

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 624/96

Date of Decision: 30-6-1997

Prafull Gajanan Narvankar

.. Applicant

Shri M.S. Ramamurthy

.. Advocate for
Applicant

-versus-

ESIC & Ors.

.. Respondent(s)

Shri Wadhavkar for Shri M.I. Sethna Advocate for
Respondent(s)

CORAM:

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

The Hon'ble

(1) To be referred to the Reporter or not ? 4

(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

O.A. 624/96

pronounced this the 30th day of June 1997

CORAM:

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

Prafull Gajanan Narvankar,
Superintendent
Finance & Accounts, Br.V
Regional office of E.S.I.C.
Lower Parel,
Mumbai - 400 013.

By Advocate Shri M.S.Ramamurthy

.. Applicant

-versus-

1. Employees State Insurance Corporation,
Panchdeep Bhavan,
Kotla Road,
New Delhi - 110 001.
2. The Deputy Director(Gen.)
Employees State Insurance Corporation, Regional Office,
Panchdeep Bhavan, Lower Parel,
N.M.Joshi Marg,
Mumbai - 400 013.
3. R.R.Kumbhare,
The Estate Officer
Employees State Insurance Corporation,
Panchdeep Bhavan,
N.M.Joshi Marg,
Lower Parel,
Mumbai - 400 013.

Shri Wadhavkar for Mr.M.I.Sethna

.. Respondents

- : O R D E R : -

This OA has a long history of litigation and it is proper that the same is noticed at the outset. The applicant is working as an Insurance Inspector in the grade of Rs.1640-2900 under Respondent No.1 and at present posted ~~in the office of~~ Respondent No.2. He was transferred to Pune on 18-11-1991.

While working at Pune the applicant was transferred to local office at Barshi on 13-3-1995. He challenged this transfer in O.A. 380/95, ~~Ex. 4, page 61~~, which was disposed of by this Tribunal on 24-4-95 giving the applicant liberty to make a suitable representation to the competent authority who was directed to

dispose of the same by passing a speaking order(Ex.K page61) Accordingly the applicant represented on 2-5-95 and the D.G., ESIC by his order dt. 27-9-95 at page 72 considered the representation favourably and ordered retransfer of the applicant from Pune to Mumbai by treating the same as in public interest. In the representation dt.2-5-95 to the DG the applicant had also made a grievance relating to eviction order in respect of staff quarters occupied by the applicant prior to his transfer from Mumbai to Pune. It was his contention that ^{notice} showcause[^] and order of eviction in respect of quarter was issued to him although the Estate Officer had regularised staff quarters even of employees working in Insurance Inspectors' rank viz. J.K.Sabnis, ^{B.R.Joshi} S.R.Suri, and K.N.Menon. Further he was being asked to pay damage rent although this is contrary to the headquarter's instruction dt. 6-9-93 that normal licence fee should be charged when the members of staff are transferred from Mumbai to Pune and thereafter re-transferred to Mumbai. The applicant did mention that this matter, however, was pending in the City Civil Court in appeal No.109/93 filed on 6-9-93.

2. The DG, E.S.I.C. however after noting that the applicant had made a plea for cancellation of the order of eviction of staff quarter observed that he ~~left~~ it to be considered by the competent authority; which in this particular case is the Estate Officer.

3. In terms of the order of DG ESIC the applicant was re-transferred to Mumbai. His Misc.Appeal No.109/93 came to be decided on 15-4-96, vide page 50. The applicant did point out the subsequent developments in the matter viz. his

re-transfer to Mumbai but the City Civil Court by its order referred to above held that the showcause notice issued to the applicant was legal and valid but the applicant was not given full opportunity to present his case and therefore remanded the case to the Estate Officer without expressing any views on the merits of the appeal. The Estate Officer accordingly fixed a personal hearing on 12-6-96. The applicant in the meanwhile approached the Tribunal which has granted ad-interim stay in terms of para 9(a) staying the eviction proceedings recommenced on the basis of the notice dt. 18-6-93 and the further letters dt. 29-5-96 and 14-6-1996.

4. In this OA the applicant has sought the relief of ⁽ⁱ⁾ quashing the eviction proceedings, ⁽ⁱⁱ⁾ directing the respondents to regularise the quarters by charging normal licence fee for the period the applicant was posted at SRO Pune and if necessary ⁽ⁱⁱⁱ⁾ declare the remand of the case ^{by the} Hon'ble Principal Judge, Mumbai City Civil Court as erroneous and the ~~show-cause notice as ab-initio void.~~

5. Counsel for respondents has taken a preliminary objection that this OA amounts to abuse of process of law inasmuch as applicant waited till the decision of the City Civil Court. When he found the decision ^{to his} not liking he approached the Tribunal. Respondents also questioned the jurisdiction of the Tribunal in matters under Public Premises (Eviction of Unauthorised Occupants) Act, 1976.

