

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A.NO.** 330/90  
~~T.A.NO.~~

DATE OF DECISION 24.4.1998.

Kanji Shivram Dave Petitioner

Miss D.S.Pardit Advocate for the Petitioner [s]

Versus

Union of India & Ors. Respondent

Mr.R.M.Vin. Advocate for the Respondent [s]

**CORAM**

The Hon'ble Mr. V.Radhakrishnan : Member (A)

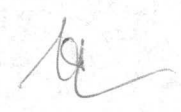
The Hon'ble Mr. P.C.Kannan : Member (J)

**JUDGMENT**

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

None present for the parties.

Adjourned to 10.09.1997.

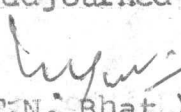
  
( V. Radhakrishnan )

Member (A)

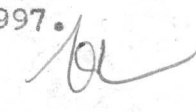
npm

The learned counsel for the applicant is not present.

At the request of Mr. R.M. Vin, the matter is adjourned to 26.09.1997.

  
( T.N. Bhat )

Member (J)

  
( V. Radhakrishnan )

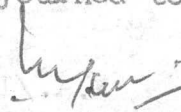
Member (A)

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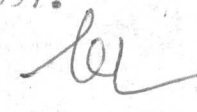
~~Time is being over and adjourned to 24.10.1997~~

Nobody appears for the applicant.

Adjourned to 3.10.1997.

  
( T.N. Bhat )

Member (J)

  
( V. Radhakrishnan )


Member (A)

npm

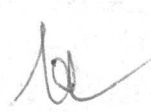
Mr. J.J. Dave is appearing for the applicant.

His name may be shown in the cause list.

Adjourned to 9.10.1997.

  
( P.C. Kannan )

Member (J)

  
( V. Radhakrishnan )

Member (A)

npm

10.9.97

9-10

Nonpresent for the parties - A

26.8.8

19-11-97.

*T.N. Bhat*

(T.N. BHAT)  
Member (J)

*V. Radhakrishnan*

(V. RADHAKRISHNAN)  
Member (A)

pt/npm

19.11.97.

O.A./330/90 with

M.A./562/97

Neither the applicant nor his counsel present. Mr. Vin for the respondents present. M.A./562/97 is dismissed for default.

*P.C. Kannan*

(P.C. Kannan)  
Member (J)

*V. Radhakrishnan*

(V. Radhakrishnan)  
Member (A)

ait.

12-3-98

M.A./195/98 allowed. Earlier dismissing the O.A. for default. O.A. is restored to file. M.A. accordingly.

*P.C. Kannan*

(P.C. Kannan)  
Member (J)

*Adjourned*

Pt

Date

Report

8.8.97

None present for the parties  
Adjourned to 10.09.1997.

( V.Radhakrishnan )  
Member (A)

npm

10.9.97

The learned counsel for the applicant is  
not present.  
At the request of Mr.R.M.Vin, the matter  
is adjourned to 26.09.1997.

( T.N. Bhat )  
Member (J)

( V.Radhakrishnan )  
Member (A)

npm

26.9.97

~~xxxxxx being xxxxxxxx adjourned xxxxxxxx~~  
Nobody appears for the applicant.  
Adjourned to 3.10.1997.

( T.N.Bhat )  
Member (J)

( V.Radhakrishnan )  
Member (A)

npm

3.10.97

Mr.J.J.Dave is appearing for the  
His name may be shown in the C.  
Adjourned to 9.10.1997.

( P.C.Kannan )  
Member (J)

( V.Radhakrishnan )  
Member

npm

Non present for the parties. Adjourned to  
19-11-97.

(T.N. BHAT)  
Member (J)

(V. RADHAKRISHNAN)  
Member (A)

pt/npm

O.A./330/90 with

M.A./562/97

Neither the applicant nor his counsel are  
present. Mr. Vin for the respondents present.  
M.A./562/97 is dismissed for default.

