IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.872/99

DATED: Tuesday, this the 12th DAY OF SEPTEMBER, 2000.

CORAM:

HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Shri Ananda Mahadeo Koli
workng as Transportation
Inspector (South) HQ. Kalyan
residing at Flat No.304
Purandare Colony Syndicate,
Kalyan (West),
Dist. Thane- 421 301. .... Applicant

(By Shri S.S. Karkera, Advocate)

vs.

1. Union of India, through
The General Manager
Central Railway
Head Quarters Office
Mumbai C.S.T.
Mumbai 400 001.

2. The Sr. Divisional Operating Manager,
Central Railway, C.S.T.
C.S.T. Mumbai 400 001.

3. The Sr. Divisional Personnel
Officer, O/0 Divisional Railway
Manager Office,
C.S.T. Mumbai-1 .... Respondents

(By Shri Suresh Kumar, Advocate)

O R D E R

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

This is an Application made by Shri Ananda Mahadeo Koli, seeking in the relief, in substance, for the quashing of the impugned order dated 27.2.1998, through which the allotment of the Railway Quarters allotted to the Applicant has been cancelled with effect from March, 1992, and the Applicant asked to handover vacant possession of the Quarter within 15 days.

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2. The facts of the case, as brought out by Applicant, are that he was allotted the aforesaid Quarter (No.F/248) in Kalyan in March, 1990. It is averred that he applied for "sharing of accommodation" in 1994 and 1995, as per letters at Ex. B & C. Applicant contends that the impugned order cancelling his allotment with retrospective effect, and also imposing a damage rent is contrary to the provisions of law. It is with this grievance that the Applicant comes up to the Tribunal, seeking the reliefs as described above.

3. The Respondents in the case have filed a Written Statement in reply, resisting the claim made by Applicant. It is stated that the Railway Quarter in question was allotted to the Applicant in March, 1990. During the Vigilance raid conducted by the Vigilance team of Central Railways, it was found that the Applicant had sublet the said Quarters to outsiders, and was charging rent from them from March, 1992. The persons to whom the house was sublet were available during the Vigilance raid, and have revealed these facts. In view of this, the recovery of damage rent has been ordered retrospectively with effect from 1992. The Vigilance Branch has advised the Senior DOM/CSTM to cancel the allotment of the said Quarters vide their letter dated 22.9.1997.

4. The Written Statement also contains an averrment by Respondent that there are no documents on record with them to show that Application for sharing of accommodation was ever made. It is alleged that Exhibit B is a fabricated documents and that it was in fact stated during investigation, to the Vigilance Inspector, that permission was not taken. The statement goes on to give further details of the Inquiry conducted, and also parawise replies to the averrments made in the O.A. Another

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salient point made in the Written Statement is that since the Govt. Quarters were sublet from 1992 there is nothing wrong in the action of ordering recovery from that time.

5. A Rejoinder has been filed by the Applicant and this has been seen along with all other papers and documents filed. I have also seen the file relating to the major penalty produced at the time of arguments. I have also heard learned Counsels on both sides.

6. Learned Counsel for the Applicant argued the case in detail, and first reiterated the averrments and contentions made in the O.A. He questioned the action of Respondents in regard to giving retrospective effect to the cancellation of allotment and, argued that any cancellation has to be only prospective. Learned Counsel cited the case of *Krishna Babu Pawar* (O.A. 642/95) decided by this Bench of the Tribunal on 7.12.1995 [*(1996 (1) ATJ 178)*. He made the point that the non issue of Show Cause notice was held to be violative of the principles of natural justice. He also drew support from the case of *Harichand* decided by the Chandigarh Bench of CAT [*1996 34 ATC 106*] and the case of *P.M.Jain* on a similar point [*1993 (24) ATC 746*]. The learned Counsel also cited the case decided by Ernakulam Bench of this Tribunal in the matter of *A.C.Isaac vs. C.G. D.A. [1991 (15) 411]* to make the point that penal rent could only be imposed after the date of detection of sharing of accommodation.

7. Arguing the case on behalf of Respondents, their learned Counsel first made the point that, on facts, there was no dispute in the case before us and therefore, the dependence on rules and case law was very relevant herein. An Enquiry was conducted, as per Rules, and he was penalised in regard to an earlier incident. Learned Counsel argued that it is a deeming provision

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that cancellation of allotment of accommodation could be made from the date of allotment itself. On the point of notice, it was argued that the communication dated 27.2.1998, Exh.A, really amounts to a Show Cause Notice, implicitly, as is clear from the 4th paragraph of this communication. Learned Counsels cited the case of *Rampoojan [1996 ATJ 540]* decided by the Full Bench of the Tribunal and the case of *UOI vs. Hingorani [1987 2 ATC 939]*. It was argued by learned Counsel that after the date of the raid the Applicant had full knowledge and that he has no further rights.

8. The basic question that arises for decision in this case is whether the the order dated 27.2.1998 is illegal or improper. The first point taken by the Counsel for the Applicant was that a Show Cause Notice was necessary before the order was passed. On this, he has depended mainly on the three Rulings of the different Benches of this Tribunal as quoted in paragraph (6) above. It is true that in these three cases the necessity of a Show Cause Notice has been upheld. Learned Counsel for Respondents neverthless sought to extend the ratio of the cases of Rampoojan and Hingorani, referred to above, to the present case. In other words, to say that when the Applicant was aware that he had to vacate the quarter, there was no need for Show Cause Notice. The fact of awareness according to his arguments comes from the fact of the raid and it is also argued from the order of cancellation implicitly acts as a Show Cause Notice. Both these arguments are obviously farfetched and cannot be accepted. It is only on retirement, transfer etc. that automatic knowledge is inferred and hence no notice is necessary. Therefore, in the present case, neither the case of Rampoojan decided by Full Bench of this Tribunal is relevant nor is the case of Hingorani applicable. In

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terms of the positions settled by the other three cases cited, (decided by the different Benches of this Tribunal) it is clear that the non-issue of a Show Cause Notice is a serious defect and is violative of the principles of natural justice. On this score the Application has some merit, as per settled law.

9. I must, however, say that this is not to decide that the case of the Applicant on merits regarding the impugned order of the Respondents. What would be required is that opportunity be provided to the Applicant in consonance with the principles of natural justice by issuing a Show Cause Notice first and then deciding the case after considering the reply of the Applicant.

10. This O.A. is, therefore, allowed to the extent and in terms of the following Orders. The impugned order of the Respondents No.B B-P/606/0/EC/SUB-KYN dated 27.2.1998 is hereby quashed and set aside. The Respondents are at liberty to issue a Show Cause Notice to the Applicant, provide him reasonable time to make a representation thereon and pass a speaking order and intimate Applicant accordingly. Should the Applicant be aggrieved by the said order, he will be at liberty to approach this Tribunal for remedy as per law. The stay granted on recovery will continue to operate until the orders as indicated above are made by Respondents.

11. There will be no orders as to costs.

B.N.Bahadur

(B.N.Bahadur)
Member (A)
12-09-2000

sj*