

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESOCOT ROAD, MUMBAI 1

O.A. No. 528 of 1996

Dated : THE 2nd DAY OF ^{August} 1996

Coram: Hon. Shri B S Hegde, Member(J)
Hon. Shri P P Srivastava, Member(A)

Ashok S. Baxi
(By Advocates Mr. M S Ramamurthy
with Mr. G S Walia)

..Applicant

V/s.

The General Manager,
Western Railway
Churchgate
Mumbai 20 & 2 ors.
(By Mr. M I Sethna, Govt. Senior
Standing Counsel along with Mr.
V S Masurkar, Govt. Standing Counsel)

..Respondents

ORDER
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In this application the applicant is challenging the dismissal order dated 23.1.1996. In the prayers he has sought for the quashign of the disciplinary order dated 23.1.1996 and the evictioin order dated 29.5.96. He has also prayed for interim direction pending final hearing for staying eviction order dated 29.5.96 till disposal of O.A.

2. The applicant has filed this O.A. on 6.6.96 and the application came for admission on 7.6.96 before a Division Bench. Since the matter pertains to Division Bench the O.A. was admitted without notice being served on the respondents. The applicant has also prayed for interim relief in terms of para 9(a) and the same was granted for a period of 14 days staying operation of impugned order dated 29.5.96 and a direction was issued to the respondents not to give effect to the eviction order dated 29.5.96 till 21.6.96 and the notice was directed to be served on the respondents by way of 'Dasti'.

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3. Respondents have filed their reply on 9.7.96 opposing the ex-parte ad-interim order to continue indefinitely and prayed for vacation of the same. Since the respondents had prayed for vacating the ex-parte interim order, the matter was fixed for 15.7.96 and ultimately the matter was heard on the question of continuation of interim relief on 19.7.96.

4. The question for consideration is whether the ex-parte interim order is required to be extended or to be vacated in the facts and circumstances of the case. At this juncture we do not think it necessary to go into the larger question of jurisdiction of Tribunal concerning P.P. Act cases as it will be dealt at the time of final hearing of the O.A. since the O.A. is admitted. However, the question of interim relief could be disposed of on basis of its own facts.

5. Ld. Counsel for the Respondents Mr. Sethna contended that the applicant has earlier filed a O.A. No.131/96 praying for a direction not to evict the applicant from the railway quarter No. 175/1 S V Road, Bandra (West) Mumbai 50 which was disposed of on 29.2.96 with the following direction:

"OA is admitted. Pleadings are completed and the original application can be disposed of at the admission stage itself. In the OA at para 8(a) the applicant has prayed that the respondents be directed not to evict the applicant from the Railway quarter No.175/1 at S V road, Bandra (W), Mumbai 50, without complying the due process of law.

"In the facts and circumstances the Respondents are directed to comply with the due process of law before evicting the applicant from the quarter. OA is disposed of with these directions. No order as to costs".

6. Obviously the direction was given by the Tribunal to the Respondents not to initiate eviction proceedings without due process of law. It is submitted that action was initiated under P.P. Act and, the final eviction

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order was passed on 29.5.96 which was served on the applicant on 3.6.96. The respondents contend that they have followed the process of law as per the direction of the Tribunal and in accordance with the P P Act, 1971 and therefore the ex-parte interim order granted to the applicant without hearing the respondents needs to be vacated as eviction order has been passed in accordance with the directions of the Tribunal.