(P.C. Kannan)  
Member (J)

(V. Radhakrishnan)  
Member (A)

ait.

M.A./195/98 allowed. Earlier order  
dismissing the O.A. for default is recalled.  
O.A. is restored to file. M.A. disposed of  
accordingly.

*adjourned to 24/11/97*

(P.C. Kannan)  
Member (J)

(V. Radhakrishnan)  
Member (A)

Pt

Date

Office Report.

O R D E R

19-11-98

Adjourned to ~~17-12-98~~ 17-12-98 at the request of Mr. Vin for filing reply.

(V. RADHAKRISHNAN)  
MEMBER (A)

\*SSN

17-12-98

At the request of Mr. Vin, adjourned to 4-2-1999.

(V. Radhakrishnan)  
Member (A)

pt

4-2-99

Mr. Vin states that alongwith the notice issued on MA/423/98 on 17-8-98, copy of the MA was not found attached. The registry will ensure, whenever notice is issued on MA, a copy of the MA may be attached for which, ~~four~~ copies may be taken from the counsel. Mr. Vin says that he has received a copy of the MA from Mr. Dave today. He seeks and granted time. Adjourned to 4-3-99.

(V. Radhakrishnan)  
Member (A)

Pt

Pl. take  
MA/244 note  
Rajubhai  
Notice  
ST

For personal pt.  
and  
5-2-99  
DR(S)

on line time  
in court

R

29.6.98

Issue notice on MA/422/98 and MA/423/98 returnable on 12.8.1998.

( Laxman Jha )  
Member(J)

( V.Radhakrishnan )  
Member(A)

npm

~~12.8.98~~

~~Both the learned advocates are present. At the request of Mr. Shevde, adjourned to 2.9.1998.~~

( Laxman Jha )  
Member(J)

( V.Radhakrishnan )  
Member(A)

npm

12.8.98

MA/422/98

Heard Mr.M.D.Rand for Mr.Dave. Under the circumstances stated, M.A. is allowed. order dated 24.4.98 to be recalled. O.A. restored to file. MA/422/98 stands disposed of.

MA/423/98

Notice returnable within four weeks. Call on 24.9.1998.

( Laxman Jha )  
Member(J)

( V.Radhakrishnan )  
Member(A)

npm

24-9-98

Leave note filed by Mr. Vin. Adjourned to

19-11-98.

(Laxman Jha)  
Member (J)

(V.Radhakrishnan)  
Member (A)

pt

*Notice issued on 17-8-98  
KAD received on 2-3-4.  
23-9-98*

DATE

OFFICE REPORT

ORDER

4.3.99

Mr.Dave has filed a leave note. Adjourned to 15.4.99.

*Dn*

(P.C.Kannan)  
Member (J)

(V.Ramakrishnan)  
Vice Chairman.

nkk

15-4-99

Last chance is given to file reply to the M.A. Adjourned to 10-6-99.

*A*

(A.S.SANGHAVI)  
MEMBER (J)

*Radha*

(V.RADHAKRISHNAN)  
MEMBER (A)

SSN

10.6.99

Mr.Vin says that he could not file reply to the M.A because of the administrative problems and request for time. As a matter of indulgence, last chance is granted for file reply to the M.A. Adjourned to 8.7.99.

(V.Radha)  
Member

nkk

8.7.99

*Ex Rajinder  
Reply filed  
in MA*

M.A423/98

Heard Mr.Dave and Mr.Vin. M.A heard at final hearing.

*We may place  
this matter*

*on 22-7-99  
for F.H.*

*Dn*

(P.C.Kannan)  
Member (J)

*pg  
16749  
DR (J)*

nkk


DATE

OFFICE REPORT

O R D E R

22-7-99


Being a Division Bench matter, adjourned to 29-7-99.


  
(A.S.SANGHAVI)  
MEMBER (J)

29.7.99

ss

sick note filed by Mr.Dave, adjourned to 12.8.99.


