

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 780/96

Transfer Application No.

Date of Decision 28.8.1997

Namdeo Vitthal Ghode

Petitioner/s

Mr. D.V.Gangal

Advocate for  
the Petitioners

Versus

Comptroller & Auditor General of India & Ors.

Respondent/s

Mr. Karkera for Mr. P.M. Pradhan

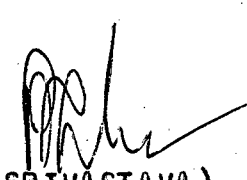
Advocate for  
the Respondents

CORAM :

Hon'ble Shri. P.P. Srivastava, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ? Yes
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? No

  
(P.P. SRIVASTAVA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO. 780/96

Dated this the 28th day of August, 1997

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

Namdeo Vitthal Ghode,  
r/o G.G.Dhorgade,  
Sai Vihar, Flat No. 18,  
Adharwadi Road,  
Kalyan (W), Dist. Thane.

By Advocate Shri D.V.Gangal

... Applicant

V/S.

1. Comptroller and Auditor General  
of India, New Delhi.
2. The Senior Deputy Accountant  
General (Admn.), Office of  
Accountant General (A&E)-1,  
Mumbai, Maharashtra.
3. The Principal Director of Audit,  
Central Railway, C.S.T., Mumbai.

By Advocate Shri S.S.Karkera  
for Shri P.M.Pradhan, C.G.S.C.

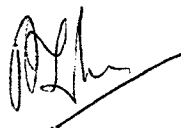
... Respondents

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

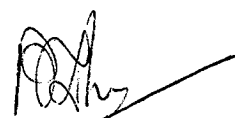
Heard Mr.D.V.Gangal, learned counsel for  
the applicant and Mr.S.S.Karkera for Mr.P.M.Pradhan,  
learned counsel for the respondents.

2. The issue involved in this OA, is that the  
applicant was issued a show cause notice for damage  
rent under Section 7 of the P.P.Act, which is placed  
at Annexure-'A-9' page 27 dated 12.12.1994 in which  
the applicant was required to show cause as to why  
an amount of Rs.22,910.72 should not be deducted  
in respect of the dues for occupation of the quarter  
by the applicant. The applicant submitted a represen-  
tation against this by a D.O.letter written to the  
Estate Officer dated 20/21.12.1994 which is placed

 .. 2/-


at Annexure-'A-10' page 28. Counsel for the applicant has argued that the respondents have not issued any orders after the show cause and the applicant was communicated the order dated 21.3.1995 which is placed at Annexure-'A-1' by which recovery of Rs.16,263/- is required to be made. This letter is addressed by the Sr.Dy.Accountant General(Admn.) Shri Krishnamurthy to Shri Venkatachalam,Dy.Director and copy of the same is given to the applicant wherein it is also mentioned that this is with reference to his representation dated 20/21.12.1994. The only argument advanced by counsel for the applicant is that the Estate Officer although happens to be the same person who has written the order dated 25.5.1995 who is required to pass an order under Section 7 of the P.P.Act which is statutory, <sup>do not</sup> has not <sup>done</sup> done in this case and therefore, the order dated 25.5.1995 cannot be held legal.

3. Learned counsel for the respondents, on the other hand, <sup>has</sup> argued that the matter has been considered by the same officer who had passed the order dated and he has referred the matter to the A.G. under the Housing Department of the respondent administration and therefore the Section of the P.P.Act is not quoted. In fact, the provisions of the Act have been complied with. In this connection, Ld.counsel for the respondents has also quoted Supreme Court judgement in Union of India vs. Khazan Singh, 1992 S.C.SLJ page 275. In this case, the issue involved was that under the Discipline and Appeal Rules, the appellate authority has not mentioned the Section 25(1) while disposing of the appeal. The Hon'ble Supreme Court has held that the exercise of power was justified under any provision of law and the non mention of the Section will not invalidate the proceedings.



4. After hearing both the counsels, I am of the view that the judgement quoted by the respondents is not applicable. The order dated 25.5.1995 is not issued by Mr. Krishnamurthy in his capacity as Estate Officer. In fact, it is not directly addressed to the applicant who had been given a notice under Section 7 of the P.P. Act. Once the Estate Officer has chosen to take action under Section 7 of the P.P. Act, <sup>it is</sup> incumbent on the part of the respondents to complete the proceedings by issuing an order in his capacity as Estate Officer after taking all the correspondence in consideration including the correspondence with Controller and Auditor General. The order dated 25.5.1995 cannot be taken as an order issued under Section 7 of the P.P. Act. Therefore, the action taken by Mr. Krishnamurthy, Sr. Dy. Accountant General for ordering recovery of Rs. 16,263/- cannot be held as action taken under Section 7 of the P.P. Act.

5. In the result, the order dated 25.5.1995 is quashed and set aside. The respondent administration will be at liberty to complete the process under Section 7 of the P.P. Act if they are so advised.

  
(P.P. SRIVASTAVA)  
MEMBER (A)

mrj.