7. Mr. Sethna further submits that in the present OA in para 7 Applicant has made a declaration that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them, which is nothing but a suppression of facts. It is well settled that any suppression of facts ipsofacto entails that no relief can be granted. In the earlier OA the applicant has not intentionally challenged the dismissal order which was passed while the earlier OA was pending. The earlier OA was filed by the applicant on 7.2.96 and the dismissal order was passed by the competent authority on 23.1.96. Despite the same, the applicant has not made any mention of the dismissal order passed by the competent authority in his earlier OA. Having selected one remedy viz., challenging the eviction in OA 131/96 it is not open for the applicant to challenge the same again. Since the applicant had chosen that forum, after passing of the final order by this court in OA 131/96 he cannot seek the same relief from this Court again in the present OA. If at all any remedy is available to him he may file an appeal to the Competent Court viz., the Principle Civil Judge, Mumbai, under section 9 read with section 15 of the P P Act against the order of the Estate Officer. Mr. Sethna further emphasised that the applicant had adopted a strategy which best suited him and had not challenged the dismissal order in his earlier OA and approached the Tribunal only on the ground of apprehension that he would

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be evicted by the respondents from the premises without due process of law and obtained a favourable direction from the Tribunal not to evict him from the quarter without following the law. The Tribunal had directed the respondents to comply with the due process of law before evicting the applicant from the quarter. Mr. Sethna also contends that in view of Railway Board's circular dated 15.1.90 a person who is dismissed from railway service should vacate the railway quarter within a period of one month and since the eviction order is also passed against the applicant on 29.5.96 under Section 5 of P P Act, he is bound to vacate the Railway quarter. He further submits that the provisions of Public Premises Act, 1971 are enacted for the sole purpose of eviction of unauthorised occupants from the Public Premises and functions in an independent manner and is a complete code in itself. Under Section 9, against an order passed under sections 5(b), 5(c) or 7 of the P P Act, an appeal lies to the appellate authority who shall be a District Judge of the District or Principle Civil Judge in Mumbai in which the Public Premises are situated and therefore the applicant may challenge the order of eviction before appropriate Court at Mumbai and not before this Tribunal.

8. In this connection Mr. Sethna draws our attention to KRISHNA PRASAD GUPTA Vs. CONTROLLER OF PRINTING & STATIONERY (1996) 1 SCC 69 and submits that the Tribunal has no jurisdiction to entertain the order passed under S.5 of P P Act and also states that the Tribunal cannot take away or usurp the jurisdiction of District Court which is an appellate forum provided under Section 9 of the P P Act 1971. Therefore, Mr. Sethna contends that this Tribunal does not have jurisdiction to entertain the prayer of the applicant to quash the eviction proceedings. He further submits that the judgment in D.N.SINGH Vs. UNION OF INDIA, FULL BENCH JUDGMENT OF CAT, VOL.II pp.1, would not squarely apply to the facts of this case. In that case the applicant was dismissed from service without inquiry and that is not the scenario in this

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case. Mr. Sethna states that if the applicant succeeds in the present OA wherein he has challenged his dismissal, he will be granted "out of turn allotment" of railway quarter. In D N SINGH's case, the applicant had challenged the dismissal order consequent upon the dismissal order, he has been asked to vacate the quarter considering the facts of that case, the Full Bench had observed that the Respondents shall not direct the applicant to vacate the quarter till the disposal of the pending OA. As stated earlier the facts of this case are not similar to the facts of D N Singh's case therefore the said decision does not help the applicant.

9. On the otherhand, Ld. Counsel for the Applicant vehemently urged that there is no suppression of facts in terms of para 7 of the OA keeping in view Sections 10 and 11 of the Code of Civil Procedure. In the present OA, he has mainly challenged the dismissal order passed by the disciplinary authority and appellate order, and not the eviction order. Though a prayer is made in para 8(b) for quashing the eviction order, it is an incidental relief to the main prayer i.e., the dismissal of the applicant. Even if he had incorporated in para 7 about his earlier OA No.131/96 he contends, despite the same, he is entitled to seek for staying of the eviction order passed by the Estate Officer u/s 5 of P.P.Act irrespective of the fact that it has a bearing on the issue decided earlier. It is open for the applicant to challenge the final eviction order, the question is which forum, whether this Tribunal or the appropriate Court. Since the order passed by the Tribunal on 29.2.96 relates to non-compliance of due process of law before eviction which concluded the issue after the Tribunal's order, there is no question of any suppression of facts. In support of his contention, he relied on the Full Bench decision of the Tribunal in D N SINGH's case wherein the second request of the applicant to continue the quarters was upheld on the ground that even if the standing orders direct that if the dismissal or removal of a government servant is

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questioned, the order to vacate the quarters need not be issued.