6. Counsel for the ~~Applicant~~ ^{Applicant} has stated that inspite of his having pointed out to the City Civil Court that he has been re-transferred to Mumbai and in the light of various Govt.

instructions he is entitled to the benefit of regularisation, the City Civil Court did not decide the matter on merit but remanded ^{it} back to the Estate Officer.

The applicant having been aggrieved by the decision of the City Civil Court could have only approached higher forum and this higher forum can only be the Tribunal as held by the recent judgment of the Division Bench of the Mumbai High Court in J.M.

Dumasia vs. The U.O.I. & Ors. decided on 25-6-1996 (W.P. 2526/96) ^{have} I/perused the decision. That was also a petition impugning the order passed by the Principal Judge Bombay in proceedings under PP Act and the Hon'ble High Court dismissed the writ petition on the ^{agitated therein} ground that the matters/fall within the exclusive jurisdiction of CAT. In this connection High Court referred to Full Bench decision of the C.A.T.

in the case of Rasila Ram vs. U.O.I., AIR 1989

(2)CAT 50, (Full Bench Judgments(1986-89) page 346).

In para 10 of the Full Bench judgment the Tribunal observed that "If the Government employee is aggrieved by the orders of the Estate Officer, he can approach the Tribunal at that stage, but if he chooses to ~~fix~~ file an appeal before the District Judge, he may not file any application before the Tribunal until completion of his case before the appellate authority (District Judge)." This is what the applicant had done. The preliminary objection regarding jurisdiction and abuse of the process of court is rejected and I therefore proceed to consider the matter on other grounds ^{urged}.

7. The contention of the applicant is that there is a long time practice in the organisation(ESIC) that when employees are transferred from Mumbai to Pune and when they are re-transferred after 3 to 4 years the quarters which are in their possession are allowed to be retained by them and on re-transfer

the same are regularised by payment of normal rent and no damage rent is charged. In this connection the applicant refers to the letter dt.16-2-1988 ESIC New Delhi at Ex.R page 99.

The relevant portion reads as below:

"In supersession of Hqrs.Office letter No.D-11-20(31)/79-Genl. dated 4.8.86, the Director General has as a special case approved the charging of normal licence fee instead of enhanced licence fee in respect of all the 17 cases (list encl) of retention of staff quarters by the officials on their transfer to Pune during the year 1980-82, subject to the condition that the allottees are not paid House Rent Allowance during the period mentioned against their names. In case House Rent Allowance has been paid, the same may please be recovered from the allottees concerned under intimation to this office."

8. Counsel for the respondents however contends that this letter was not be cited as a precedent and in any case it relates to the ~~(1-2)~~ initially transfer in the rank of Assistants/Head Clerks/~~transferred~~ from Mumbai to Pune on rotational basis. The applicant belongs to the cadre of Inspectors and this instruction cannot be made applicable to the applicant. So far as applicant is concerned the orders which apply are those issued by the Directorate of Estate, Ministry of Works Housing and Rehabilitation, vide O.M. No.12016(2)/80-Pol.II(VIII)(xxiii) dt. 24-10-85 at page 43. The relevant para states that regularisation of allotment of residence on reposting can be done if the officer has been posted back and has joined duty at the Station where he has been allowed to retain the accommodation within the period of retention of accommodation allowed. So far as the present case is concerned the applicant was

allowed to retain accommodation only for two months from 15-11-1991 to 15-1-92 and therefore the applicant does not fall within the concession envisaged by the OM. It is stated that this OM was forwarded to all Regional offices on 25-9-87, vide Ex.2 to the written statement in which it ^{been} ~~has~~ stated that the same has been adopted for implementation in ~~the~~ ESIC. Counsel ^{the decision} for the applicant would contend that ~~in~~ the circular dt. 25-9-87 cannot be said to be a decision taken in accordance with Section 18 of the ESIC Act read with Section 7 and therefore the OM cannot be said to be applicable to the employees of the ESIC. Respondents, however, contend that in terms of memorandum dt. 27-11-1968, Ex.3, to the written statement, the supplementary rules from 317-B-1 to 317-B-26 as also the administrative instructions issued from time to time by the Director of Estates, Ministry of Works Housing and Rehabilitation ~~have~~ been adopted by Director General in lieu of the existing allotment rules of the Corporation. According to respondents therefore it is not necessary every time to issue a notification under section 18 read with Rule 7 of the ESIC Act. Counsel for the applicant then contends that the whole matter was considered by the Corporation and instructions dt. 6-9-93 was issued vide page 90 to the O.A. As these instructions are important for decision of the case the same are reproduced in full.

