

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 38/96 /199

28-2-97

Date of Decision:

Shri Prabhakar Krishnaji Kinhikar & anr.

Petitioner/s

Mr. S.P. Kulkarni

Advocate for the
Petitioner/s.

V/S.

U.O.I. & Ors.

Respondent/s

Mr. S.S. Karkera

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member(A)

Hon'ble Shri

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R. Kolhatkar

(M.R. KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.38/96

FRIDAY, this the 28th day of FEBRUARY, 1997

CORAM:

HON'BLE SHRI M.R. KOLHATKAR, MEMBER(A)

1. Shri Prabhakar Krishnaji Kinhikar
42-43, Raghukripa,
Janorkar Wada, Shabari Lane,
Panchvati,
Nashik - 422 003
2. Shri Umaji Nagorao Bankar
President,
All India Postal Employees Union
Class-III
Nashik Division
Branch at P.O. Nashik - 422 001

By Advocate Mr. S.P. Kulkarni .. Applicants

-versus-

1. Union of India
through
Senior Superintendent of Post Offices,
Nashik Division,
Nashik.
2. Postmaster General,
Aurangabad Region,
Maharashtra Circle,
Aurangabad - 431 001

By Advocate Mr. S.S. Karkera .. Respondents

The application having been heard on 28th February, 1997
the Tribunal on the same day delivered the following :

- : O R D E R : -

(Per M.R. Kolhatkar, Member(A))

In this O.A. the facts are as below :

The applicant was working as Sub Post Master at Kala Ram Mandir Post office upto 15-6-1993 and thereafter he was transferred to work as Sub-Post master, Budhwarpeth (Nashik) Post office and he worked as such from 16-6-94 to 30-9-95 when he retired. He remained in occupation of the quarters attached to the post of Sub-Post Master, Kalaran Mandir Post office from 15-6-93 to 15-6-94. He had a grievance relating to the quarters attached to the new post viz. quarter attached to the Budhwarpeth Post Office and this grievance was ^{wa}sairied by him by his representation dt. 23-6-1993 at page 36. The same is reproduced below :

"Vide your office Memo No.B.2/5/BCR/93 dt. 4-6-93 I had taken over the charge of SPM Budhwar Peth Nashik on 15-6-93 A/N. On perusal of present SPM Budhwar Peth quarter only one room divided in two by plywood partition. For Latrin, Bathroom SPM has to use Post office premises. Being HSG-II BCR official also having 32 years of service in Department the said quarter is too inadequate.

As per present norms of Government to allot quarter to the BCR official the said quarter is totally inadequate. I have request Shri Vaidya present SPM Kalaran Mandir that I will vacate my previous quarter(Nashik Kalaran Mandir) if I will get the suitable quarter, and he is agreed for the time being.

You are therefore requested to surrender the quarter to the landlord as it isnot fulfilled the requirement. Also allow me to draw the HRA which I can pay to Shri Vaidya

On this present situation you are requested to visit the Post office and give justice to me."

It would be seen that the essential grievance is that the quarters attached at Budhwarpath Post office consisted of one room divided by partition but there ~~was no~~ his family had Latrine attached and the SPM ~~and~~ to use post office premises on the ground floor. Since the ground floor is for the official use the implication is that the use of latrine on the ground floor by the family of the incumbent/post is either impossible or cannot be made without adversely affecting the essential privacy. Counsel for the applicant submits that he had ~~therefore~~ ^{continue to} asked for permission to/occupy the quarters attached to Kalaran Mandir post office and the matter was also taken up at various levels including the union and the position in respect of this is to be seen at page 39 which gives ~~the~~ the minutes of monthly meeting held between the

SSPO's Nashik and representatives of AIPEU CL.III held on 29-4-1994 and in respect of the SPM quarters problem of Budhwar peth PO, it is stated that case will be taken up with R.O. Aurangabad. The grievance of the applicant is that ^{decision} inspite of this ~~he~~ is being charged penal rent after two months and in all an amount of Rs.2,566/- has been paid by him as against Rs.110/- monthly licence fee calculated on the basis of 10% of the basic pay. Subsequently, the applicant shifted from the quarters attached to Kalaram Mandir Post office from 16-6-94 to ~~30~~ 9-95. However, for this latter period he has not been paid any HRA. The reliefs claimed by the applicant in this OA are as below :

- "(a) Hold and declare decision conveyed by SSP Nashik, vide his letters dated 28-6-1995 and 18-9-1995 quoting R.O. Nos.A.R/Bldg-II/ HRA/SPM/Budhwarpath/95 dt. 21-6-95 and 13-9-95 of PMG Aurangabad (Exh.A-(1) & Exh.A(2) as arbitrary, autocratic, unjust unfair being formulated with closeness of mind;
- (b) Hold and declare the act of non-providing of suitable attached quarters at Budhwarpath P.O. as a condition of service with essential amenities as arbitrary and unfair
- (c) Direct respondents to ~~cons~~ reconsider their decision of (a) above and consider grant of HRA plus HRA in lieu of quarters for the period from 16-6-1994 to 30-9-1995(15 $\frac{1}{2}$ months)
- (d) Direct the respondents to refund the amount of Rs.2,566/- forcibly got credited as damage rent for Kalaram Mandir post office's quarters with interest at 18% till its refund;
- (e) Hold and declare decision taken by SSP Nashik to recover Rs.2566/- for August,93(2+6+2 $\frac{1}{2}$ months at NML + Double + Damage rate) as arbitrary and quash the recovery.*

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2. Counsel for the applicant submits that the in relation to BudhwarpethQtr. department was expected to take action as indicated of S.A by him in para 5.1 viz. (i) suspension of quarters for the time being or (ii) merger of quarters with post office (iii) alternate building and (iv) providing separate WC for sub-postmaster, and according to him this gets support in terms of Director General of Posts New Delhi circular dt. 20-8-1985 at page 37 which is reproduced below :

*It has been reported by service union that a number of post offices which are located in rented building are in bad repairs and lack essential amenities such as water supply, drinking water, toilets, electricity, proper ventilation etc. Adequate powers are vested in the officers at various levels and there should be no difficulty in ensuring that building taken on rent are good and have all essential amenities. All Inspecting/visiting officers are required to look into these aspects during visits to offices. Where these facilities are wanting in existing rented building urgent steps must be taken to have them provided by negotiating with the landlord or if that is not possible; shift offices to better building having amenities.

