2.1996 (annexure 'K' to the application), are illegal and the entire action of the respondents as alleged in the application is arbitrary, illegal and liable to be quashed.

3. The respondents have denied the case of the applicant by filing a written reply and have submitted that the application is not maintainable. It is stated that the applicant on his transfer to Headquarter at New Delhi, made a representation to the Estate Officer for allowing his family to stay in the existing Govt. quarters at least for a period of six months. Thereafter, he did not make any further application for retention of the quarters beyond the period of six months. So all allegations made in the application are denied by the respondents. It is stated that a huge amount is lying outstanding in the licence fee account of the applicant in respect of the said quarters since the applicant had occupied the quarters unauthorisedly without taking any permission from the authority and in violation of the Rules of allotment of quarters. It is also stated that the representation of the applicant dated 2.11.1995, was forwarded to the Director of Estates, New Delhi, for consideration. The Assistant Director of Estates (R), New Delhi, however, by his letter dated 18.3.1996,

rejected the prayer of the applicant for retention of the said quarters as it was not covered under the allotment rules (annexure 'R/1' to the reply). It is also stated that in pursuance of the notice dated 15.12.1995 under Sub-Section 2 of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (annexure 'H' to the G.A.) the applicant appeared before the Estate Officer and prayed for one month's time to vacate the quarters, but he did not vacate the quarters as assured. It is also denied by the respondents that the eviction order was passed without giving any opportunity of being heard to the applicant. The applicant did not prefer any appeal against the order of eviction dated 5.2.1996 (annexure 'K' to the application), as provided under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The respondents state that the applicant did not prefer any appeal from the order of eviction as he submitted before the Estate Officer during the hearing that he would ~~vacate~~ ^{vacate} the quarters within one month, which was not accepted by the Estate Officer. Hence, the application is devoid of merit and is liable to be dismissed.

4. Ld. counsel, Mr. Samir Ghosh, appearing on behalf of the applicant submits that the applicant was not supposed to be evicted from the quarters in ^{pursuance to the said} view of the transfer order on the ground that the office of the D.G.T.D. Calcutta was abolished and the transfer order to New Delhi cannot be said to be a transfer order since office of the D.G.T.D. at Calcutta was abolished. For that reason, the applicant has ~~no obligation~~ ^{right} to retain the quarters on his posting to New Delhi ^{as a temporary transfer} as a consequence of abolition of the office concerned and the applicant cannot be said to be an unauthorised occupant of the quarters on his posting to New Delhi for the reasons stated above. Mr. Ghosh

further submits that the show cause notice was devoid of reason and grounds for which eviction order was issued and thereby all the orders passed by the authority including the order of recovery of penal rent are liable to be quashed.

5. Ld. counsel, Mr. Madhusudan Banerjee, appearing on behalf of the respondents submits that the applicant has no locus standi to retain the quarters in question on his transfer from Calcutta to New Delhi and it is a case of transfer from one headquarter to another headquarter and thus on expiry of the prescribed period for retention of the quarters on transfer under the rules, the applicant ~~should~~ ^{ought to} have vacated the quarters ~~and~~ after the expiry of the said period, the applicant will be deemed to be an unauthorised occupant and no notice is required for holding the applicant as an unauthorised occupant in the quarters. He further submits that the applicant did not make any further representation for retention of the quarters as per his application. So under no circumstances, the applicant can be said to be a lawful occupier of the quarters. He further submits that since the applicant did not vacate the quarters in accordance with law and direction of the authority, show cause notice was issued and he appeared before the Estate Officer and assured ^{on expiry of the period.} ^{Authority} him that he would vacate the quarters within one month but did not vacate the same and thereby all actions of the respondents are in accordance with law and the applicant cannot have any grievance in respect of payment of penal rent as assessed by the authorities and he is liable to be evicted from the Govt. quarters.

