

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 738/96

Date of Decision : 3.5.2001.

Deepak Sadashiv Applicant

Shri G.S.Walia Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri V.S.Masurkar Advocate for the
Respondents

CORAM :

The Hon'ble Shri Justice Ashok C.Agarwal, Chairman

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ? |
(ii) Whether it needs to be circulated to other Benches of the Tribunal ? | X
(iii) Library ✓

Shanta
(SMT.SHANTA SHASTRY)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.738/96

Thursday this the 3rd day of May, 2001.

CORAM : Hon'ble Shri Justice Ashok C. Agarwal, Chairman
Hon'ble Smt. Shanta Shastry, Member (A)

Deepak Sadashiv,
Ex-Gangman,
Western Railway,
R/o Rly. Qr. No. 8/E/C,
Goregaon (E), Mumbai.

...Applicant

By Advocate Shri G.S. Walia

V/S.

1. Union of India through
General Manager,
Western Railway,
HQs. Office, Churchgate,
Mumbai.
2. Divisional railway manager,
Western Railway, Bombay Division,
Bombay Central, Mumbai.
3. Senior DEN (Track),
Bombay Division,
Western Railway,
Bombay Central, Mumbai.

...Respondents

By Advocate Shri V.S. Masurkar

ORDER (ORAL)

{Per : Smt. Shanta Shastry, Member (A)}

The applicant who was working as a Gangman under the Chief Permanent Way Inspector at Andheri was served with a charge-sheet on 2.8.1992 on the allegation that he was occupying two Railway Quarters and he did not vacate the Railway quarter at

Bandra. Based on the chargesheet, the enquiry was conducted and the applicant was removed from service vide order dated 17.8.1994. The applicant has approached this Tribunal to quash and set aside the aforesaid order of the removal and to direct the respondents to reinstate him in service with full back wages and all consequential benefits.

2. It is the contention of the applicant that he never received the order of removal therefore he could not go in appeal. He also did not receive a copy of the enquiry report. The decision was ex-parte as he was not given any opportunity to defend himself. The order of removal is bad in law. Further, according to the applicant, he did not commit any misconduct. He himself was requesting the respondents to get the quarter at Bandra vacated as it was used by unlawful elements. Further action was initiated against the applicant under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The applicant had clearly stated his position in the matter. However, without hearing the applicant, the Estate Officer has passed the eviction order on 23.9.1996. The applicant preferred an appeal before the principal Judge, City Civil Court by Misc. Appeal No.93 of 1996 against the said eviction order. On 16.4.1996, the City Civil Court stayed the eviction order in respect of Railway Quarter at Goregaon but granted liberty to the respondents to execute the eviction order in respect of Railway Quarter at Bandra (E). ~~The appeal is still pending.~~

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3. The learned counsel for the applicant is not certain about the outcome of the appeal.

4. The learned counsel for the respondents submits that the order of removal was sent to the applicant by Registered Post at both the addresses, namely, Goregaon as well as Bandra. However, the applicant had not accepted the order and it was returned by the postal authorities. Therefore, the applicant cannot complain that he has not been served with the removal order and its copy. The action of the respondents is strictly in accordance with law. According to the respondents, the applicant had been served with the chargesheet but he did not file any statement nor did he enquire about the result of the chargesheet for two years. The departmental enquiry was held by the enquiry authority and ample opportunity has been given to the applicant under the rules and all principles of natural justice had been followed. They also said that even if it were to be presumed that the applicant did not receive the copy of the removal order, a copy of the removal order was annexed with the written statement filed on 20.1.1997 even though the applicant did not care to file any appeal. The learned counsel for the applicant submits that no enquiry report was made available to him and unless he knew the grounds about the details of the order of the removal, he could not have gone in appeal.

5. The learned counsel for the applicant also produced copies of two judgements of the Tribunal delivered by this bench in OA.NO.848/90 and OA.NO.368/91 wherein it has been held that occupying two quarters or sub-letting the quarter does not amount to misconduct. These OAs. were therefore disposed of by quashing the chargesheet. The learned counsel for the applicant further informs that in the matter of M.A.Jaleel Khan vs. Union of India, OA.NO.848/90 SLP was filed. Though SLP was allowed, the Apex Court remained silent on the issue of whether sub-letting of Government quarter amounted to misconduct or not. He further states that there are contrary judgements also, he has, however, not produced them. ^{It The learned Counsel is also not pressing reliance on these judgements.} Be that as it may, we find that the respondents have not showed anything in support that the copy of the enquiry report was made available to the applicant. Natural justice demands that enquiry report should have been made available as has been laid down in the case of Ramzan Khan. We, therefore, feel that the applicant should get an opportunity to file an appeal.

6. Accordingly, we direct that the applicant should be given the enquiry report and the other proceedings relating to the enquiry and he should be given a proper opportunity to file an appeal within a period of one month from the date of communication of this order and the respondents shall consider the appeal ignoring the delay in filing of the appeal and decide the matter as per rules within two months thereafter. Accordingly, the OA. is disposed of. No costs.

In auto 9-
(SMT. SHANTA SHAstry)
(MEMBER (A))

mrj.


(ASHOK C. AGARWAL)
CHAIRMAN