

In the Central Administrative Tribunal
Calcutta Bench

OA No.912 of 1997

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

Mohan Shaw

Vs.

Defence

For the Applicant : Mr. S.N. Roy, Lt. Advocate

For the Respondents: Mr. S.K. Dutta, Lt. Advocate

Heard on : 8.7.98

Date of Judgement : 8.7.98

ORDER

The question involved in this case is whether a govt. employee is entitled to get show-cause notice on the allegation of sub-letting of the quarters to unauthorised person before cancellation of order of allotment of quarters. In the instant case applicant Shri Mohan Shaw - while working as Mazdoor under Garrison Engineer(Fort William), Calcutta was allotted a quarters No.KP1/7 previously quarters No.3/7 outside the Georges Gate, Fort William for the purpose of accommodation of the family members under allotment of quarters rules. According to the applicant, the said order of allotment has been cancelled by the authority (respondent) by order dated 29.7.97 (Annexure 'B' to the application) without offering any reasonable opportunity to state his case on the allegation ~~made against him~~ alleging that the applicant had subletted the quarters to unauthorised person. According to the applicant, the said order of cancellation is violative of principle of natural justice, arbitrary and liable to be quashed.

2. Respondents submitted reply denying the claim of the applicant. It is found from the reply that the applicant had been residing in the

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accommmodation with the following persons, namely, Kumari Anu, sister of Sh. Mohan Shaw, Smt. Sapen, wife of Sri Arun Kumar, Raju, son of Sri Arun Kumar and Bharati, daughter of Sri Arun Kumar. According to the respondents, the applicant took over the charge of the accommodation on 23.8.94 and order of allotment was issued in his favour on condition that he would not sublet the quarters to any other person as per condition laid down in the certificate (Annexure R-1 to the reply). So, as per report (Annexure R-1 to the reply) the applicant occupied ~~the~~ ^{unauthorisedly} by allowing accommodation to unauthorised person without taking any permission from the authority and thereby, no notice is required for the purpose of cancelling allotment order as claimed by the applicant in this case. According to the respondents, they acted in accordance with law and order of cancellation is in operative as it was issued in accordance with the law. So, application is liable to be dismissed.

3. I have heard Ld. Advocates of both the parties. Ld. Advocate Mr. Roy, appearing on behalf of the applicant, submits that the order of cancellation is violative ^{of} ~~and~~ principle of natural justice as no show-cause notice on the alleged facts ~~was~~ ^{had been} brought against the applicant was issued to the applicant before taking action of cancellation vide letter dated 29.7.97 (Annexure 'B' to the application). So, there has been denial of principle of natural justice in this case. Thereby, the impugned order is liable to be quashed. Ld. Advocate Mr. Dutta for the respondents submits that the application is pre-mature~~one~~. He further submits that as per provision of the rule the applicant is not entitled to get any notice of show-cause whatsoever before passing order of cancellation if he was found to have violated the terms and conditions of the allotment order. The applicant could have raised his causes or grievances against the order of cancellation before the enquiry authority who is the Estate Officer under the provision of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Having not approached the authority, he has come to Tribunal challenging the validity of the order of cancellation, which is automatic, for violation

of terms of allotment rules. Mr. Dutta has referred to the provisions of the rules 4 and 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 by which the Estate Officer is authorised to consider his grounds made in this application. Thereby, application is liable to be dismissed.

4: I have heard Ld. Advocates of both the parties and have considered their submissions and perused the records. It is found that ^{an} surprise check ^{in hand} of the said allotted quarters done by some officer of the Unit, ^{and} some persons, namely, Kumari Anu, sister of Sri Mehal Shaw, Smt. Sapan, wife of Sri Arun Kumar, Raju, son of Sri Arun Kumar and Bharati, daughter of Sri Arun Kumar were found in the quarters in occupation. According to the said report, the above mentioned persons were unauthorised occupants in the said quarters. On the basis of the said enquiry report the respondents took action and passed the impugned order straightway vide letter dated 29.7.97 which is under challenge. Admittedly, no notice of show-cause of the allegation made there was served upon the applicant before order of cancellation of the allotment. On a perusal of the said provisions of section 4 & 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and records, it is found that after passing of the order of cancellation of allotment the eviction proceeding ^{in the} was started for evicting the applicant from the said quarters. The proceedings of cancellation under Allotment Rules/ ^{or} ^{an} distinct Eviction Proceedings under Public Premises Act ^{cannot be done unless} the order of allotment is cancelled. In the instant case, admittedly before passing of the order of cancellation of allotment on the basis of the allegation of sub-letting the quarters brought by the authority on the basis of the report, no show-cause notice was issued to the applicant and order of cancellation of allotment of the quarters was issued without affording any opportunity to state his case. In Menaka Gandhi's case ^{ML} of 1978 SC 597 where the Hon'ble Court held that every arbitrary action is open to judicial scrutiny. I am concerned mainly with the question whether principles of natural justice

is attracted in the case of cancellation of the quarter and whether action on the undisclosed material facts to the applicant is ground for quashing the order of cancellation of the allotment of the quarters. So, there is no doubt in my mind that such allegation of sub-letting the quarters as per report of the checking officer ^{enquiry} should have been disclosed to the applicant by the authority before cancellation of the allotment of the quarters. In the instant case, no ~~eviction~~ ^{proceeding} proceedings ~~or enquiry~~ has been initiated against the applicant for the purpose of cancellation of the quarters on the basis of the allegation made therein as stated above. It is settled law that no person should be condemned without offering him reasonable opportunity to state his case. Thereby, I am of the view that before passing order of cancellation on the basis of any report received by the authority, reasonable opportunity ought to be given to the applicant. Moreover, it is noted that no person can be said to be an unauthorised occupant in the quarters unless order of cancellation of allotment is issued by them or until the expiry of the period of permissible limit is granted to them. So, jurisdiction of the Estate Officer, in view of the provisions of the Section 4 and 5 of the said Act, will come in operation when the allotment order has been cancelled and thereafter, ~~it is referred to~~ ^{one is the made} the authority under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for eviction of unauthorised occupant from the quarters. It is true that as rule of allotment does not prescribe for issuing any show-cause notice before passing order of cancellation; but in the instant case, the cancellation order was issued on the basis of allegation brought against him alleging that he violated the rules of allotment. In view of the aforesaid circumstances I find that the impugned order of cancellation was issued in violation of principles of natural justice and without giving any opportunity to applicant to state his case before passing the order of cancellation. Thereby, I find that the impugned order of cancellation is liable to be quashed and accordingly, it is quashed. Liberty is given the respondents to proceed further if they think fit and proper in accordance with law.


(D. Purkayastha)
Member (J)