6. In view of the divergent arguments advanced by the Ld. counsel for both the parties, I find it is an admitted position that the applicant, on abolition of the office of the D.G.T.D. Calcutta, has been transferred and posted at New Delhi. So Calcutta is an old station and New Delhi is the

new headquarter as per order of transfer and posting. Abolition of the ^{end} whole office at Calcutta does not indicate that the applicant has a right to retain the quarters on his transfer from Calcutta to New Delhi. Transfer, as per provisions of FR & SR means the movement of an employee from one headquarter station in which he is employed to another such station, either to take up the duties of a new post or in consequence of a change of his headquarters. Calcutta and New Delhi are not in the same station. Since distance of Calcutta and New Delhi is more than 20 Kms., hence change of residence of the transferee is inevitable. According to the rules, a Govt. employee has no right to retain the quarters on his transfer from one headquarter station to another new station if the distance is more than 20 Kms. At best the employee can retain the quarters for a maximum period of 2 months on such transfer. According to the applicant, he applied for retention of the quarters for 6 months on his transfer and he was allowed so. Thereafter, he did not apply for retention of the quarters beyond the period of 6 months. Therefore, the applicant has no authority to retain the quarters beyond the period of 6 months as prayed for and if it is presumed that he has been granted to do so and he should have vacated the said quarters on expiry of that period. It is a settled law that on expiry of the prescribed period of retention of the quarters on transfer, no notice is required for treating the Govt. servant an unauthorised occupant. It is found that the applicant was asked to show cause by a letter dated 22.9.1995 (annexure 'F' to the application) as to why the allotment of the quarters should not be deemed to have been cancelled on account of retention of the accommodation unauthorisedly u.s.f. 30.11.1993. The applicant made a representation on 2.11.1995 (annexure 'G' to the application) stating the grounds thereon and sought for regularisation of the quarters due to his re-transfer from New Delhi to Calcutta. Thereafter, authority decided the case

stating that the applicant is in unauthorised occupation on the grounds stated therein and that he should be evicted from the said premises. Thereafter, he was asked to show cause as to why he should not be evicted from the said quarters. He made representation against the said show cause and sought for retention of the quarters on the plea that "in the case of a temporary transfer where such extension beyond the normal period of four months permissible under SR-317-B-11 is sought strictly in public interest i.e. where the officer concerned is given the impression that his transfer or deputation is for a short spell and where that is extended by the Ministry/department concerned by short period, individual cases are to be examined on merit and question of grant of extension in relaxation of the relevant provisions of SR-317-B-II under provisions of SR-317-B-25 considered and cases put up to Joint Secretary(A), Ministry of Work and Housing. The normal licence fee under FR 15-A is to be charged if it is decided to allow extension vide (1) above for the entire period." The above plea of the applicant is not tenable in view of the fact that the applicant did not make any further prayer for extension of retention of the quarters after expiry of the period of six months for which he had originally applied for and thereby the applicant has no right to retain the quarters after the said period. Ultimately, the respondents by a letter dated 5.2.1996, issued another order of eviction against the applicant and ^{the applicant} ~~be asked~~ for one month's time to vacate the quarters, which indicates that the applicant needed one month's time to vacate the Govt. quarters but the same was not allowed to him by the authority as it was not permissible under the allotment rules and the authority decided that the applicant had been unauthorisedly occupying the said quarters and directed him to vacate the quarters within 15 days from the date of issue of the order. Accordingly, the applicant

was again directed to vacate the quarters by a letter dated 18.3.1996 (annexure 'M' to the application). Thereafter, the applicant approached this Tribunal for getting appropriate relief in this case.

7. In view of the aforesaid circumstances, it is found that the applicant totally failed to justify the retention of the quarters for such a long period on his transfer from Calcutta to New Delhi. Even after the eviction order was issued upon him he did not vacate the quarters. Such action and conduct of the applicant ~~cannot be appreciated~~ ^{do my speak well} in view of the circumstances and the rules of allotment. It is also found that the applicant was given opportunity to state his case but he could not justify his action for the purpose of retention of the quarters beyond the statutory period as stated therein. In view of the aforesaid circumstances, I am of the view that an unauthorised occupant or trespasser cannot take shelter of law on the plea that he was not given reasonable opportunity to state his case. In the instant case, from the records I am satisfied that reasonable opportunity was given to the applicant but he did not vacate the quarters till date. So he has to suffer for his own wrong and court cannot ~~grant~~ indulge to such conduct of the applicant by granting him any relief in this case.

8. Thus after having considered the facts and circumstances of the case, I am of the view that the department acted in accordance with law and he was given proper opportunity to state his case before the appropriate authority. In such circumstances, he is not entitled to get any relief in this case as prayed for. Thereby the application is devoid of merit and liable to be rejected.

9. Accordingly the application is dismissed awarding no costs.

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(D.Purkayastha)
Judicial Member