

Gurbax Singh
2016.10.06 10:22

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 19612 of 2016
Date of decision: 21.09.2016**

Faquir Chand

.....Petitioner

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr.Vivek Sharma, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner through the present petition under Articles 226/227 of the Constitution of India prays for quashing the orders dated 20.10.2015 and 14.12.2015, Annexures P.20 and P.22 respectively passed by the Central Administrative Tribunal, Chandigarh (in short, "the Tribunal") as there was no delay on his part. Further prayer has been made for allowing the petitioner to stay in the government accommodation allotted to him and not to effect any recovery and the recovered amount be refunded to him with 18% penal interest. Direction has also been sought to the respondents restraining them from vacating the government accommodation from the petitioner and operation of recovery order may also be stayed.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is working as a Head Constable in Chandigarh Police. He was allotted a government quarter in Police Lines, Sector 26, Chandigarh. There is no other accommodation with the petitioner. The family of the petitioner is residing in the said government quarter. A news was published in a newspaper "Aaj Samaj" stating that the police colony had turned into Paying Guest (PG). There were more than 1300 government quarters in the Police Colony. The name of the petitioner was also projected therein. According to the petitioner, merely on the basis of the said news item, respondent No.3 issued order dated 29.3.2012, Annexure P.2 cancelling the government accommodation allotted to eight officials including the petitioner and further debarred them from allotment/change of police pool house for a period of two years. Departmental proceedings were also directed to be initiated against them. The petitioner came to know that the said action had been taken on the basis of secret enquiry made by DSP, CID. According to the petitioner, no opportunity of hearing was given to the petitioner. The petitioner made a representation dated 02.04.2012, Annexure P.4 to the respondents stating that at the time of checking, her daughter Meenakshi Sharma was staying in the same house and since she was living alone, he had made a request to the lady constable to stay with her for her security. The petitioner stated that he had not taken any rent from them. Respondent No.3 vide order dated 25.5.2012, Annexure P.5 ordered a departmental enquiry against the petitioner and others. Vide order dated 22.8.2013, Annexure P.6, respondent No.3 directed the petitioner to vacate the house within a week otherwise he will be liable to pay market rent at the rate of 50 times the normal rent. The petitioner challenged the said order by filing

appeal before respondent No.3 which was dismissed vide order dated 8.11.2013, Annexure P.7. The said respondent had also issued order dated 11.2.2015, Annexure P.8 vide which penalty had been imposed upon the petitioner at the rate of 50 times of the normal market rent w.e.f. 31.3.2012. It was also directed to deduct ₹ 2,27,937/- from the salary of the petitioner by deducting 50% of it. After the order dated 11.2.2015, the respondents started recovery of ₹ 12000/- per month with effect from April 2015 from the salary of the petitioner. Thereafter, the petitioner filed revision petition against the order dated 08.11.2013 before respondent No.2 which was also dismissed vide order dated 02.07.2015, Annexure P.10 being not maintainable. Respondent No.2 in the said order directed respondent No.3 to furnish the details of disciplinary proceedings against the petitioner. In the departmental enquiry, the petitioner was held guilty by the Enquiry Officer. The respondents issued show cause notice dated 23.2.2015 to the petitioner proposing punishment of forfeiture of five years of approved service with permanent effect. The petitioner submitted a reply to the said notice. The Commandant IRB Battalion issued order dated 24.4.2015, Annexure P.11 vide which punishment of forfeiture of five years of approved service with permanent effect rendering him junior to his colleagues forever was inflicted upon the petitioner. The petitioner challenged the said order by filing appeal before respondent No.3. Respondent No.3 found that there was no statutory provision under which such punishment could be awarded to the employee. Thus, vide order dated 19.5.2015, Annexure P.12, respondent No.3 remanded the matter back to the disciplinary authority to pass fresh order. The Commandant IRB Battalion on remand inflicted a revised punishment of forfeiture of five years of approved service for increment purpose with permanent effect on the petitioner vide order dated 13.7.2015 (Annexure

P.13). Thereafter, respondent No.3 filed an application before the Estate Officer under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) 1971, (in short, “the 1971 Act”), against the petitioner for eviction of the house. Vide order dated 29.4.2014, the Estate officer directed the petitioner to vacate the house within 15 days. The petitioner filed appeal before the District Judge against the said order. Vide order dated 29.4.2014, the Additional District Judge stayed the operation of the impugned order. Thereafter, the petitioner approached the Tribunal by way of filing original application dated 4.8.2015, Annexure P.15. The petitioner came to know through RTI that departmental enquiry had been dropped against five police officials and they were being paid house rent allowance and even no recovery had been made from them. The petitioner also relied upon judgment of this Court dated 03.12.2003 in CWP No.15848 of 1999 (***Pritam Singh vs. Secretary, House Allotment Committee, Chandigarh Administration and others***) vide which it was held that allotment of house could not be cancelled on the ground of subletting without complying with the basic principles of natural justice. The respondents filed written statement, Annexure P.19. Vide order dated 20.10.2015, Annexure P.20, the Tribunal dismissed the application filed by the petitioner solely on the ground of delay without appreciating the fact that the petitioner had also challenged orders dated 11.2.2015 and 2.7.2015 which were consequent to the orders dated 29.3.2012, 22.8.2013 and 8.11.2013. The review application filed by the petitioner was also dismissed vide order dated 14.12.2015, Annexure P.22 by the Tribunal. The Additional District Judge vide order dated 20.7.2016 dismissed the appeal filed by the petitioner against the eviction order dated 29.4.2014 passed under the 1971 Act. The petitioner approached this Court through CWP No.16656 of 2016 challenging the

order dated 20.7.2016 passed by the Additional District Judge. Vide order dated 17.8.2016, Annexure P.23, the learned Single Judge dismissed the writ petition observing that since the order of cancellation of allotment passed by respondent No.3 had become final against the petitioner, he had no case either on facts or in law. Hence the instant petition by the petitioner.