"The Regional Director,
E.S.I. Corporation,
Regional Office,
Bombay.

Sub: Retention of Staff Quarters by
Employees on transfer to within
the region - regarding

Sir,

The matter regarding retention of
staff quarter at old headquarters by employees
on transfer to out station within the region

has been examined at length and the following guidelines have been approved relaxing the proviso contained under SR-317-B-11(2) of the allotment Rules :-

- (a) In case of transfer of officials within the region he may be allowed to retain the accommodation at his old place of posting on payment of normal licence fee till he is re-posted back to his old place of posting provided during the period of such a transfer the said official will not draw HRA at the new place of posting till he is occupying the staff quarter at the old place of posting.
- (b) The said official will not be entitled to any transfer TA for the members of his family and transportation of personal affects. He will be entitled to TA on transfer for self only.

The above guidelines would be followed by the Regional Director in consultation with the Regional union.

This disposes Regional Director Bombay D.O. No.D.11/20(2)/AV-Genl-III dt. 26-3-1993 on the subject mentioned.

This issues with the approval of Director General and concurrence of Financial Commissioner.

Yours faithfully,

Sd/-

(K.MISHRA)

Administrative Officer(G)"

According to applicant these instructions of the Corporation are more liberal than the instructions contained in the OM dt. 24-10-85 of the Ministry of Urban Development. These instructions envisage regularisation of staff quarters in the case of re-posted employees in case he has not drawn HRA at the new place of posting. According to applicant he fulfills this condition

because he did not draw HRA on his transfer from Mumbai to Pune and on retransfer from Pune to Mumbai. Moreover he contends that his wife who is also an employee of the central govt. (Excise Department) has also not drawn HRA in her own office. According to ^{the} applicant therefore the respondents ought to have regularised his case on the basis of the instructions dt. 6-9-93 and not on the basis of OM dt. 24-10-85.

9. The counsel for the respondents however argues that these instructions did not apply to the staff in the category of Inspectors. These instructions were issued by the DG in the context of the dtd. 26-3-93 specific reference made by the Regional Director at page 46. It is clear from this reference that ~~the same xxx~~ pertains to Assistants/Head Clerks transferred from Mumbai to Pune on rotational basis who are reposted back but applicant belonged to the cadre of Inspectors and these instructions are not meant to apply to him. Counsel for the applicant however contends that the instructions from the HO do not refer to ~~any~~ particular category of staff, ^{that the} instructions did not also specify in the "subject matter" ~~xxxxx~~ the letter dt. 26-3-93. Instructions only purported to dispose of the letter. The instructions are therefore required to be ~~construed~~ ~~as such~~ as general instructions applicable to all categories of staff and not only ~~Head Clerks/Assistants~~.

10. Counsel for the applicant further contends against that the applicant has been discriminated ^{against} inasmuch as the four employees referred to in his representation to the Director General although they belong to the category of Inspectors were permitted to retain the quarters and were not required to pay damage rent. According to applicant the then Regional Director

during whose time the eviction proceedings were started bore^a/grudge against the applicant and he singled out the applicant for hostile discrimination vis-a-vis his other colleagues. Respondents were asked to file additional statement in respect of this contention and the respondents have conceded that Shri Menon¹, Inspector, was first transferred from Mumbai to Pune on 23-4-84 and retransferred on 1-3-85. Quarters were regularised on payment of twice the standard licence fee w.e.f. 24-6-84 to 23-12-84 and on payment of licence fee at market rate w.e.f. 24-12-84 to 3-3-85. Regarding Mr. Sabnis he was transferred to Pune from 7-5-90. He was re-transferred to Bombay w.e.f. 19-5-93 and he was asked to pay damage rent. However, the said damage rent was wrongly assessed and the matter is under verification. Regarding Shri B.R. Joshi he was an Inspector and was transferred to Pune thereafter re-transferred to Mumbai but the old record regarding cancellation of his licence etc. is not traceable. Regarding S.R. Suri he was transferred to Pune on 30-12-87 and re-posted to Mumbai on 28-4-89. He was required to pay normal licence fee from 1-10-87 to 30-11-87 and enhanced licence fee for subsequent period; on the basis of which his retention has been regularised. According to respondents therefore^{although} there have been cases of regularisation of quarters in favour of the Inspector level officers when they^{were} re-transferred from Pune to Mumbai, but in all these cases enhanced licence fee was charged. Even in the case of the applicant on an earlier occasion when he was posted from Gujarat^{from} 19-12-85 till 19-1-87, the retention of quarters was allowed and the penal market rent was charged for the period from 1-9-86.