  
(A.S.Sanghavi)  
Member (J)

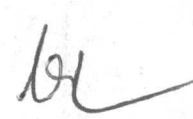
  
(V.Radhakrishnan)  
Member (A)

nkk

2.8.99


Mr.Dave is present. At the request of Mr.Vin, adjourned to 9.9.99. Respondents are directed to keep records ready of MA/423/98 for final hearing.

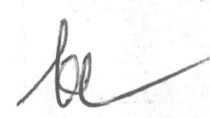
  
(A.S.Sanghavi)  
Member (J)

  
(V.Radhakrishnan)  
Member (A)

nkk


At the request of Mr. R.M. Vin, adjourned to 23\_9-99.

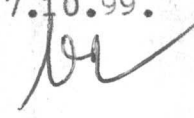
  
(A.S. Sanghavi)  
Member (J)

  
(V. Radhakrishnan)  
Member (A)

Pt

Heard Mr.J.J.Dave for the applicant. PART PART HEARD. Adjourned to 7.10.99.

  
(A.S.Sanghavi)  
Member (J)

  
(V.Radhakrishnan)  
Member (A)

nkk

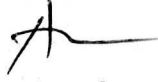
कार्यालय टिप्पणी  
OFFICE REPORT

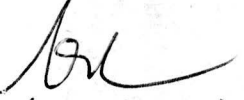
आदेश  
ORDER

.10.99

Heard Mr.Dave and Mr.Vin.

JUDGMENT RESERVED.

  
(A.S.Sanghavi)  
Member (J)

  
(V.Radhakrishnan)  
Member (A)

nkk

Kanji Shivram Dave  
residing at Quarter E/61T (SS)  
Type II, Railway Quarters,  
Visavadar, Dist. Bhavnagar.

... Applicant.

(Advocate: Miss. D. S. Pandit )

VERSUS

1. Union of India, through:  
The General Manager, Western Railway,  
Churchgate, BOMBAY.
2. The Divisional Manager  
Western Railway,  
BHAVNAGAR.
3. The station Superintendent  
Western Railway,  
Visavadar, Dist: BHAVNAGAR.
4. Shri S. B. Makwana  
R. ASN. Western Railway,  
Visavadar,  
BHAVNAGAR.

... Respondents

(Advocate: Mr. R. M. Vin )

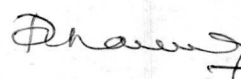
O R A L O R D E R


Date: 24.4.1998.

OA/330/90

Per: Hon'ble Shri P. C. Kannan : Member (J)

Neither the applicant nor his counsel are present.  
Dismissed for default. No order as to costs.

  
( P. C. Kannan )  
Member (J)

  
( V. Radhakrishnan )  
Member (A)

npm

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

OA/330/90 With MA/423/98

Date of Decision 22.10.99

Shri Kanji Shivram Dave : **Petitioner (s)**

Mr. J. J. Dave : **Advocate for the petitioner(s)**

Versus

Union of India & Ors. : **Respondent(s)**

Mr. R. M. Vin : **Advocate for the Respondent(s)**

**CORAM**

**The Hon'ble Mr. V. Radhakrishnan** : **Member (A)**

**The Hon'ble Mr. A.S. Sanghavi** : **Member (J)**

**JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Shri Kanji Shivram Dave,  
Residing at Quarter E. 6/T (S.S)  
Type II, Railway Quarters,  
Visavadar, Dist. Bhavnagar.

: Applicant

Advocate: Mr. J.J. Dave

Versus

1. Union of India  
(To be served through the  
General Manager, Western Railway,  
Church Gate, Bombay)
2. The Divisional Manager,  
Western Railway,  
Bhavnagar,
3. The Station Superintendent,  
Western Railway,  
Visavadar, Dist. Bhavnagar.
4. Shri S.B. Makwana,  
R.A.S.M.,  
Western Railway,  
Visavadar,  
Dist. Bhavnagar.

