

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 1284 of 96

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

Sri Raj Kumar Singh , MES No. 203410, son of Ganapati Singh, Mazdoor, Office of G.E. (FW), Calcutta Division, residing at Quarter No. 49/1, Strand Lines, (FW), Calcutta.

...Applicant.

-v e r s u s-

1. Union of India, Service through the Secretary, Ministry of Defence, South Block, New Delhi.
2. G.O.C., Bengal Area, Acharya Jagadish Chandra Bose Road, Calcutta-700 027.
3. Garrison Engineer (Fort William), 4, Red Road Camp, Calcutta-700 021.
4. Station Commander, Station Head Quarter, Alipore, Calcutta-700 027.
5. A.G.E. E/M No. 1 FW Calcutta, 4, Red Road Camp, Calcutta-700 021.
6. U.A.B.S.O. (Fort William), 4, Red Road Camp, Calcutta-700021.
7. B.S.O. (Fort William), 4, Red Road Camp, Calcutta 700 021.

... Respondents

For the applicant : Mr. S.N. Roy, counsel
Mr. A.K. Ghosh, counsel.

For the respondents : Mr. S.K. Dutta, counsel,

Heard on 23.7.98

Order on 23.7.98

O R D E R

D. Purkayastha, JM

The applicant Sri Raj Kumar Singh, MES No. 203410 being allottee of the quarter No. 49/1, Strand Lines (FW), Calcutta had challenged the purported order of cancellation of allotment of the quarter issued by the respondent Adm. Comdt. for and on behalf of the Station Commander, respondent No.4 on the ground that the order of cancellation dated 5th October '96 (Annexure-B to the application is arbitrarily and violative of principle of natural justice and liable to be quashed.

2. According to the applicant, he was allotted the said quarter sometime in July '82 and he had been residing in the said quarter with his family members but suddenly the respondents without serving any notice upon the applicant had canceled the allotment of quarter alleging

It was alleged that on the date of checking of the quarter by a Team of Officers, some unauthorised persons were found in the quarter. But no show cause notice was issued upon the applicant before passing such order of cancellation of allotment of quarter.

2. The respondents filed a written reply stating inter-alia that a Group of Officers conducted physical checking to find out whether the allottees were in occupation in the premises allotted to them and during inspection it was found that the said quarter was not in occupation of the applicant i.e. allottee. It was also found that the applicant was not residing in the quarter No. 49/1 and it was also found that some unauthorised persons viz. K.S. Thapa, Janaki Thapa and Manika Thapa had occupied the said quarter without any valid permission from the competent Authority and after receiving the report of the Group of Officers, authority cancelled the allotment as the applicant had violated the terms and conditions of the order of allotment where it was specifically mentioned that applicant would stay with his family members in the quarter and he would not sublet his quarter to any person under any circumstances (Annexure-A to the application). Since the applicant was not found in occupation in the quarter and some unauthorised persons were found staying in the said quarter, thereby the authority had cancelled the said quarter in accordance with law. So application is liable to be dismissed.

3. Mr. Ghosh, Id. counsel for the applicant submits that a show cause notice ought to have been given to the applicant before the order of cancellation since some unfounded allegations of subletting of quarter to unauthorised persons had been brought against the applicant and thereby the applicant under the rules of principles of natural justice was entitled to get opportunity to revert the allegation brought against him but in the instant case that has not been done. Thereby the order of cancellation is arbitrary, illegal and violative of the principles of natural justice and accordingly order of cancellation (Annexure-B) is liable to be set aside.

4. Mr. Dutta, Id. counsel appearing on behalf of the respondents submits that as per rules of allotment, the applicant was not entitled to show cause notice before cancellation of quarter, since the applicant had violated terms and conditions of the order of allotment and he will

be given opportunity to state his case in a proceeding which has been started against him under the Public Premises (Vacation of Unauthorised Occupants) Act 1971 and in that proceedings the applicant would get full opportunity to defend his case. Mr. Dutta, Id. counsel for the respondents further submits that since the applicant had violated the terms and conditions of the order of allotment, the cancellation of the allotment was automatic and no question of show cause did arise. So the order of cancellation was operative, valid and it was issued in accordance with rules and thereby the application is liable to be dismissed.

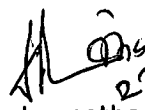
5. I have considered the submission of Id. counsel for both the parties and I have gone through the record. It is apparent from the Annexure-R/1 to the reply filed by the respondents that the applicant stated that they had not subletted the accommodation. In other words, the allegations were denied by the applicant. It is also found from the report submitted by the Board of Officers alongwith the Annexure-R/1 to the reply that some persons viz. Sri K.S. Thapa, Smt. Janaki Thapa and Smt. Manika Thapa were found in the occupation of the quarter on the date of checking. The respondent No.3, on the basis of the said report given by the Board of Officers had proceeded to cancel the order of allotment without serving any show cause notice to him and that order had been challenged before this Tribunal by the applicant.

6. It is not in dispute that the applicant was charged for subletting but he was not given any notice, and justice i.e. S.R. 317 (B-21(1)) provides for cancellation of allotment, if it was subletted to unauthorised person. The rule does not provide for show cause notice, but at the same time, a Govt. servant who is allotted a Govt. quarter is normally permitted to retain the same till it is surrendered or he ceases to occupy the residence or the allotment is cancelled/or deemed to have been cancelled for any reason by the Director of Estates. But it is settled law that no order detrimental to the interest of the employee should be passed by the authority without giving him any proper opportunity to revert the allegation brought against him. In the instant case, I find that applicant has categorically stated that he had not subletted the accommodation. The respondents also could not produce any evidence in support of the report of the Board of Officer that the applicant had

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subletted the accommodation to those unauthorised persons who were found in the quarter at the time of checking. Admittedly, the order of cancellation or allotment was passed denying the reasonable opportunity to the applicant to state his case and without collecting material evidences in respect of allegations of unauthorised occupation of the quarter by those persons. Thereby I find that the impugned order of cancellation is not tenable and liable to be quashed. Accordingly I quash the order dated 5th October '96 (Annexure-B to the application) and as well as the order of vacation of the quarter dated 8th October '96 (Annexure-C to the application). However, liberty was given to the

respondents to proceed against the applicant in accordance with the rule, if they so desire to do so, on the basis of the report submitted by the Board of Officers as stated in the reply. Accordingly the application is disposed of awarding no costs.


(D. Purkayastha)
M e m b e r (J)
23/7/98