11. In the light of above discussion it would appear that the basic issue on which the case turns is the applicability of DG's instruction dt. 6-9-93 to the case of the applicant. In my view the instruction on the face do not apply, merely to officials in the cadre of Assistants/Head Clerk's, and the instructions have been specifically made in relaxation of proviso under 317-B-11(2) of the allotment rules. I, therefore, intend to consider the status of the instructions contained in OM dt. 24-10-85. In my view considering the memorandum dt. 27-11-68 at Ex.3 to the reply the action of the respondents in adoption of the OM dt. 24-10-85 cannot be said to be illegal. However, when the instructions dt. 6-9-93 are issued then those subsequent instructions in the field in which they operate are required to be treated as authoritative and given weight as against earlier instructions dt. 24-10-85. On this point I am required to follow the elementary rule that an earlier Act must give place to a later, if the two cannot be reconciled - *lex posterior derogat priori*, ^{*n (vide p. 348 Brown's Legal Maxims)*} since the circular ^{*n*} dt. 6-9-93 is a later circular issued after 24-10-85 I am also required to notice another general principle in the matter of statutory interpretation. In this connection at page 98 of G.P.Singh's Principles of Statutory Interpretation, Sixth Edition, 1996, it is stated as below :

"A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific. The principle is expressed in the maxims *Generalia specialibus non derogant*, and *Generalibus specialia derogant*. If a special provision is made on a certain matter, that matter is excluded from the general provision."

12. On the basis of the twin general principles therefore I hold that instructions dt. 6-9-93 would prevail over instructions dt. 24-10-85 and ^{a further} that they would apply not only to the categories of the Assistants and Head Clerks but also the category of the Inspectors to which the applicant belongs ^{for reasons given}

13. Respondents however would contend that the applicant was transferred in November '91 and the instructions were issued on 6-9-93. Therefore these instructions cannot be said to have applicability to the case of the applicant. Applicant would contend that although his transfer was prior to the date of issue of these instructions, his re-posting was subsequent to office circular dt. 6-9-93 in September '95. Therefore by dint of reposting this circular would be applicable in his case. In my view the instruction dt. 6-9-93 are beneficial instructions and they can take effect only after reposting and since re-posting is subsequent to the date of issue of instructions, those instructions are required to be held applicable to the case of the applicant.

14. I am now required to consider whether on the basis of the discussion above I may direct the respondents to decide the case of the applicant in the matter of regularisation of the quarter. However, I notice that the respondents have already taken a stand before the Principal Judge, City Civil Court vide their affidavit dt. 27-11-95 at page 69 of the OA that the applicant's case is covered by memorandum dt. 24-10-85 and not by instructions dt. 6-9-93. I may also observe that the respondents had not made a correct statement before this tribunal when they stated vide para 10 of written statement that 32 employees who were transferred outside Bombay i.e. to Pune were transferred in ^{the} in/

capacity of Assistant/Head Clerk only whose transfers are ordered by the Regional Director on rotational basis. No material however has been placed before me to show that the then Regional Director had a personal bias against the applicant and it has been further been pointed out to me that respondent No.4 who has been added in his personal capacity no longer holds the post of Estate Officer. All the same the apprehension of the applicant that his case may not receive a fair treatment at the hands of Regional Director because of the earlier stand of the respondents cannot be said to be entirely unfounded. I am therefore inclined to dispose of the ~~matter~~ matter by issuing of appropriate order :

-: O R D E R :-

The eviction proceedings commenced on the basis of the notice dt. 18-6-93 and further letter dt. 29-5-1996 and letter dt. 14-6-1996 are hereby quashed and set aside. Respondents are directed to regularise the occupation of the quarter by the applicant on his retransfer to Bombay on payment of licence fee on the footing that instructions dt. 6-9-93 applied to him. Respondents also may not disturb the applicant from the quarter in his possession viz. B type till 'C' type quarter is allotted to him in his turn. I am not inclined to pronounce on the validity of the judgment of the Principal Judge dt. 15-4-1996 beyond what is implied by the above orders. O.A. is allowed in these terms.

✓ No order as to costs.

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