3. We have heard learned counsel for the petitioner.

4. Admittedly, the petitioner who is working as Head Constable in the Chandigarh Police was allotted a government quarter in Police Lines, Sector 26, Chandigarh. On secret enquiry conducted by the respondents, it came to the notice that the police lines was infact turning into P.G. A news to this effect was also published in the newspapers. Consequently, vide order dated 29.3.2012, Annexure P.2 allotment of government accommodation to eight officials including the petitioner was cancelled and they were further debarred from allotment/change of police pool house for a period of two years. Further, disciplinary proceedings were also ordered to be initiated against the said officials. The representation filed by the petitioner against the said order was dismissed vide order dated 22.8.2013, Annexure P.6 by respondent No.3. Direction was also given to vacate the government accommodation within a week failing which penalty of market rent at the rate of 50 times of the normal market rent from the date of the original allotment would be charged. The appeal and the revision filed by the petitioner against the impugned orders were also dismissed. The plea of the petitioner that the persons staying in the quarter were the friends of his daughter was also rejected. At the same time, the petitioner also faced disciplinary proceedings on account of subletting the government quarter allotted to him. The charge was held to be proved and punishment of forfeiture of five years of approved service for increments with permanent

effect had been imposed upon the applicant vide order dated 13.7.2015, Annexure P.13. Thus, the contention of the petitioner that he was not afforded any opportunity of hearing cannot be accepted. The petitioner had availed all the statutory remedies against the impugned orders. The relevant findings recorded by the Tribunal in its order dated 20.10.2015, Annexure P.20 read thus:-

“9. We have given our careful consideration to the matter. It is seen that vide order dated 29.3.2012, Annexure A.2, the allotment of the government accommodation to the applicant was cancelled. This was done on the basis of internal enquiry carried out by the Deputy Superintendent of Police, UT Chandigarh regarding subletting the houses in Police Lines, Sector 26, Chandigarh and report submitted in this regard. He submitted his written representation in this matter claiming that the persons staying in the quarter of the applicant were the friends of his daughter, who were also working in the police department. They were staying with his daughter for the short period that he was away at the Training centre of CRPF during June 2011. The appeal filed by the applicant against the order dated 29.3.2012 was rejected on 22.8.2013. Another representation was also rejected and vide order dated 8.11.2013, he was directed to hand over the vacant possession of House No.I-T-1/NPL, Sector 26, Chandigarh to Caretaker/Police Pool Houses (PHQ) Sector 9 within a week positively (Annexure A.6). The applicant failed to vacate the accommodation in question. He was later issued notice under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) 1971 dated 11.11.2013. From the material on record, it is evident that the applicant submitted his representation/appeal regarding cancellation of the allotment of the house to the concerned authorities time and again. These were rejected and now he is contesting the eviction order issued to him by the Estate Officer, Chandigarh Administration on 29.4.2014.

10. At the same time, the applicant faced disciplinary proceedings on account of subletting the government quarter allotted to him. The charge was held to be proved and punishment of forfeiture of five years of approved service for increments with permanent effect has been imposed upon the applicant vide order dated 13.7.2015, Annexure A.12. The present OA has been filed on 14.8.2015. Although it is seen that the allotment of government quarter to the applicant was cancelled on 29.3.2012 without holding a formal enquiry into the matter but later the applicant has faced a departmental enquiry on the very same issue and the charge against him has been held to be proved. This would appear to validate the order dated 29.3.2012 regarding cancellation of the allotment of government quarter to the applicant. Hence the claim of the applicant is distinguishable from cited case of Pritam Singh (supra). Also the cases of the persons referred to by the applicant against whom it was alleged that they had sublet their accommodation but no penal rent had been recovered from them appear to be distinguishable as these persons vacated the accommodation allotted to them after the order was issued cancelling the allotment of government accommodation to them, while the applicant has held on to the accommodation since April 2012 inspite of the cancellation order and the departmental authorities have therefore ordered recovery of penal rent @50 times the normal rent from the date of cancellation of the allotment.

11. The impugned order dated 29.3.2012 was confirmed by the higher authorities on 22.8.2013 vide which respondent No.3 rejected the appeal/representation dated 02.04.2012 of the applicant. If the applicant was aggrieved by the orders dated 29.3.2012 and 22.8.2013, he could have approached the Tribunal at that very time but he has only filed the instant OA in August 2015, perhaps, after the order dated 11.2.2015 (Annexure A.7) was issued vide which respondent No.3 ordered recovery of penal rent from the applicant and order dated 2.7.2015 (Annexure A.9) was issued rejecting revision

against the order dated 8.11.2013 as the same was not maintainable under the rules. As such, so far as the action of the applicant impugning orders dated 29.3.2012/22.8.2013, this appears to be barred by limitation and consequential relief as sought by the applicant is also not admissible. Moreover, the orders passed by the respondents/department in this matter are compliant with the provision of the standing order on House allotment of Chandigarh Police and judicial interference is not warranted in the matter.

12. Hence, there being no merit in this OA the same is rejected. No costs.”

5. Learned counsel for the petitioner has not been able to produce any material on record to controvert the findings recorded by the authorities below and the Tribunal, warranting interference by this Court under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

September 21, 2016
‘gs’

(Kuldip Singh)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes