

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A.1022 of 1996

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

BIMAN CHANDRA DAS

... Applicant
Vs.

1. The Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, Indraprastha Head Post Office, New Delhi-110 002.
2. The Principal Accountant General (A&E), West Bengal, Treasury Building, Calcutta-700 001.
3. The Deputy Accountant General(A) and Ex-Officio Estate Officer, Indian Audit and Accounts Department, Office of the Principal Accountant General (A&E), West Bengal.

... Respondents

For the applicant : Mr.S.K.Dutta, counsel.
Mr.T.K.Biswas, counsel.

For the respondents: Mrs.Kanika Banerjee, counsel.

Heard on : 17.3.1997

Judgment on : 17.3.1997

JUDGMENT

The short question before this Tribunal is as to whether cancellation of allotment in respect of quarter no.130 (III) at Indian Audit & Accounts Department (IA & AD) Housing Complex, Ultadanga, Calcutta, in the name of Shri Biman Chandra Das was rightly done in accordance with the rules or not.

2. Main grievance of the applicant is that he was holding the post of General Secretary of the Association under the name and seal of IA & AD Staff Welfare Quarters Association and he as Secretary of the Association received a notice dated 27.6.1996 from the Deputy Accountant General (Admn.) who is also Ex-Officio Estate Officer, asking the Welfare Association to send a reply

of the notice within fifteen days from the date of issue of the notice. Reply was accordingly given, but thereafter on 2.7.1996 the Deputy Accountant General (A) & Ex-Officio Estate Officer issued another notice or show cause dated 2.7.1996 (annexure 'A/9' to the application), asking the applicant, Biman Chandra Das, to show cause as to why he should not be asked to vacate the quarters No.130 (III) at IA & AD Housing Complex, Ultadanga, Calcutta, within 60 days from the date of issue of the memo.

3. The allegation against the applicant is that he (Biman Chandra Das) had entered into an unlawful agreement for displaying hoarding boards inside IA & AD Housing Complex and such unlawful act by Shri Das has caused a breach of Allotment Rules. On receipt of the show cause notice dated 2.7.1996, the applicant, Shri Biman Chandra Das made a representation before the said authority stating inter alia all facts therein and denying the charge brought against him in the notice dated 2.7.1996. On receipt of the representation dated 17.7.1996 from the applicant, as asked for, the Ex-Officio Estate Officer passed an order dated 9.8.1996 cancelling the allotment in respect of quarter no. 130 (Type- III) at IA & AD Housing Complex in the name of Shri Biman Chandra Das holding that after careful consideration of his representation, the competent authority has not accepted his explanation made therein. As such, the applicant was directed to vacate the quarters within sixty days from the date of issue of the show cause memo dated 2.7.1996. Feeling aggrieved by the said order of cancellation, the applicant has come before this Tribunal for setting aside the impugned order dated 2.7.1996 (Annexure 'A/9' to the application) and also the final order of cancellation of the quarters dated 9.8.1996 (annexure 'A/12' to the application), on the ground that the entire action taken against the applicant is arbitrary, illegal and malafide and violative of the rules and also in violation of the principles of natural justice.

4. The respondents resisted the application by filing a written reply stating inter alia that the action was taken by the

authority in accordance with the rules and after giving the applicant proper opportunity to represent his case against the proposed action by the authority. It is stated that the Indian Audit & Accounts Department has its own residential housing complex at 1/5, CIT Scheme, VII-M, Ultadanga, VIP Road approach, Calcutta-67. The said complex came into being from 1988 under the administrative control of Principal Accountant General (A&E), West Bengal, and the Deputy Accountant General (Admn.) functions as the Estate Officer for the complex for allotment of quarters. In September, 1993, on receipt of a complaint regarding erection of an iron structure inside the housing complex, there was a direction by the Estate Officer to the General Secretary, IA & AO Staff Quarters Welfare Association to intimate the office immediately the purpose and utility of the structure or any other information known to them in this regard. The General Secretary of the Association by his confidential letter dated 10.9.1993 had intimated him that with a view to procure some additional financial assistance towards welfare activities/puja funds, the allottees decided to erect a temporary structure for display of banners/hoardings. Thereafter, in the month of February, 1995, the office received a similar complaint regarding erection of iron structures and displaying of hoardings inside the housing complex. On receipt of the complaint against the Association for erecting a hoarding, the General Secretary of the Association was requested vide letter dated 10.3.1995 to inform a convenient date for meeting with the Estate Officer, but he neither intimated the convenient date for meeting nor called on the Estate Officer and as such a reminder was issued vide letter dated 15.5.1996, but to no effect. Thereafter, the Secretary of the Association was directed to remove the objection of the complaint vide letter dated 31.5.1995 (annexure 'R-VI' to the reply). Thereafter, the Headquarters Office received various complaints from various persons regarding erection of hoarding boards inside the complex and the matter was investigated by the Welfare Officer and

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department received the report of the investigation dated 9.4.1996 (annexure 'R-X' to the reply). Thereafter, the Secretary of the Welfare Association was served a show cause notice dated 27.6.1996, requesting him to explain the reason for these illegal activities and also to state why recognition of the Association would not be withdrawn for such illegal acts (annexure 'R-XII' to the reply). Thereafter, a case was instituted by M/s Shade before the 2nd Munsif, Sealdah, praying for permanent injunction and that petition has been dismissed. Thereafter, the respondent, Estate Officer, served a notice on 2.7.1996 upon the applicant, proposing action to be taken by them for alleged violation of the terms and conditions of the allotment rules. Since the reply was not satisfactory, the competent officer rightly cancelled the allotment by the letter dated 9th August, 1996 (annexure 'R-XIV' to the reply). As such, the respondents state that the application is liable to be dismissed.

5. Heard 1d.counsel, Mr.S.K.Dutta, appearing on behalf of the applicant. Mr.Dutta has submitted that before issuing the show cause notice on 2.7.1996 vide annexure 'A/9' to the application, no personal notice was served upon Shri Biman Chandra Das for cancellation of allotment of his quarters for violation of the terms and conditions of the Allotment Rules. He submits that all previous correspondence were made with the General Secretary of the Association and not in the name of Shri Biman Chandra Das. ~~hence the said allotment of the quarters was not made for the purpose of use of the Association but for the use of Shri Biman Chandra Das and his family members.~~ Mr.Dutta further submits that the show cause notice is bad, unwarranted, and without any sufficient particulars. He further submits that the order of cancellation of the allotment of quarters was issued by the authority without considering the representation of the applicant submitted before the authority by passing non-reasoned and non-speaking order. Thereby, the order of cancellation is laconic one and liable to be struck down.

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6. 1d.counsel Mrs.Kanika Banerjee, appearing on behalf of the respondents, submits that the facts disclosed in the show cause

notice dated 2.7.1996 are sufficient to hold that the applicant has unlawfully displayed the hoarding boards inside the IA & AD Housing Complex, without taking any permission from the authorities and harmonious relations between the neighbours is going to be jeopardised. She further submits that since the authority was not satisfied with the explanation submitted by the applicant, the authority has the right to cancel the allotment, as done in this case and thereby the question of personal hearing does not arise and as such, the principle of natural justice has not been violated at all in this case.

7. I have considered the submissions of both the parties. First I would like to deal with the show cause notice dated 2.7.1996 purported to have been issued by the Deputy Accountant General (A) & Ex-Officio Estate Officer, who is the competent authority to decide the matter in question. From the show cause notice it is found that an allegation has been brought against the applicant that he has entered into an unlawful agreement for displaying hoardings inside the IA & AD Housing Complex and it was found that such unlawful act by Shri Biman Chandra Das has caused a breach of Allotment Rules. On a careful consideration of the show cause notice it is found that the notice or show cause cannot be said to be a notice following all principles of Rules of Allotment for cancellation of allotment of the quarters in respect of the applicant. It is found from the records that all correspondence were made by the Estate Officer before 2.7.1996 with the Secretary of the Association concerned and not in the personal capacity of Shri Biman Chandra Das who had got the allotment of the quarters in the capacity of staff of the office of the Accountant General. Moreover, the said show cause notice does not disclose name of the person with whom the applicant entered into an agreement for displaying the hoarding boards inside the IA & AD Housing Complex, though from earlier

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notice it is found that allegations were brought against the Association not against Shri Bimal Chandra Das. Contention of Mrs. Kanika Banerjee is that since the applicant contested the case before the 2nd Munsif where he was made a respondent, he knew about the fact for which alleged charge was brought against him. Such a contention of Mrs. Banerjee cannot be accepted.

8. When a prejudicial order is going to be issued by the competent authority for cancellation and for vacation of the quarters where the applicant resides with his family members and when the said quarters was allotted in the name of Shri Biman Chandra Das in his capacity as staff of the Office of the Accountant General (Audit)-I, West Bengal and not as Secretary of the said Association, the show cause notice must be served with sufficient particulars for the proposed action to be taken by the respondent-authorities. Besides the said fact, it is found that by the show cause notice the applicant was asked to represent his case before the authority for consideration. Accordingly, the applicant submitted a representation against the proposed action to be taken by the authority for alleged violation of the terms and conditions of the Allotment Rules and also against the purported allegation brought against him. But the authority after considering his representation, did not disclose any reason as to why his representation submitted to the authority was found unsatisfactory. On the face of the order dated 9.8.1996, it is found that the order is devoid of reason.

9. On careful consideration of the aforesaid order and the facts on record, it is very difficult to say that the Estate Officer had really applied his mind to the case before issuance of notice of show cause and for cancelling the allotment of the quarters. So the impugned order of cancellation as well as the notice of show-cause have been issued by the Estate Officer without applying his mind, which is apparent from the fact that he has not given

any reasons for rejection of the representation against the proposed order of cancellation of the allotment. So non-application of mind, rejection without disclosing any reason thereof, vitiates the impugned order of cancellation and accordingly, this is liable to be struck down. It is an elementary principle of natural justice that no person should be condemned without hearing and without giving him proper opportunity to represent his case before the authority.

10. Hence, the show cause notice dated 2.7.1996 (annexure 'A/9' to the application) as well as the final order of cancellation of the allotment of quarters in respect of the applicant dated 9.8.1996 (annexure 'A/12' to the application) are set aside. However, the authority will be at liberty to proceed against the applicant in accordance with law, if they think fit and proper.

11. I have not dealt with the other points raised in this application. My decision is confined to the show cause notice dated 2.7.1996 and the subsequent order of cancellation of the quarters dated 9.8.1996 only.

12. The application is disposed of on the above lines. No order is made as regards costs.

16/12/97
(D.Purkayastha)
Judicial Member