

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATIONS NO. : 655/99 & 656/99

Dated this Thursday the 16 day of December ¹⁹⁹⁹ 2000.

Shri Mukhtiyar Singh in OA 655/99 & Applicant
Shri M.R. Thakur in OA 656/99

Shri Suresh Kumar Advocate for the
Applicant.

VERSUS

Union of India & Others. Respondents.

Shri R.K. Shetty Advocate for the
Respondents.

CORAM : Hon'ble Shri B.N. Bahadur, Member (A)

(i) To be referred to the Reporter or not ? No
(ii) Whether it needs to be circulated to other Benches
of the Tribunal ? No
(iii) Library. No

B.N. Bahadur

(B. N. BAHADUR)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.655/99 &
Original Application No.656/99

Thursday the 16th day of December, 1999.

Coram : Hon'ble Shri B.N. Bahadur, Member (A).

Shri Mukthiyar Singh,
Lift Operator, Garrison Engineer,
Naval Works, Navy Nagar, Colaba.
at present residing at Quarter No.
108/10, 15% Defence Civilian Otr.,
Dandi Near INS Trata, Colaba,
Mumbai - 400 005.

... Applicant in
OA 655/99

Shri Mahesh Ram Thakur,
Lift Operator, Garrison Engineer,
Naval Works, Navy Nagar, Colaba.
at present residing at Quarter No.
4, Marshal House, Near I.N.S. Trata,
Colaba, Mumbai - 400 005.

... Applicant in
OA 656/99

Applicants by Shri Suresh Kumar, Advocate

Vs.

1. Union of India, through
The Major General,
General Officer Commanding Officer,
Headquarters Maharashtra and
Gujarat Area, Colaba,
Mumbai - 400 005.

2. Officer in charge
Station Headquarters,
Colaba, Mumbai - 5.

3. The Garrison Engineer,
Naval Works, Navy Nagar,
Colaba - 400 005.

... Respondents.

Respondents by Shri R.K. Shetty, Counsel.

: O R D E R (ORAL) :

(Per Shri B.N.Bahadur, Member (A))

The O.A.No.655/99 and O.A.No.656/99 are being dealt with together, since the facts and issues involved are similar and the ground taken by either side are also similar. Needless to

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say that wherever the facts or conclusions needs to discriminated between these 2 cases, it will be done.

2. In O.A.No.655/99 the applicant Mukhtiyar Singh, who is Lift Operator with Garrison Engineer, Naval Works, Mumbai, comes up for seeking relief for quashing of the orders dated 7.12.1998 and 22.7.1999 relating to his eviction from Government accommodation. The facts in brief are that the Respondent Authorities inspected the house of applicant on 13.11.1997 at about 4 O'Clock in the morning, and allegedly found some unauthorised persons staying with the applicant. The applicant states that one Shyamsingh Rajput who was visiting them, and who is a relative, was staying with them as casual visitor. Also one Arvinder Singh, relative, was staying with him and was to go away in middle of November. Applicant alleges that without show cause notice, the allotment of his quarter has been cancelled and deduction of market rent has been started.

3. In O.A.656/99, the applicant is one Shri M.R.Thakur, who is also a Lift Operator in the same Respondent's organisation. In a similar inspection, on the same date and time some unauthorised persons were allegedly found to be staying with him. Applicant contends that two younger brothers Satyanarayan and Rajnarayan Thakur were staying with him, and that his joint family, both here and in the native place. Further, he states that his uncle who stays nearby in Geeta Nagar, had come over for a function at night, and his son Brij Bhushan Thakur was staying over only for a night. The applicant in this case also seeks relief for quashing of the orders dated 7.12.98 in respect of his quarters.

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4. The Respondents in both the cases have filed written statement, separately, in which they have denied the allegations made by the applicants and have contended that these 2 cases were of sub-letting, and the applicants had erred in sub-letting the quarters contrary to rules and conditions of allotment. It is strongly averred that, as per rules, the contention that no rent is being received is irrelevant and that the charges of sub-letting sticks whether there is monetary consideration involved or otherwise. The circumstances of the surprise check, and subsequent events leading to the order of eviction have been described in the written statement. Judgment in case O.A.No.595/97 dated 3.3.98 by the Tribunal is cited in support of contentions that acceptance or otherwise of money has no consideration in proving the charge of sub-letting.

5. We have seen all the papers and documents in the case, including the copies of Judgment cited by Learned Counsel on both the sides, whose arguments have been carefully heard and considered.

6. Learned Counsel on both sides in both the cases argued in detail, and the points made by them are mentioned in gist below.

