

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 813 of 97

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

Shri P.K. Chatterjee, son of late J.K. Chatterjee, Court Officer in the Calcutta Bench of the Central Administrative Tribunal at No.234/4, A.J.C. Bose Road, Calcutta-700 020, residing at P-9, Niva Park, Badamtala, Brahmapur, Garia, Calcutta-84.

...Applicant

- v e r s u s -

1. Union of India through the Secretary to the Government of India, Ministry of Urban Affairs & Employment, Nirman Bhawan, New Delhi-110011.
2. The Director of Estates, Government of India, Nirman Bhawan, New Delhi-110011.
3. The Estate Officer/Estate Manager, Office of the Estate Manager, 5, Esplanade East, Calcutta-700069.
4. The Assistant Estate Manager, Office of the Estate Manager, Government of India, 5, Esplanade East, Calcutta-700 069.
5. The Section Officer (Estt.) Central Administrative Tribunal, Calcutta Bench, 2nd M.S.O. Building, 11th and 12th Floor, CGO Complex, Nizam Palace Compound, 234/4, A.J.C. Bose Road, Cal-700 020.

For the applicant : Mr. R.K. De, counsel.

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

Heard on 25.9.98

Order on 25.9.98

O R D E R

D. Purkayastha, JM

The applicant having been retired from the post of Section Officer of this CAT challenged the validity of the purported order of cancellation of allotment dated 3.10.96 (Annexure-A/3), order of the Appellate Authority dated 4.3.97 (Annexure-A/5) rejecting the appeal filed by the

applicant and order of recovery of licence fee of Rs.12,000/- dated 13.5.97 on the ground that proceedings for cancellation of the allotment of quarter initiated by the respondents is based on no legal evidence, thereby all the impugned orders are illegal, arbitrary and violative of principles of natural justice.

2. According to the applicant, he was allotted a Govt. quarter No. 748 Type-III, Block-IC, Salt Lake, Calcutta. Thereafter he allowed his colleague of this Bench Sri S.R. Das to stay in the said quarter for ten to fifteen days after Sri Das with his wife came down from outstation. According to the applicant, he was asked to show cause by a letter dated 3.9.96 (Annexure-A/2) as to why allotment should not be cancelled on the ground that on enquiry, it was revealed that he had made sublet the quarter to unauthorised person in violation of Allotment rules and accordingly he appeared before the authority on the date fixed on 29.9.96 at 11-30 Hrs. and he denied the allegations, but he stated his case before the authority that he allowed his colleague Sri Das to stay his quarter for 10 to 15 days. But the respondent No.3 without considering this fact had come to a purported decision that the applicant had made sublet the said quarter to unauthorised person and cancelled the order of allotment by a letter dated 3.10.96 (Annexure-A/3).

3. Feeling aggrieved by and dissatisfied with the said order of cancellation (Annexure-3), the applicant preferred an appeal through proper channel before the Director of Estate, New Delhi stating the ground therein; but that appeal has been rejected by the Appellate authority by an order dated 4.3.97(Annexure-A/5). Thereafter the applicant vacated the quarter on 4.4.97. The respondents Asstt. Estate Manager issued memorandum dated 13.5.97 (Annexure-A/10) for recovery of Rs.12,000/- from his D.C.R.G. etc.).

4. Feeling aggrieved by the said orders mentioned above, the applicant approached this Tribunal.

5. The respondents denied all allegations of the applicant made in the application stating inter-alia that the application is barred by principles of estoppel, waiver, and acquiescence. As the applicant had sublet the whole suite he was given opportunity of hearing on 20.9.96 at 11.30 A.M. and Enquiry Officer was satisfied that the applicant had

sublet the quarter and accordingly order of cancellation was issued.

6. Heard Id. counsels of both the parties. Id. counsel Mr. De appearing on behalf of the applicant submits that all the purported actions of the respondents contained in the Annexures-A/2, A/3, A/5, A/7, A/9 and A/10 of this application are highly arbitrary, illegal and liable to be quashed as allegations were based on no evidence. Id. counsel Mr. De further argued that there is no evidence in record to justify the conclusion made by the Estate Manager that the applicant had sublet the quarter to unauthorised persons. According to the Id. counsel Mr. De that the show cause notice is vague without any sufficient particulars of unauthorised person. It is also stated by the Id. counsel Mr. De that the purported enquiry report as mentioned in the show cause notice (Annexure-A/2) had not been furnished to the applicant to defend his case. Mr. De, Id. counsel also submits that there is no admission on the part of the applicant that he had sublet the quarter to the unauthorised person and thereby conclusion arrived at by the Estate Manager on the basis of the report of the Enquiry Officer without any legal evidence is perverse and arbitrary and violative of principles of Natural justice.

7. Mr. Mukherjee, Id. counsel for the respondents produced notification to show that the Estate Manager/Asstt. Estate Manager was vested with the power of allotment of the quarter, cancellation of the quarter. So Id. counsel Mr. Dey does not dispute the same. Id. counsel Mr. Mukherjee also produced the concerned file of the proceeding where the impugned order was passed by the Authority in this case. Id. counsel Mr. Mukherjee submits that all the orders are valid in law and order of cancellation and order of recovery of damage rent were issued in accordance with the rules. So application is liable to be dismissed.

