BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.868/99 &
ORIGINAL APPLICATION NO.869/99

Dated this Thursday the 23rd Day of March, 2000.

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

Smt.Indira M. Nair,
Employed in the office of
The Medical Officer In Charge,
Naval Hospital Pawai, Bhandup,
Mumbai-400078
As a Staff Nurse. .. Applicant in OA 868/99

Shri E.K. Radhakrishnan Nair,
Employed in the office of
The Meterial Superintendent,
Material Organisation,
Ghatkoper,
Mumbai - 400 086
As a Senior Foreman. .. Applicant in OA 869/99

(Applicants by Advocate Shri P.A. Prabhakaran)

Vs.

1. The Flag Officer Commanding-in-Chief,
Headquarters, Western Naval Command,
SBS Road, Mumbai - 400 001.
Representing THE UNION OF INDIA

2. The Admiral Superintendent,
Naval Dockyard,
Mumbai - 400 023.

3. Shri Suresh Kumar Avasthi,
(Chargeman) In charge of Security
Naval Civilian Housing Colony,
Pawai, Kanjurmarg,
Mumbai - 400 078. .. Respondents.

(Respondent by Advocate Shri V.S. Masurkar).

O R D E R

[Per : Shri B.N. Bahadur, Member (A)]

We are considering herein 2 OAs, together as the basic issues in these 2 applications are admittedly

identical / similar and the Impugned Orders are identical. Wherever facts etc. need to be distinguished this will be done, needless to say.

2. In O.A.868/99, the facts, as brought forth by the applicant are that the applicant, who is a Staff Nurse in Naval Hospital Pawai, was allotted a Government Quarter No.144/4 at Bhandup Colony by Respondent No.2. Some disputes had arisen in the Colony which is owned by Respondents between the residents / outsiders, on the one hand and the Security Guard/s and the authorities-incharge of Security on the other. Without going into the details of the dispute, which has been described by the applicant in detail, suffice it will to say mentioned that Respondent No.2, after giving a show cause notice, has cancelled the allotment order dated 1.10.1986, through which the Quarter No.144/4 had been allotted to the applicant. Further in the same order, the applicant was ordered to vacate the said Quarter and hand over the vacant possession, failing which, it was stated, eviction proceedings under P.P. Act, 1971 would be initiated. The reason given for this action in the same order, dated 21.9.1999, is that applicant's husband was responsible for creating nuisance between 1st & 4th December, 1988 and for preventing the security staff from performing its duty. Also for joining the procession on 4.12.1998 defying Police Orders.

3. It is against this impugned order that the applicant is before us in this O.A. The Respondents have filed a reply denying all the allegations, and making the point that this Tribunal has no jurisdiction to interfere with the matter and that redress must be sought in the Court competent to deal with the matters relating to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The reply statement further goes on to deal with the merits of the case, and to state that the Naval Civilian Housing Colony, Pawai, is located on Defence land and the entry in the Colony is restricted and regulated, strictly, in order to control tresspassing and other anti social activities and for reasons of safety and security.

4. It is further explained that there are two temples in the Colony and that regualted entry is permitted to outsiders by Security Guards. The statement describes in detail that some trouble has arisen, the details of which need to be repeated. Fur;ther, the main relevant point made is as stated above is to say that the applicant in second OA Shri E.K. Radhakrishnan and Shri Mohanan Nair husband of Smt.Indira Nair in the first OA were instrumental in instigating outsiders and others against the Police and Security Authorities and that have played "key roles for the whole unrest in the Colony".

Hence they have violated Rule 313 of CCS Conduct Rule. Further actions of mis-behaviour on the part of the two persons named have already been discussed. It is stated that Shri Mohanan Nair the husband of Smt. Indira Nair in OA 868/99 and Shri E.K. Radhakrishnan, the applicant in the OA 869/99 are guilty of misconduct and violation of rules and the allotment of the Quarters has been cancelled after pvovision of due opportunity through a show cause notice. Rejoinder has also been filed by the applicant which has also been seen.

5. The basic issues in the second OA 869/99 are identical. In fact, here the applicant Shri E.K. Radhakrishnan is himself charged with causing unrest and the allotment of house in his name has been cancelled (Quarter No.G/6 NCHC Pawai).

6. We have heard the Learned Counsel on both sides. Learned Counsel for the applicant argued both the cases to make the point that the Respondents are trying to shift the burden of proof on the applicant and are infact asking them to prove their innocence. He stated that these two were illegal Orders and denied that either the applicant's husband in the first OA or the applicant in the second OA had any improper role in the problems that which arisen. He went over the details of the entire situation in respect of the temples described and

sought to say that no improper role / misconduct was proved.

7. a) Learned Counsel took us over the various documents filed by either side including letters from Police in (Annexure) and also recited facts by way of evidence, as it were, to bring home his point that the persons charged with creating disharmony, or with misconduct were in fact not so. He also cited the case of Sheoraj Singh Vs. Union of India decided by this Tribunal (1994/26 ATC/293), which will be considered later.

b) He indicated that cancellation was indeed made under SR 317(B)21 and that, in view of this, Tribunal had total jurisdiction in these cases.

