

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1248/96

Date of Decision: 4.9.97

Shri Uttamrao Ramchandra Morey

Applicant.

Shri S.P. Kulkarni.

Advocate for
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri S.S.Karkera for
Shri P.M.Pradhan.

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri.

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

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 1248/96

Thursday the 4th day of September 1997.

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

Uttamrao Ramchandra Morey
Senior Postmaster
Dhule Division, DHULE
R/at 7, Anand Nagar,
Devpur, Dist. Dhule

... Applicant.

By Advocate Shri S.P. Kulkarni.

V/s

Union of India through
Postmaster General
Aurangabad Region
Aurangabad.

Senior Superintendent of Post
Office, Dhule Division
Dhule.

Postmaster General
Pune Region
Pune.

Estate Officer,
Office of the
Postmaster General
Pune Region, Pune.

... Respondents.

By Advocate Shri S.S. Karkera for Shri P.M. Pradhan.

ORDER (ORAL)

{Per Shri M.R. Kolhatkar, Member (A)}

1. In this O.A. the applicant has challenged the communication dated 11.11.96 at page 20 on the subject " Regarding unauthorised subletting Postmaster quarter Ahmednagar HO by the then SSPOs Shri U.R. More (now Sub Postmaster Dhule HO)" which informed that

recovery of an amount of Rs. 8478/- in 6 equal monthly instalments is ordered by the PMG Aurangabad because the applicant while working as SSPO Ahmednagar had sublet the quarter of Postmaster to Zonal contractor unauthorisedly. The contention of the applicant is that there was no subletting, he had merely permitted the contractor to use one of the vacant quarters in his capacity as SSPO. He has relied on office note dated 30.1.96 at page 31, which reads as below:

" I have gone through the contents of the letter under reference.

As regards occupation of residential accommodation of Ex-Dy. Postmaster, Ahmednagar H.O. I hereby confirm that occupation of partial accommodation of the said building by the aforesaid zonal contractor during the period mentioned therein is hereby confirmed.

During his stay and at the time of enquiry by vigilance officer Bombay I have personally visited the said accommodation on various times and have personally seen partial occupation of the said building by the said building by the said contractor.

I have therefore hereby permit to Shri S.N. Masand credit Rs. 2376/- (Rs. Two thousand three hundred seventy six) towards rental charges at market rate at the rate of Rs. 2.7 per sq.ft. for 216 sq.ft. p.m. for four months."

The counsel for the applicant further contended that even assuming that by sub-letting is meant unauthorised grant of permission to contractor to use the quarter in question, the rent which should have been recovered is as given in the O.M. dated 23.12.91 (page 33) which shows that the revised flat rate of licence fee would be Rs. 45/-. It is further contended that even assuming that it was not less than market rent to be charged on account of un-authorised occupation, enquiry in this regard has been conducted behind his back and an amount of Rs. 10,854/- was calculated by the respondents due from contractor for the say of the contractor and that this action is illegal. The applicant has relied upon the judgements in the case of Kraipak A.K. V/s. Union of India (1970) 1 SCR 457 AIR 1970 SC 150 J Kalpana alias J. Lilly V/s. Union of India and Ors. (1986) 1 SLJ (CAT) 93 and I Ibrahim Kunju V/s. State of Kerala AIR 1970 Kerala 65.

2. The respondents however contend that it was not part of the room which was allowed to be used by the contractor but the whole of the quarter measuring 947.25 sq.ft. and the contractor has given a statement that he had stayed in the room alongwith his family during the period from 6.9.95 to 16.9.95, 13.10.95 to 20.10.95 and 5.11.95 . According to respondents , therefore the action taken by the respondents is perfectly justified.

3. It is clear that the case is not one of unauthorised subletting of the quarter allotted to the applicant but the case is that of permission given to the contractor for temporary use and failure to make recovery thereon at market rent. Memorandum dated 11.11.96 however refers to unauthorised subletting of the quarter of Postmaster. Subletting is defined in SR 317 B (1) as below:

" Subletting includes haring of accommodation by an allottee with another person with or without payment of licence fee by such other person."

Clearly there was no subletting in this case. It is not open to the respondents to clarify subsequently that what is meant is something else. The communication dated 11.11.96 is vitiated on this ground alone.

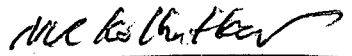
4. Could the respondents issue the same memo by substitution of appropriate words? In my view this course of action is not open to respondents ^{to consider} without show cause notice have held applicant liable to pay the balance amount not paid by the contractor. This is in violation of fundamental principles of natural justice.

5. The O.A. is therefore allowed and the communication dated 11.11.96 is quashed and set aside. It is made clear that this order should not be treated to mean that the respondent cannot in

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future proceed against the applicant. It is open to the respondents to proceed against the applicant as per rules and thereafter order any recovery. No order as to costs.



(M.R. Kolhatkar)
Member (A)

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