It should also be invariably ensured that buildings taken on rent in future for post offices and other offices are in good condition and having all the basic amenities mentioned above

You may once again instruct all regional and divisional officers suitable on this and carry out a review of building in your circle and take immediate steps wherever required." and According to him inspite of these instructions inspite of joint decisions at district level meeting to take up the matter with regional level no action was taken to provide satisfactory and adequate quarters for SPM of Budhwar peth post office and therefore he was required to stay in private quarters and hence the relief claimed by him.

3. In regard to right for a reasonable accommodation counsel for the applicant relies on the judgment in the case of M/s. Shantistar Builders vs. Narayan Khimalal Totame & Ors., AIR 1990 SC 630, para 9 of which is reproduced :

"9. Basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment, and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation."

The Hon'ble Supreme Court also observed in Govind v. State of M.P., AIR 1975 SC 1378, in para 24 as below:

"24. Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty."

He has also relied on para-8 of judgment in the case of Chhetriya Pardushan Mukti Sangarsh Samiti vs. State of UP AIR 1990 SC 2060 but it does not appear to be relevant to the facts of the present case.

4. The counsel for the respondents have opposed the O.A. He has pointed out that the applicant did not occupy the SPM quarter which was existing and available at Budhwar Peth and retained the quarter at Kalaram Mandir Post office. Respondents further stated that Shri A.G. Vaidya who was posted in place of the applicant also submitted his request application for immediately getting the said quarter vacated and they have produced a letter dt. 22-11-1993 from A.G.Vaidya.

5. Respondents have also referred to S.R. 312 and SR 313. According to SR 312 the incumbent of a post to which a residence has been allotted under Rule 311 shall be considered to be in occupation of the residence during the period of his incumbency unless the allotment is changed or suspended under these rules. It is contended that SR 313 gives powers to the competent authority to suspend the allotment of a residence; but in the present case no such suspension was effected. According to them during the period 15-6-93 to 15-6-94 applicant was in occupation of two quarters viz. quarters attached to Kalaram Mandir Post Office and quarters attached to Budhwar Peth Post office, because Mr.Vaidya has clearly stated that he handed over the keys to the applicant. According to D.G. P&T's order relating to Licence fee-free quarters attached to non-gazetted post, Heads of Circles may suspend the allotment of a residence to the incumbent of a non-gazetted post entitled to licence fee-free quarters when the incumbent is living in privately rented accommodation. Such is not the case in the

present case because the applicant was not anteriorly in occupation of the quarter but he occupied the private quarter only after having worked in the post for about 12 months. Therefore the provision relating to suspension of the allotment of quarter would not apply to the case of the applicant.

6. Coming to the contention of the applicant that he should not be charged penal rent for the quarters occupied by him viz. Kalaram Mandir/Quarters it is difficult for me to see as to how the applicant can escape the liability to pay the penal rent. He has no right to enter into private arrangements with his successor; the department's stand that the applicant was bound to vacate the quarter attached to the Kalaram Mandir when he was not holding the post and they were justified in their action in charging the penal rent cannot be faulted.

7. I now come to the next contention of the applicant that he is entitled to HRA in respect of the period 16-6-94 to 30-9-95. No doubt there were quarters attached to the post held by him but one has to consider whether these quarters could be considered to be quarters in the true sense of the term as observed by the Supreme Court in the case of M/s. Shantistar Builders vs. Narayan Khimalal Totame, where it was observed that right to life includes right to reasonable accommodation and in Govind vs. State of MP where ingredients of privacy were defined. In my view, therefore, the quarters attached to Budhwarpath Post office cannot be said to be such reasonable accommodation with protected privacy within the meaning of quarters which a Govt. employee may reasonably be expected to occupy as part of an amenity attached to the post.

M In this case observation made by the Supreme Court in the case of Govind vs. State of M.P. AIR 1975 SC 1378

are of great relevance. I have already referred to the departmental instruction that superior departmental ~~instruction that superior departmental~~ authorities are required to see that the buildings taken on rent are in good condition and have all essential amenities and respondents have obviously failed in their duty to ensure that the quarters attached to Budhwarpath Post office complied with minimum standards of reasonable amenities. It is no defence to state that his predecessor had chosen to occupy the quarters in question because the applicant as soon as took over the charge took the first opportunity of making representation regarding inconvenience of the quarters vide representation dt. 23-6-93 reproduced in para -1 above.

8. I am, therefore, of the view that although the department did not suspend the allotment of the applicant's residence in terms of SR 313 in the light of the facts discussed by me, this is a fit case in which allotment of the residence at Budhwarpath post office in favour of the applicant should be deemed to have been suspended for the period from 16-6-94 to 30-9-95. Applicant therefore would be entitled to the relief at para 8(c). The respondents are directed to make payment of HRA plus HRA in lieu of quarters for the period from 16-6-1994 to 30-9-95. Action in this regard to be completed within three months. ~~Exhibit~~
No order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)