: Respondents.

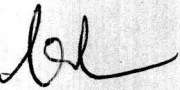
Advocate: Mr. R.M. Vin

### JUDGMENT

OA/330/90 with MA/423/98

Date: 22.10.99

Per: Hon'ble Mr. V. Radhakrishnan : Member (A)

 The applicant was working as Pointsman at Visavadar. The applicant states that he was allotted quarter No. 4-T which was Type I quarter. As he was entitled for Type II quarter he had applied for the same. He also belongs to essential category of staff. He also states that he was in the top of list for the

allotment of Type II quarters. The respondents ultimately acceded to the request of the applicant and allotted him Type II quarter No.6/T in December, 1989. Thereafter, the applicant vacated Type I quarter No.4-T from 10/12/89. After some time, the applicant was served with a Memorandum dated 8.2.90 to vacate quarter No.6/T and go back to his old quarter No.4-T. The applicant was also served with charge sheet dated 29.3.90 for unauthorised occupation of the railway quarter. The applicant has submitted his reply saying that he has been legally allotted Type II quarter regularly and there is no question of unauthorised occupation of the same. The respondents also sought charging penal rent of Rs.825/- per month from the applicant. Accordingly, the applicant has approached the Tribunal first against the charging of penal rent on the quarter allotted to him by the respondents in the normal way and secondly against the issue of charge sheet against him on the alleged unauthorised occupation of the quarter without being heard. The applicant states that the charging penal rent without hearing him is against the principle of natural justice as the quarter has been allotted to him by the respondents cannot be said to be unauthorised occupation. He states that his quarter was re-allotted to Shri S.B.Makwana, representative of Western Railway Employees Union and the applicant was penalised. Accordingly he has approached this Tribunal praying for the following reliefs:-

- (A) The Hon'ble Tribunal may be pleased to quash and set aside the Order charging any rent from the petitioner more than the normal rent for the occupation of the quarter No.E-6-T and to treat him in the lawful occupation of the said quarter till the final decision on the alleged charges against the petitioner and not to charge any penal rent from the petitioner.
- (B) Be pleased to quash and set aside the impugned order charging the Penal rent from the petitioner for the aforesaid quarter and treat the same as illegal and violative of principles of natural justice, unconstitutional and bad.

(C) Be pleased to grant such other and further relief as may be deemed just and proper in the facts and circumstances of this case."

2. The respondents have filed reply. They have stated that the applicant was first allotted Type I quarter and while occupying that he became eligible for Type II quarter he had applied for change of quarter to Type II. They have not denied that the applicant was allotted Type II quarter. In fact they have stated that the allotment committee had approved the allotment of quarter No.6-T to the applicant. However, it seems that additional D.R.M, Bhavnagar had advised the Station Superintendent , Visavadar , not to allot the quarter. A meeting of the Divisional Housing Committee held on 18.1.90 held that the allotment of quarter No.6-T to the applicant was not correct and decided to allot to 6-T to Shri S.B. Makwana. The applicant was asked to shift his old quarter. Accordingly, a memo was given to him on 8.2.90 to vacate quarter No.6-T . According to the respondents the applicant did not vacate the quarter and he was issued charge-sheet for disobedience of the orders.

3. The applicant has filed rejoinder. He has given the details of penal rent recoveries from February ,91 to December, 93 at the rate of 14, 575.00/- and charge-sheet against him was penalised by stoppage of one increment. He also stated that he has been harassed by transferring to three places. He also stated that the allotment of the quarter No.6-T was made to him by the Unit Housing Committee and the Divisional Housing Committee has not the authority to review the allotment or to cancel it.