8. In view of the aforesaid divergent arguments made by the Id. counsels of both the parties, I have perused the show cause notice dated 3.9.96 (Annexure-A/2) as well as the order of cancellation dated 3.10.96 (Annexure-A/3), order of recovery of damage rent. I have also perused the notes at page 1 of the file produced by the Department concerned. It is found that in the order, the Estate Manager decided to cancel the allotment of the quarter on the ground of charge that

applicant had made sublet the quarter to unauthorised person. It is also found that the applicant did not file any written reply to the show cause notice. But he appeared on 20.9.96 before the authority and he made a statement before the authority that he allowed one Sri S.R. Das to stay his quarter temporarily for 10 to 15 days. It is found that on the basis of the statement made by the applicant before the authority on 20.9.96 the Estate Manager drew a conclusion that the applicant had sublet the quarter to unauthorised person and accordingly decided to cancel the allotment. It is found that no further order of enquiry in pursuant to the said statement made by the applicant has been passed by the Authority to ascertain the facts stated by the applicant. It is also found from the relevant files produced by the respondents that the Estate Manager did not collect any further evidence to satisfy himself that the applicant had sublet the quarter to Sri S.R. Das or Sri Das was allowed to stay in the quarter temporarily on bonafide. It is settled law that ~~suspicion~~<sup>allegation</sup>, however, may be strong that does not take the place of legal proof. So charge of subletting must be based on legal evidence. The respondents did not examine Sri Das to ascertain as to whether Sri Das paid any rent to the applicant for occupation of the said quarter. I have gone through the enquiry report submitted by the Enquiry Officer basing upon which a memorandum of show cause notice dated 3.9.96 (Annexure-A/2) had been issued. On a careful perusal of the said enquiry report, it is found Enquiry Officer also did not collect any evidence against the applicant to ascertain whether the applicant had sublet the quarter or not to any unauthorised person. On a perusal of the said enquiry report, it is found that name of Sri S.R. Das was not found as unauthorised person in the said quarter. But name of Sri Das was disclosed by the applicant in his statement made on 20.9.96 and applicant admitted that he allowed Sri S.R. Das to stay in the quarter for 10 to 15 days temporarily. Such admission does not lead to conclude that he had sublet the quarter to Sri Das. It is true that on the face of the allotment of Govt. residence (General Pool in Delhi) Rules, 1963 which is applicable to W.B., it is found that sharing accommodation with another person is not permissible unless such sharing is permitted by the competent authority. But in the instant case, I find that Sri Das is a staff of the CAT and he was allowed to stay in the quarter 10-15 days only as per

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representation made by the applicant before the authority. So such temporary stay of colleagues/relatives for 10 to 15 days does not lead to conclude that the applicant had sublet the quarter to Sri DAs. In order to prove the charge of subletting, further evidence from the neighbour of the allottee could have been collected by the authority when the applicant made a categorical statement that he allowed Sri Das to stay in the quarter temporarily. Temporary stay does not lead to irresistible conclusion that he had sublet the quarter to Sri Das. So, I find that the decision arrived at by the Estate Manager that the applicant had sublet the quarter to Sri Das is wholly unsustainable for want of evidence in this case.

9. Regarding appellate order dated 4.3.97 (Annexure-A/5) the Id. counsel Mr. De submits that the order of the appellate authority dated 4.3.97 is also arbitrary, illegal and violative of principles of natural justice as the said order is devoid of reason. Thereby it is liable to be quashed.

10. Mr. Mukherjee, Id. counsel appearing on behalf of the respondents submits that the respondents in the order dated 4.3.97 (Annexure-A/5) has stated that Appellate Authority considered the representation preferred by the applicant against the penalties on the charge of unauthorised subletting of the above quarter. Accordingly application has been rejected. No speaking order is required to be passed by the appellate authority in this case.

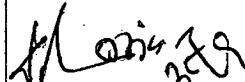
11. I have also considered the arguments for both the parties on that score. The file of the Appellate Authority has not been produced by the respondents. But it is found that the applicant made a representation/appeal to the Director of Estate i.e. Appellate Authority stating the facts therein and in the said representation (Annexure-A/4), it is stated by the applicant that allegation of subletting of quarter is untrue and it is also stated by the applicant that his colleague Shri S.R. Das and his wife temporarily were allowed to stay with him for some short spells of 10 to 15 days after his wife came down from outstation. But respondents did not consider the facts stated in the representation. Impugned order (Annexure-5) does not show in what way the appellate authority has considered his representation made to him. The said

impugned order of the appellate authority dated 4.3.97 (Annexure-A/5) is devoid of reasons and devoid of consideration of the material facts stated in the representation. The Appellate Authority being a quasi judicial body must afford reason for rejection of the appeal. Appellate Authority is bound to pass reasoned order in judicial proceedings. But in the instant case, I find that impugned order of the Appellate Authority is wholly devoid of consideration of the material facts stated in the application. Thereby I am of the view that appellate order (Annexure-A/5) is also not sustainable and liable to be quashed.

12. Ld. counsel Mr. De further submits that if the cancellation order is quashed, ~~subsequently~~ <sup>✓ & Subsequently</sup> all impugned orders passed by the authority after cancellation of order of allotment (Annexure-A/7), dated 27.11.96 are liable to be quashed.

13. In view of the aforesaid circumstances, I set aside all the impugned orders (Annexures-A/2, A/3, A/5, A/7, A/9 and A/10 of the application). Accordingly, it is ordered that the applicant shall be paid all retiral benefits within six months from the date of communication of this order.

14. Accordingly application is allowed without any costs.

  
( D. Purkayastha )  
M e m b e r (J)