7. Learned Counsel for the applicant states that the persons found staying overnight in both the cases were casual guests or relatives as described in detail in the OA. In fact it was stated that for one person written permission had been sought. Learned Counsel steneously stated that these being guests as

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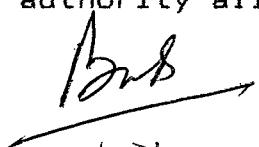
friends or relatives, there was no question of any monetary consideration, and that this aspect was relevant also. For instance, he said that Shyamsingh Rajput was a friend and Arvinder Singh was a cousin, and took me over the relevant documents in this regard.

8. Another point strenuously made by the Learned Counsel for the applicant was that no notice was given as was required as per principles of natural justice. Some judgments were cited in this regard as follows.

- (i) Decision in O.A.27/98, CAT, Mumbai Bench,
- (ii) Decision in O.A.642/95 (1996)1 AIR 178 and
- (iii) Decision in Rajguru i.e. 1995 (30) ATC 442.

Assertion was made that action taken without show cause notice was invalid and deserves to be quashed. It was further stated that there was no rule which requires permission for casual guests and attention sought to be drawn to rule contained in SRO 308 issued on 17.10.78. In fact this SRO was cited by Learned Counsel for Respondents also for support of their case.

9. Learned Counsel for the Respondents reiterated the point made in detail in their written statement that the case law cited did not apply in the present case, since it is admitted that the persons who have been alleged to be staying in the quarters at the time of inspection in both the OAs were admitted to be actually found staying. Regarding the point of show cause notice, the Respondents admitted this but contended that permission was needed and admittedly there was no sanction by the competent authority allowing the persons who are found staying in



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the quarters to stay with applicants. Prior permission was necessary and thus there was no need for a show cause notice when once it is admitted that no such prior permission existed.

10. Learned Counsel for the Respondents drew our attention to the documents filed, and taking me over the conditions of allotment and a order dated 30.10.82 stated to be "Special Station Order".

11. Learned Counsel for the Respondents stated that this was a serious matter and that security considerations were involved in the action taken pursuant to the policy decision for need of permission by guests and friends who were seeking to stay with allottees. The point was made that it was difficult to find out who was relatives or friends or casual visitors as distinguished from a sub-lessee staying in the garb of such persons. Counsel for the Respondents thus pleaded for the dismissal for the case.

12. Facts of the case, in both the cases are by and large undisputed. The applicants have admitted that certain persons as detailed out were needed found to be staying in their house at the time of surprise inspection. However, the applicants have sought to explain why and how each one of those persons, was staying in both cases with the applicants. These have been explained in the OAs and the arguments made before me. In the case in OA No.655/99 two persons were found to be staying and in the second case OA No.656/99 there were 3 persons. When repeating the facts and explanations, we would like to say that having perused the papers carefully and considered arguments made before on either side, we do find plausible explanation of the

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persons found staying. We also feel that the SRO 308 which was depended upon by both the sides, I have carefully seen what needed have to be depended upon. It is clearly stated that "it is not the intention to deprive genuine dependents relatives and casual visitors to stay with the JCO's, OR and Civilian employees....." but that the urgent need is to bring these effectively control unauthorised personnel. Further in the definition of relatives would included brothers, sisters and dependents. Having regard to the facts and circumstances of the case we are not convinced that the persons found living with the applicants in either case are unauthorised in the above context.

13. A further point was made regarding non issue of show cause notice need not to be discussed in detail in view of the ratios in the judgments cited. It was absolutely necessary for the Respondents to have issued show cause notices, and then consider the reply received and pass orders. The point regarding the charging of penal rent need not be gone into since from the above discussions, it can clearly be concluded that the order issued in respect of eviction itself is not a valid order. The prayer made that relief in both the cases is similar i.e. the quashing of an order dated 21.7.99 (this is a order common to both applicants). On perusal of record and a clarification by Learned Counsel for Respondents, it is seen that what they are seeking is quashing of order dated 22.7.99 and not 21.7.99. Respondents Counsel claims that this is a typographical error.

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14. In view of the discussions made above, the O.A. No.655/99 and O.A.No.656/99 are both allowed in terms of following order.

(a) The order issued by Respondents dated 7.12.1998 regarding unauthorised occupation is hereby quashed and set aside in so far as it relates to Shri Mukhtiyar Singh and Shri M.R. Thakur in respect of official accommodation allotted to them. Similarly Order No.114/THURS/E1C dated 22.7.1999 is also quashed and set aside. If any deduction of penal rent has been made, by Respondents, the excess amount deducted beyond normal rent shall be refunded. Before parting with this case we must state that nothing in this decision can down grade subject to the importance of need for vigilance for this area. The point relating to vigilance in importance areas made by Respondents Counsel and the right of the Respondents to exercise continuous check in regard to persons who are unauthorisedly staying in government accommodation however is appreciated. These orders are made only in this particular facts and circumstances of the case.

There will be no order as to costs.

B. Bahadur

— (B.N. BAHADUR)

MEMBER (A)

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