

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 402/96

Transfer Application No.

Date of Decision 11.2.1997

Bhagirath Sahu

Petitioner/s

Shri D.V.Gangal

Advocate for  
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri Ravi Shetty for Shri R.K.Shetty

Advocate for  
the Respondents

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)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA .NO. 402/96

Tuesday this the 11th day of February, 1997

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

Bhagirath Sahu,  
Residing at 8/18, DCA Lullanagar,  
Pune - 411 040.

By Advocate Shri D.V.Gangal ... Applicant  
V/S.

1. The Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of Army Staff, South Block, New Delhi.
3. General Officer Commanding-in-Chief, Headquarters, Southern Command, Pune.
4. The Estate Officer, Brigadier, Station Headquarters, Pune.
5. The Lt. Col. and Administrative Officer, Headquarters, Southern Command, Pune.

By Advocate Shri Ravi Shetty for  
Shri R.K.Shetty, C.G.S.C. ... Respondents

O R D E R (ORAL)

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

In this OA, the applicant has challenged the eviction order under Section 5 of P.P.Act at page 16 by which the applicant was asked to vacate the quarter allotted to him by 18.4.1996. The grounds for eviction were given in Notice under Section 4 at page 17 (Annexure-'A-3'). The main ground was

that during ~~the~~ surprise check conducted on 5.2.96 it was found that the applicant has sublet part of the premises of Qr.No. 8/18 DCA Lullanagar, Pune to one Shri Mithalesh Kumar, which is in contravention to the existing quartering rules.

2. The contention of the applicant was that when he received the notice under Section 4 dated 18.3.1996, he had sent a letter dated 25.3.1996 stating that he has not received the cancellation order dated 6.3.1996 in respect of quarter in question. However, the applicant by letter dated 19.2.1996 at page 27 had taken the stand that his brother Mithalesh Kumar was there at the time of checking of the quarter and that the said brother had come from his village since November, 1995 in search of a job and that on the date of checking, the applicant was admitted to KEM Hospital in connection with Hydrosil operation. It would appear that applicant had sent this letter by Regd.Post but the same was not accepted by the respondents. Another letter was sent by Southern Command Mazdoor Sangh dated 1.3.1996 at page 28. It is stated therein that at the time of checking the younger brother was staying with the family. It is the case of the applicant that eviction notice under Section 5 is against the principles of natural justice because the applicant was not supplied the copy of the order of cancellation dated 6.3.1996, that the letters sent by the applicant and the Union were not accepted by the official respondents and that no opportunity was given to the applicant to show the relationship of Mithalesh Kumar who was found in the quarter which according to the OA. is the cousin of the applicant and is therefore within

the definition of a close relative whose stay is not to be treated as amounting to sub-letting in terms of the relevant S.R.

3. The respondents have opposed the OA. It is contended by them that the quarter in question was allotted on out of turn basis on medical grounds as the mother of the applicant was suffering from Bronchial Asthma and the same was allotted w.e.f.

2.2.1992. It is contented that the applicant was earlier involved in a similar sub-letting case in November, 1994 and he was excused with a verbal warning. In the present case, on the date of surprise check both the applicant and Mithalesh Kumar had signed in token of their being present. Moreover, a copy of the cancellation order was also shown to the applicant and his signatures were obtained. Further, the respondents contend that the applicant has been making inconsistent claims relating to relationship of Mithalesh Kumar, initially, he was stated to be a brother and in the Union letter he was stated to be a younger brother and in the OA. he is stated to be cousin. The respondents state that name of Mithalesh Kumar was not in the service book nor had the applicant given particulars of occupant to the respondents for necessary verification.

4. It appears to me that the applicant had been shown the cancellation order and had signed in token of having seen it though admittedly a copy has not been given to him. The sole ground taken by the applicant in his letter dated 25.3.1996 is non-supply of copy of the cancellation letter and the letter is also not couched in proper terms. On the other hand, it also appears that the applicant was present at the time of

surprise inspection, he having signed on the inspection report along with Mithalesh Kumar and the story regarding the applicant being in KEM Hospital on 6.2.1992 the date of inspection is not borne out by the material available. However, on the basis of the material on record, I am not able to decide the main issue as to whether Mithalesh Kumar is in fact a cousin brother and therefore in terms of relevant S.R. relating to <sup>or otherwise</sup> sub-letting, the applicant can/said to have sub-let the quarters. The S.R. reads as under :- "Subletting includes sharing of accommodation by an allottee with another person with or without payment of licence fee by such other person, but sharing of accommodation with close relations will not be treated as subletting." It is prescribed that a cousin is a close relation. Next there is a clause re: "persons eligible to share quarters". It is stated that "only one sharer is permitted and the allottee officer shall send prior intimation to the Directorate of Estates in the prescribed form intimating the particulars of the officer and his family and also that of the sharer". The respondents appear to have relied on this provision in their stand that the particulars of Mithalesh Kumar were not given to the respondents as required by rules. It appears that the close relatives are not in the list of approved sharers and the close relatives are not governed by this clause and respondents cannot make a grievance that the applicant had not taken prior permission of respondents for registration. Of course, respondents are bound to verify whether the <sup>a and her</sup> alleged occupant is a close relative/applicant is bound to furnish satisfactory proof. Respondents have conceded that there had been no occasion to make this verification.

This verification would require detailed enquiry and this enquiry cannot be undertaken by this Tribunal.

5. I am, therefore, of the view that the case of the applicant that Mithalesh Kumar is a close relative and if Mithalesh Kumar shares the accommodation, it does not amount sub-letting is required to be investigated and if it is established that Mithalesh Kumar is not a close relative within the meaning of S.R., then the respondents would be at liberty to evict him as a sub-lessee. Till this is done, the present order of eviction cannot be sustained. The OA. is, therefore, allowed on this limited ground. The impugned order dated 18.4.1996 is quashed and set aside and the matter ~~be~~ remanded to the competent authority for a fresh enquiry. Notice under Section 4 dated 18.3.1996 is, however, not quashed and respondents should continue the enquiry by giving an opportunity to the applicant to establish that Mithalesh Kumar is a close relative in terms of the S.R. and cannot therefore be called sub-lessee and therefore order under Section 4 is required to be withdrawn. It is expected that applicant would co-operate in enabling the departmental authorities to arrive at the truth of the matter and that the applicant would not raise any side issues and would refrain from writing letters in an improper tone. OA. is disposed of in the above terms.

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER (A)

mrj.