8. Arguing the case on behalf of Responents, their Learned Counsel Shri V.S. Masurkar first dealt with the point of jurisdiction and said that the limitation of Tribunals in such matters has been laid down in the judgment of K.P. Gupta, dated 18.10.1995 (1995 JT (7) SC-522). He contended that the arguments being made by Learned Counsel for applicant with regard to the evidence on record as something that can only be an appropriate subject matter before a Competent Court deciding grievances under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 when eviction proceedings starts.

9. Coming to the merits of the case, Learned Counsel for Respondents contended that this was not a case of either haste or lack of application of mind,

before passing of the impugned order. All procedures had been following, and opportunity provided through Show Cause Notice.

10. Learned Counsel for Respondents contended that the case of Shivraj Singh vs. Union of India cited by the Counsel for Applicants (para 7 above) was not relevant to the facts of this case, and that after the case of K.P. Gupta referred to him, the law had changed. The Counsel for Respondents also depended on the arguments and averments on the ground put forth in the written statement of the Respondents.

11. Re-arguing the case briefly, Shri Prabhakaran contended that the case of Shri K.P. Gupta cited only talks of the situation after notice has been issued under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Only in such a contingency cán the jurisdiction of this Tribunal be limited. He further stated that the Respondents were not free to resort to providing alternate accommodation, in the facts and circumstances of the case.

12. We have considered carefully, the arguments made by Learned Counsels on both sides and have also perused all papers in that case including rejoinder and have also considered the case law cited.

13. The first thing that would need to be recapitulated is that the provisions of rules, as contained in the SR 317(d)(21) have been followed. Sub-rule 1 of this rule allows for the cancellation of the allotment of official residence to any allottees under a number of contigencies/one of them being a situation where an allottee "conducts himself in a manner which is prejudicial to the maintenance of harmonious relations with his neighbours". It is clarified that the allottee would include members of his family.

14. Now, there is evidence in this case to show that there have been clearcut problems in the Colony of the Respondents, where the applicant reisdes, and that the husband of the applicant had taken a role which was prejudicial to peace in the colony and that he had created nuisance and prevented the security from performing their duty. Evidence was sought to be discussed in detail by both sides and especially by Learned Counsel for applicants, during arguments. He referred to various Police reports and other documents on record. At this stage one is conscious of the limitation of the extent to which appreciation of such evidence can be done by this Tribunal. On a assessment of the arguments and materials before me, it cannot be said that the action taken by the Respondents suffers from arbitrariness, perversity or malice. Beyond this it would neither be possible nor desirable for this Tribunal

to sit in evaluation and assessment of evidence as if it is an Appellate Authority.

15. It is also seen that show cause notice has been sent to the applicant and that the final order clearly shows that the representation submitted in reply to this show cause notice has been duly considered by the Respondents before passing the final order. Thus it cannot be said that principles of natural justice have not been followed. The Learned Counsel for the applicant had strongly argued that the Respondents were trying to shift the burden of proof on the applicant and were infact, asking them to prove their innocence. When a show cause notice has been issued indicating therein the fault on the part of the applicant, and when applicant's reply has been considered before the final decision was given, this argument cannot be said to hold water. It cannot therefore be said that the order was illegal.

16. The question regarding the jurisdiction of this Tribunal, as raised by both Learned Counsel, need not be discussed in detail. What has been dealt with here is the limited question in regard to the correctness or otherwise of the impugned order, which declares the Applicant as an unauthorised occupant of the Quarters allotted to her / him. The Tribunal can certainly go into this aspect and in any case would not tread into areas relating to the provisions of the Public Premises

(Eviction of Unauthorised Occupants) Act, 1971. This issue therefore does not deserves further discussion.

17. Learned Counsel for the applicant had cited the case of Sheoraj Singh vs. Union of India [(1994) 26 ATC 293] and argued the point that the ratio of this (Sheoraj Singh's) case applied to the present case. In Sheoraj Singh's case direct notice was issued under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and it had been assumed that since the applicant therein had refused to evict the quarter as directed, within 7 days, he had become a unauthorised occupant. The Learned Bench of this Tribunal, which decided this case, had referred to the lack of show cause notice prior to the earlier cancellation as being the the vital reason for its decision in allowing the OA. Besides, it had been stated that the notice served was vague and inspecific. In the present OA before us, the proceedings do not suffer from the infirmities, which are the important grounds in the case of Sheoraj Singh. The applicant therefore cannot get any benefit from the ratio of Sheoraj Singh's case decided by the Madras Bench of this Tribunal. In view of these reasons there appears no cause of any interference in the application No.868/99.

18. On the perusal of the second O.A.(869/99), it is seen to be the identical in all substantial aspects and indeed this was the admitted position on both the

sides. In this case (OA 869/99) the applicant himself viz. Shri E.K. Radhakrishnan Nair who was in occupation of Government Quarter No.G/6 NCHC, Pawai. The reasons discussed by us above in the case of O.A.868/99 will apply totally to O.A.869/99. We do not therefore find any need to discuss them again. The conclusions will also be same.

19. In view of the above discussions, both the OAs viz. O.A.No.868/99 and O.A.No.869/99 are hereby dismissed, with no order as to costs.

(B.N. Bahadur)
Member (A).

H.