In several cases, where public servants are removed or dismissed from service, when those orders are challenged before the Appellate Authority or before this Tribunal, they are being allowed to retain the quarters until the appeals are disposed of by this Tribunal. Unless such an order is made applicants would be exposed to great hardship. It would also be difficult to secure allotment of quarters even if their appeals are allowed. In the circumstances, the respondents are directed to allow the petitioners to detain their quarters ofcourse subject to payment of such rent as was paid by them before their dismissal from service. Therefore, the Ld. Counsel for the applicant urged that similar relief be given in Applicant's case as that of D N SINGH's case. As stated earlier, the facts of D N SINGH's case are not similar to the present case and thus is distinguishable.

10. Mr.Ramamurthy also submitted that in a similar circumstances the Tribunal had passed an order earlier in OA No. 394/94 R.M.P. VERMA Vs. UOI & ORS. decided on 3.6.94 wherein the applicant was allowed to retain the quarters on normal rent till the decision of the application. That is a case wherein the applicant was compulsorily retired. In that OA the applicant had given reasons for filing the OA on the ground that the respondents have threatened that he would be evicted from the quarter and would not wait till the disposal of the appeal pending before the competent authority and he was forced to file the OA and therefore got a favourable order from the Tribunal.

11. Mr. Ramamurthy further contended that the respondents had taken a stand in the earlier OA No.131/96 that it was premature and did not afford a cause of action to the applicant and hence there should not be any legal objection if the applicant is filing the present OA when the cause of action has actually and subsequently accrued to him by passing of the eviction order u/s.5 dated 29.5.96. The earlier OA was on the apprehension and the present OA

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is against the eviction order passed by the Estate Officer which is not impugned in the earlier OA and the present OA is against independent order and for a different cause of action viz., that of dismissal of the applicant and hence there is no question of resjudicata or suppression of facts.

12. We have considered the arguments advanced by the Ld. Counsel for both the parties and have perused the record. The question which is required to be considered by us is whether the ex-parte ad-interim order passed by us is to be continued in the facts and circumstances of the case. It is an admitted fact, that while granting ex-parte ad interim order the Ld. Counsel for the applicant has not drawn our attention to the earlier order passed by the Tribunal in OA No.131/96. The present eviction order passed by the Estate Officer under Section 5 is in accordance with the P.P.Act and keeping in view the direction of the Tribunal to comply the due process of law before evicting the applicant from the premises. It is also a settled principle that unless a claim is made in the main OA no interim relief can be claimed as a matter of right. The main thrust of the argument of the Ld. Counsel for the applicant is both in the earlier OA as well as in the present OA is that the cause of action is separate and independent and therefore the question of suppression of facts does not arise. However, on perusal of para 7 of the OA it clearly states that the applicant is duty bound to state true state of affairs regarding the matters in respect of which the application has been made before any court or any other authority or any other Bench etc. In the earlier OA though the applicant had specifically stated in para 4.8 that he is proposing to file an appeal against the order of dismissal from service though he has not made any specific prayer to that effect in para 8 of that OA and the only prayer made in that OA was for a direction not to evict him from the Railway Quarter No.175/1 at S V Road, Bandra (W), Mumbai without due process of law. It is also noticed that the applicant had preferred a statutory appeal

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before the competent authority, before disposal of the earlier OA on 29.2.96, which fact, he did not disclose in that OA except stating he proposes to file an appeal. The appeal preferred by the applicant was disposed of by the competent authority on 31.5.96.

13. The Respondents submission are two fold viz., (i) suppression of the facts by the applicant and (ii) want of jurisdiction of the Tribunal in entertaining the appeal against the order passed by the Estate Officer under Section 5 of the P.P. Act. As stated earlier regarding jurisdiction it need not be considered at this stage as it is open for argument by the parties at the time of final hearing of the O.A. Regarding suppression of fact, there cannot be any doubt, that the applicant has suppressed material fact which he ought to have mentioned in para 7 of this O.A. which he failed to do so.

14. Ld. Counsel for the applicant draws our attention to the case of the Full Bench in RASILA RAM stating that on the basis of the principle laid down therein the aggrieved party can approach the Tribunal for relief. Therefore, Mr. Ramamurthy submits, that the contention of the applicant is logical in seeking a direction not to evict him from the Railway Quarter till disposal of OA challenging the order of dismissal passed by the competent authority against him.

15. Though the Full Bench in RASILA RAM's case empowers the aggrieved persons either to approach the Tribunal or the authorities mentioned in the statute, in view of the recent decision of the Supreme Court in K P GUPTA Vs. CONTROLLER PRINTING STATIONERY, (supra) the Full Bench decision in RASILA RAM is modified to the extent referred to in Apex Court. In K P GUPTA's case the Apex court has held that the original or for that matter, the appellate authority under Payment of Wages Act is neither an Industrial Tribunal nor a labour court nor are they 'Authorities' under the Industrial Disputes Act,

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1967, but since the payment of Wages Act is a "corresponding law" under s.28 of the A.T.Act, the jurisdiction of the authority under the Payment of Wages Act is also saved. The Authority constituted under Section 15 and the Appellate Authority u/s.17 of the Payment of Wages Act, fall within the exception in S.28 of the A.T.Act and the Payment of Wages Act is positively covered by the connotation 'corresponding law' used in that section. Consequently, the jurisdiction of the Authority to entertain and decide claim cases u/s.15 of the Payment of Wages Act is not affected by the establishment of the Administrative Tribunals. As mentioned, the question of jurisdiction will not be considered now as it is not necessary to decide at this stage for disposal of the issue at hand i.e., vacation of the ex-parte ad-interim order.

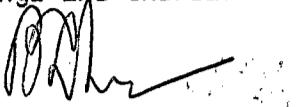
16. In the facts and circumstances of the case, in our considered opinion the applicant has suppressed the material fact in the present OA. We are constrained to hold that the very suppression of material facts is sufficient for us to vacate the ex-parte ad interim order passed by us without going into the merits of the case. Since the respondents have also given an undertaking to allot the applicant a railway quarter on "out of turn basis" if he succeeds in the present OA. Therefore, we do not think it necessary to continue the interim order on the basis of undertaking given by the respondents.

17. Accordingly, we hereby vacate the ex-parte ad-interim order passed on 7.6.96. Since the OA has already been admitted, the matter would be taken up on its turn for final hearing on merits of the dismissal order.

18. Since the respondents have not filed a detailed reply they are at liberty to file a detailed reply within four weeks with a copy to the applicant's counsel who, if he so desires, may file a rejoinder within two weeks thereafter.

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19. List the case before Registrar on 23.9.96 for completion of pleadings and thereafter keepin in sine die list.


(P.P. Srivastava)
Member(A)


(B.S. Hegde)
Member(J)

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O.A. No. 528 of 1996

Dated: 2nd August, 1996

After pronouncement of the order, the Ld. Counsel for the Applicant Mr. G.S. Walia submits that the Applicant's daughter is stydying in XIth Standard and seeks six months time to vacate the quarter.

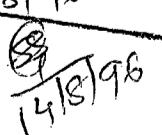
However, ~~in the~~ facts and circumstances of the case we grant three months time to the Applicant from to-day to vacate the quarter. The Respondents are directed not to give effect to the eviction order dated 29.5.1996 till 1-11-1996.


(P.P. Srivastava)
Member(A)


(B.S. Hegde)
Member(J)

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~~At 29/8/96~~
Order/Instrument despatched
to ~~Applicant~~ Respondent(s)
On 12/8/96


14/8/96