

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.782 of 1997

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

SHRI N.BARUA, MES/202319, PHO
S/o Late Dilip Barua, working
for gain at G.E.(FW) Calcutta
and residing at Quarter No.5/6,
Type-II O/S George Gate,
Fort William, Calcutta.

... Applicant

Vs.

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

... Respondents

For the applicant : Mr.S.N.Roy, counsel.

For the respondents: Mr.Bikash Chatterjee, counsel.

Heard on : 30.6.1998

Order on : 30.6.1998

O R D E R

The applicant, Shri N.Barua, being allottee of quarter no.5/6 Type-II O/S George Gate, Fort William, Calcutta, on the basis of the allotment order dated 21.2.1994 by the competent authority, has challenged the validity of the impugned order dated 5th July, 1997 (annexure 'B' to the application), by which the applicant was directed to vacate the quarters by 10th July, 1997, or else forceful eviction proceeding would be started against him.

2. According to the applicant, it has been alleged by the respondents that he has sub-let the quarters allotted to him but no show-cause notice has been issued to him nor an enquiry held before taking the decision for cancellation of the order of allotment dated 21.2.1994 and thereby the applicant contends, the entire action of the respondents is violative of the principles of natural justice and is arbitrary and as such the impugned order of allotment is liable to be cancelled.

3. The case of the applicant has been resisted by the respondents stating inter alia that the applicant was admittedly allotted the said quarters, but he deliberately suppressed the fact that by a letter dated 30th June, 1997, allotment of quarters in favour of the applicant was cancelled by the competent authority w.e.f. 18th June, 1997, on the ground of sub-letting of Government married accommodation, failing which necessary eviction proceedings would be initiated w.e.f. 11th July, 1997 (annexure 'R/1' to the reply). The applicant was asked to vacate the accommodation by 10th June, 1997. It is also stated that during surprise checking which was carried out under the instruction of administrative commandant, it was found that the applicant had violated the provisions and the terms and conditions regarding sharing/sub-letting of Government accommodation by sub-letting his quarters unauthorisedly without the permission of the competent authority. Hence, they submit, the respondents have acted in accordance with law and the application is liable to be dismissed.

4. Ld.counsel, Mr.S.N.Roy, appearing on behalf of the applicant, submits that the entire action of the respondents is arbitrary as no enquiry was held in presence of the applicant and after giving him an opportunity of hearing before issuing the order of cancellation of allotment of the quarters. As such, the said order is arbitrary, illegal and liable to be quashed. Mr.Roy further submits that the applicant cannot be asked to vacate the quarters merely by passing an order of cancellation

without following the procedure as envisaged under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

5. Mr. Bikash Chatterjee, ld. counsel appearing on behalf of the respondents submits that the applicant was found sharing his quarters unauthorisedly with another person, Shri Asan Vaidia. Mr. Chatterjee has also drawn my attention to the letter dated 30th June, 1997 (annexure 'R/1' to the reply) and has produced before me three letters. One letter is dated 18th June, 1997. There is also a surprise check report and also a declaration given by the applicant that he ^{did} ~~would~~ not sub-let the quarters allotted to him to any other person. Mr. Chatterjee submits that as Asan Vaidia was found to be an unauthorised occupant in the quarters allotted to the applicant, the allotment of the quarters was cancelled on the basis of that enquiry.

6. I have considered the submissions of the ld. counsel for both the parties on that score and I have also gone through the records produced before me by the ld. counsel for the respondents. From the letter dated 18th June, 1997, written by A. Swain, Major 2IC, for CO addressed to the Station Headquarter, Alipore, Calcutta-27, it is found that the respondents received an anonymous letter regarding sub-letting of the quarters by the applicant and others. A report of the said sub-letting was accordingly sent to Station Headquarters, Alipore, Calcutta. On a perusal of the surprise check report it is found that the family members of the applicant were found in the quarters allotted to the applicant but also one Shri Asan Vaidia, alleged to be a brother, was found an unauthorised occupant who was serving in the Customs Department. On the basis of such report, the allotment order was cancelled. However, the respondents could not produce before me any document to show that before passing the order of cancellation of the quarters an enquiry was held following due procedure ^{& prescribed by the Act} and the applicant given an opportunity to state his case regarding the allegation of sub-letting of the

quarters. I do not find any statement made by any officer or witness supporting the case of the respondents that the applicant had sub-let the quarters. Hence, this is a mere allegation which must be proved by proper evidence from the side of the respondents.

7. In the case of Bhupender Singh vs. UOI & Ors. (1993 (23) ATC 113), it has been held that conclusion of sub-letting can be arrived at on the preponderance of probabilities but the evidence must be adequate. It must be established that the allottee was residing at a place other than the accommodation allotted to him. Statements of the neighbouring allottees also considered relevant.

8. Hence the charge of sharing the quarters with another person by way of sub-letting is no doubt a stigma to the applicant but no person should be condemned without giving him an opportunity of being heard. No order detrimental to the interest of the employee should be passed by the authority without allowing him to state his case. In the instant case, I am satisfied that no enquiry in accordance with the principles of natural justice has been adopted.

9. I have gone through the letter dated 30th June, 1997, (annexure 'R/1' to the reply), which has been relied upon strongly by Mr. Bikash Chatterjee, ld. counsel for the respondents in support of his case. I find that the said letter clearly indicates that the allotment of the quarters was cancelled w.e.f. 18th June, 1997, and the authorities were requested to ask the applicant to vacate the quarters by 10th July, 1997, failing which necessary eviction proceedings would be initiated w.e.f. 11th July, 1997. The said letter cannot be termed as a show-cause notice. In the case of unauthorised ^{eviction} occupation, a proceeding is required to be started by the respondents after cancellation of the quarters. But no such proceeding has been started by the respondents against the applicant in this case.

10. In view of the aforesaid circumstances, I find that the entire action of the respondents in cancelling the quarters in question, as evident from annexure 'R/1' to the reply

which is dated 30th June, 1997, and the order dated 5th July, 1997 (annexure 'B' to the application), are wholly arbitrary illegal and liable to be quashed as the said orders were passed against the principles of natural justice.

11. In view of the above, I set aside both the orders, annexure 'R/1' to the reply and annexure 'B' to the application. The respondents are given the liberty to hold a fresh enquiry on the basis of the allegations brought against the applicant in accordance with law.

12. The application is thus disposed of. No order is made as to costs.

[Signature] 20/6/98
(D. Purkayastha)
Judicial Member