

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 797 of 96

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

Subhas Chandra Dhar, son of late Surendra Nath Dhar, aged about 50 years, employed as Peon under the Office of the Ministry of Human Resources Development, Department of Education (E.R.), 5, Esplanade East, Calcutta, residing at 847, Type-II, Block-IC, Salt Lake, Calcutta-700 091.

...Applicant.

-v e r s u s -

1. Union of India, service through the Director of Estates, Nirman Bhawan, New Delhi-110 011.
2. The Director of Estate, Nirman Bhawan, New Delhi-110 011.
3. The Estate Manager, Office of the Estate Manager, 5, Esplanade East, Calcutta-69.
4. The Deputy Director of Estate, Nirman Bhawan, New Delhi-110 011.
5. The Assistant Estate Manager, Office of the Estate Manager, 5, Esplanade East, Calcutta-700 069.
6. Deputy Director, Government of India, Ministry of Human Resource Development, Department of Education, Eastern Regional Office, 5, Esplanade East, Calcutta-69.
7. Assistant Director of Estate (R), Government of India, Director of Estates, Nirman Bhawan, New Delhi-110 011.

... Respondents.

For the applicant : Mr. A.K. Roy, counsel.

For the respondents : Mr. B. Mukherjee, counsel.

Heard on 6.7.98

Order on 6.7.98

O R D E R

D. Purkayastha, JM

One Sri Subhas Chandra Dhar, peon under the Ministry of Human Resource Development, Department of Education (E.R.) challenged the validity of the impugned order of show cause dated 20.12.95 (Annexure-A/1 to the application) and order of eviction dated 14.3.96 (Annexure-4 to the application) and the order of the Appellate Authority dated 9.6.96 (Annexure-A/10 to the application) on the ground that all actions of the respondents are wholly arbitrary, illegal and violative of the principle of natural justice. According to the applicant, he was allotted quarter

bearing No.847, Type-II, Block-IC, Salt Lak, by the authority on 9.6.94. But that allotment was cancelled on the allegations that the respondents on surprise visit found that some unauthorised persons were in possession of the said quarter and thereby a show cause notice was served upon the applicant asking him to show cause as to why he would not be declared ineligible for Govt. accommodation for a period of five years from the date of vacation of the quarter and as to why he should not be charged four times standard licence fee under F.R. 45 A from the date of issue of the order to the date of vacating of the quarter and the applicant was further directed to appear before the Estate Manager vide notice (Annexure-A/1 to the application) on 29.12.95. On receipt of the said notice dated 20.12.95 (Annexure-A/1 to the application), the applicant did not file any written reply, but appeared in person on 29.1.96 with necessary documents to satisfy the respondent No.3, Estate Manager that he had not subletted the quarter to any unauthorised persons though it was stated by the applicant as it appears from the Annexure-R/5 that one Mrs. Mandira Roy, who was his sister and brother-in-law who is a Homeopath doctor had been accommodated in his quarter temporarily and he is residing at Ashoknagar with his family. On the basis of the said admission, the respondents served a notice upon the applicant asking the applicant to vacate the quarter within a period of 60 days from the date of issue of this memorandum dated 14.3.96 (Annexure-A/4). He was also charged to pay damages rent. On receipt of the said order of cancellation dated 14.3.96 (Annexure-A/4 to the application) he filed appeal, before the Authority Nirman Bhawan, New Delhi. But on 28.3.1996 by another memorandum (Annexure-A/5 to the application) the applicant was further directed to hand over the vacant possession of the said quarter to the CPWD authorities failing which the matter will be dealt with in accordance with the Rules and Rulations. Thereafter applicant made another representation vide letter dated 30.4.96 (Annexure-A/6 to the application) and the respondents issued The respondents issued another memorandum dated 10.3.96 (Annexure-A/7 to the application) stating that the applicant was liable to pay Rs.354/- per month i.e. four times of the Flat rate of licence fee plus other charges from 14.3.96.

Another letter being No. 1/171-D/Rent/S.Lake was issued by the Assistant Estate Manager after fixing the damage market rate at the rate of Rs.2196/- per month. Applicant sent another appeal through his Advocate on 30.4.96 (Annexure-A/6 to the application) stating the grounds therein. But unfortunately the said appeal preferred by the applicant has been rejected by the Appellate Authority by a letter dated 9.6.96 (Annexure-A/10 to the application).

2. Feeling aggrieved and dissatisfied with the order dated 9.6.96, the applicant approached this Tribunal challenging the all actions of the respondents in the matter of eviction and for quashing <sup>unlawful</sup> all orders on the grounds stated above.

3. The respondents denied the claim of the applicant and also denied the allegations made therein in the application. According to the respondents, during inspection made by one Inspecting Officer it is found that no family members of the applicant except Mrs. Mandira Roy alongwith her husband who is homeopath doctory by profession, were found available in the said quarter. The Inspecting Officer submitted its report accordingly. It is also stated by the respondents that the applicant is residing at Ashoknagar with his family members. So it is a clear case of subletting since neither the applicant nor his family members are residing in the said Govt. accommodation. It is also stated that show cause notice dated 20.12.95 was issued in accordance with law which was issued on the basis of the inspection report submitted by the Inspection Team deputed by the respondents. It is also stated in the reply by the respondents that the brother-in-law (Husband of the Sister) cannot be of the same blood with the applicant and the said brother-in-law cannot be treated as a member of the family of the allottee applicant. Thus, the application made by the applicant is unwarranted and hence it is liable to be dismissed.

4. Mr. Roy, Id. counsel for the applicant submits that pursuant to the show cause notice dated 20.12.95 (Annexure-A/1), issued by the respondent No.3, Estate Manager, the applicant appeared before the authority on 29.1.96 and stated his case. Mr. Roy further submitted that the sister is a 'close relative' as per definition of the word, "relation"

embodied in the notification (Annexure-II) issued by the Ministry of Urban Development (Director of Estates) under S.R. 317-B of Swamy's F.R. & S.R. So mere temporary residence of relatives for treatment purpose cannot be a ground for <sup>charge or</sup> subletting of the quarter to unauthorised persons. Secondly, Id. counsel for the applicant further submits that the order of appeal preferred by the applicant had been rejected by the Appellate authority on 9.6.96. But no reason had been disclosed in the Appellate Authority's order <sup>(for rejection)</sup> So order of the appellate authority <sup>is</sup> devoid of reason. So all ~~the~~ actions of the respondents are arbitrary, illegal and violative of natural justice and liable to be quashed.

5. Mr. Munsi, Id. counsel on behalf of the respondents strenuously argues before me that applicant admitted that his sister Smt. Mandira Roy is married and she is not dependent on him. Thereby Smt. Mandira Roy and her husband who is homeopath practitioner cannot be termed as close relations as defined under provisions of S.R. 317-B. So the applicant had allowed them to stay in the quarter without prior permission from the competent authority, ~~hence~~ the case comes within the purview of subletting to unauthorised persons which is not permissible under the rules. Accordingly, the applicant was asked to vacate the quarter pursuant to the inspection report dated 20.1.95. Thereby the actions of the respondents are valid in law and are in operation. It is also stated that the applicant was asked to vacate the quarter by different memos and notices served on the applicant but he did not vacate the quarter even after cancellation of the same. So damage rent as well as the order of eviction as passed by the authorities are in accordance with law. Hence application is liable to be dismissed.

6. I have considered the submission of Id. counsel for both the parties. By notice dated 20.12.95 the applicant was asked to show cause as to why he should not be declared ineligible for Govt. accommodation for a period of 5 years from the date of vacation of the quarter. It shows that the said notice was issued as a result of the enquiry report submitted by the Enquiry Officer. But the copy of the said report has not been furnished to ~~the~~ applicant. Admittedly, the applicant did not file any reply to the show cause notice but appeared personally before the Estate

Manager at 11-30 a.m. on 29.1.96 and he made a statement which was recorded by the respondents on 29.1.96 is marked as Annexure-R/1 to the application. It is seen that during interrogation applicant admitted that her sister Smt. Mandira Roy and her husband are residing in the quarter temporarily for treatment purpose and they are close relatives.

7. The allegation of subletting to unauthorised persons were made against the applicant. It is settled law that allegation cannot take place of proof unless it is supported with evidence. So, on the basis of the allegation alone, the applicant cannot be asked to vacate the quarter unless the charge of subletting against the applicant is proved by adequate evidence. In view of the aforesaid circumstances, I am of the view that in absence of prima <sup>adversi</sup> facie evidence, the mere temporary stay of the relatives for one or two months in the quarter for the treatment purpose does not justify to draw requisite presumption that he subletted the quarter. In the instant case, the enquiry report was not furnished to the applicant since the applicant did not ask for. I am of the view that the respondents ought to have furnished the enquiry report notwithstanding of the fact that the applicant did not ask for, because of the fact that rule of natural justice requires that report must be disclosed to the applicant for giving proper representation to the allegation brought against the applicant. In order to bring the case within the ambit of subletting' there must be adequately established that applicant was not residing at the quarter and he allowed unauthorised persons to occupy the same for some wrongful gain or benefit and in order to support the charge there should be some prima facie evidence of the neighbours that the applicant had not been residing in the quarter due to subletting the accommodation to other. So I find that in the instance case the respondents could have made fullfledged enquiry for proving the charge of subletting brought against the applicant. Moreover, I find that the appeal preferred by the applicant had been disposed of by the Appellate Authority mechanically without disclosing any reason. Even in administrative order, it must contain the reason to show in what way the appellate authority considered the appeal or the representation for the purpose of rejection of the same. So, it is found that the order of the Appellate Authority

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dated 9.6.96 (Annexure-A/10 to the application) is devoid of reasons and cryptic in nature and thereby this order is arbitrary and also liable to be quashed. In view of the aforesaid circumstances, I quash the impugned order of cancellation dated 14.3.96 (Annexure-A/4 to the application) and also the appellate order dated 9.6.96 (Annexure-A/10 to the application). However, the liberty is given to the respondents to proceed further, if they think fit and proper in accordance with the law. Accordingly the application is disposed of awarding no costs.

*H. Dny/*  
( D. Purkayastha )  
M e m b e r (J)