4. Mr.Dave , learned advocate for the applicant stated that the applicant had been allotted quarter No.6-T by the respondents and as such he was not in unauthorised occupation of the quarter. Furthermore, the respondents did not issue any show cause notice to the applicant regarding any unauthorised occupation but straight away issued a letter stating that he was in

unauthorised occupation of the quarter. Such an action on the part of the respondents without hearing the applicant and putting him in financial hardship is against the principles of natural justice. In this connection he based his argument on the judgment of the Hon'ble Supreme Court in Smt. Menaka Gandhi vs. Union of India and another AIR 1978 SC 597 regarding procedure that should be followed in accordance with the principles of natural justice and opportunity of being heard before any adverse action is taken against any person. He also stated that in case the allegation regarding alleged unauthorised occupation the respondents should have taken action under the relevant Civil Act namely; Public Premises (Eviction of Unauthorised Occupant ) Act, 1971 and it cannot construe as misconduct necessitating issue of charge-sheet against the applicant. In this connection he quoted certain judgments of Hon'ble Gujarat High Court SCA Jayantilal Patel vs. State of Gujarat and Anr. GLR vol.XXVII (1) 254 and Competent Authority, Gujarat Housing Board, Ahmedabad vs. Dhomi Vijendra Mehta and Ors. 1996 (2) GLH.72 . Accordingly, he has prayed that the OA may be allowed.

5. Mr.Vin, learned advocate for the respondents on the other hand contended that even the allotment of Type II quarter No.6-T was made to the applicant by the Unit Housing Committee which was subject to confirmation by the Divisional Housing Committee. The Divisional Housing Committee had ordered that Type II quarter should not be allotted to the applicant and should be allotted to one Shri Makwana. Hence, the allotment of the applicant was cancelled and he was directed to go back to his old quarter Type I , but he failed to do so and he continued to stay in quarter No.6-T unauthorisedly. Accordingly, he was charge-sheeted for penal rent for unauthorised occupation of the quarter and this has been correctly done by the respondents.

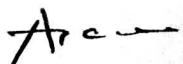
6. We have heard both the learned advocates for the applicant and the respondents. It is not in dispute that the applicant was allotted Type II quarter No.6-T by the respondent Annexure A-5 (Page-16) with the recommendation of the respondent (page -16) on 10.12.89. There is no condition mentioned in the allotment letter. The respondents have also not denied that the applicant was entitled for Type II quarter. It has also not been shown by the respondents that the applicant was not senior among the applicants for Type II quarter. Even though the respondents were directed to produce relevant registers, no such documents were produced and we have to conclude that the applicant was senior-most among the applicants for Type II quarter. Extract of rent rate of statement produced by the applicant Annexure A-6 (page-17) also shows the applicant's name. Accordingly we come to the conclusion that quarter No.6-T was allotted to the applicant in regular manner. However, the respondents issued order at Annexure A-10 dtd. 10.7.90 that the quarter No.6-T was unauthorisedly occupied by the applicant and issued charge-sheet for penal rent. It is also not denied by the respondents that no show cause notice was issued and no opportunity was given to the applicant to state his case before cancelling his quarter. Once the quarter has been allotted on a regular basis it could not have been cancelled without proper show cause notice and an opportunity of being heard. Accordingly, the action of the respondents for cancelling the allotment without show cause notice and an opportunity of being heard to the applicant is against the principles of natural justice and should be quashed and set aside. Accordingly, we have no hesitation for quashing and setting aside the order dated 10.7.90 at Annexure A-10 charging the penal rent on the applicant. Consequently the amount of penal rent recovered from the applicant i.e. Rs.14,575.00 is ordered to be repaid to the applicant within eight weeks from the

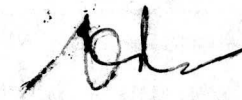
:7:

date of receipt of a copy of this order, failing which the amount to be given with interest at the rate of 12% from the date of recovery.

With the above order, OA stands disposed of. No costs.

In view of the disposal of the OA., MA/423/98 does not survive.

  
(A.S.Sanghavi)  
Member(J)

  
(V.Radhakrishnan)  
Member(A)

aab