

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 336 of 2000.

Dated this Friday the 9th day of March, 2001.

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

S. K. Jaffar,
Sl. No. 55189, Section Engineer,
SSE, WDM2 Shop, Central Railway
Workshops, Parel, Mumbai.

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Applicant.

(By Advocate Shri K. R. Yelwe)

VERSUS

1. Union of India through
The Secretary to the Govt.
of India,
Ministry of Railways,
Rail Bhavan,
New Delhi.

2. The General Manager,
Central Railway (H.Q.),
C.S.T., Mumbai - 400 001.

3. The Chief Works Manager,
Central Railway Workshops,
Parel, Mumbai - 400 012.

4. The Deputy Chief Mechanical
Engineer, Central Railway
Workshops, Parel,
Mumbai - 400 012.

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Respondents.

(By Advocate Shri R. R. Shetty)

ORDER

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case, Shri S. K. Jaffar, comes up to the Tribunal, being aggrieved by the Impugned Order dated 27.02.1999 (Annexure A-1) through which the residential

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Railway Quarter allotted to him at Parel is cancelled, vacation of quarter ordered and, further, damage rent ordered to be levied, as detailed in the impugned order.

2. The facts of the case, as brought out by the Applicant, are that he holds the post of a Section Engineer in the Workshop of Respondents, at Parel, and has been allotted Railway Quarters No. RB.II/268/03, which he occupies since 20th December, 1994. The Applicant states that he had proceeded with his family to visit his mother-in-law, who had taken ill in February, 1997 and had requested a neighbour, Shri M. Y. Qureshi to look after his house on security considerations. Shri Quershi was occupant of Railway Quarter RB.III/266/2 in the neighbourhood. The Applicant further states that his Railway Quarter was inspected on 24.02.1997, and the said Mr. Quershi was found there with two family members. The Respondents have issued the Applicant with charge-sheet, and conducted a departmental enquiry, which was completed by the Inquiry Officer in August, 1999. Before the orders of disciplinary authority were made, however, Respondent No. 3 issued orders dated 27.02.1999 (Annexure A-1) with which the Applicant is aggrieved. Among other things, a ground is taken to the effect that no show cause notice has been issued before this order was made. Recovery has been started. However, interim orders have been made on 20.07.2000 to the effect that no further recovery will be made in respect of the damage rent.



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3. The Respondents have filed a reply in the case. After giving the background in regard to the impugned order, and the departmental proceedings simultaneously ordered, it is stated that although no show cause notice had been issued to the Applicant before issue of the impugned order dated 27.02.1999, the Applicant had nevertheless made three representations in April and May, 1999 i.e. after the issue of impugned order, and it was only after these were duly considered by Disciplinary Authority that recovery was started. Respondents aver that it is clear that Shri Quershi admitted having been in unauthorised occupation for two years prior to February, 1997. It is further mentioned that the said Shri Qureshi had also been in unauthorised possession of quarters allotted to him after his superannuation with effect from 30.09.1993.

4. It is seen that there is a M.P. No. 966/2000 filed by the Respondents for deletion of the Respondent No. 1. The prayer made in the M.P. is inconsequential, at this stage, and hence the M.P. is rejected. I have considered the arguments made on both sides and have perused the papers in the case.

5. Learned Counsel for the Applicant first took me over the facts of the case, and reiterated the grounds taken in the O.A. One of the first points made was that no show cause notice was issued. Thus the principle of natural justice was flagrantly

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violated and this itself was enough ground for dismissing the O.A. He sought support in this regard from the judgement of this Bench in O.A. 642/95 in the matter of Krishna Baburao Pawar V/s. The Chief Postmaster & Others reported at 1996 (1) ATJ 178. This point was argued at length. Another point taken was that the impugned order had levied the damage rent from a date earlier than the date of which inspection was made and that this was contrary to law in view of the judgement made by the Principal Bench of this Tribunal in the matter of P.M. Jain V/s. Union of India [1993 (24) ATC 746]. Learned Counsel also took support of the decision made in the matter of Harichand [1996 (34) ATC 106] and the judgement in the matter of V.K. Mishra V/s. Central Railway decided by this Bench on 18.10.2000 in O.A. No. 916/2000.

6. Arguing the case on behalf of Respondents, their Learned Counsel took support of the argument made in the first paragraph of the Written Statement, as already mentioned earlier in this order. Learned Counsel sought support in this regard from the judgement of the Supreme Court in the matter of A.K. Sharma [1999 (1) SC 171]. It was argued by the Counsel for Respondents further that the facts surrounding the circumstances of the presence of Shri Quershi, and the statements made by him show that this was a clear case of subletting. Shri Quershi had retired from service by this time, and the statements made by him (Exhibit R-1) show that the Respondents stand was correct.

Support was sought from the case of Union of India V/s. Sh. Rasila Ram & Others reported at 2000 (2) SC SLJ page 429. Learned Counsel further stated that it was perhaps true that the Applicant was never staying in the house allotted to him but had subletted, as alleged. (This point was resisted by the Counsel for Applicant who asserted that this point was never taken in the pleadings).

7. In the first place, it is clearly an admitted position that no show cause notice has been issued to the Applicant before the impugned order was made. The stand taken by the Respondents in the Written Statement, and in the arguments made was that this would not amount to an infirmity, since after the issue of impugned order the representations made by Applicant were decided by the Disciplinary Authority and recovery was started only subsequently. In fact, it is stated by Respondents that "non grant of show cause notice is of no consequence, since his representations have been duly considered.....". It does not need too much argument to state that this stand cannot be accepted, and is patently devoid of any force. If a show cause notice has to be issued to the Applicant, it has clearly to be done before the orders are made. This is the well accepted principle and in fact, the judgement in the case of Krishna Pawar, quoted above, also provides full support to this view. This is a clear infirmity in the action of the Respondents in

issuing the order and it has to be concluded that the principles of natural justice have been violated in the present case.

8. Another point taken by the Applicant, as discussed above, relates to the issue of levy of damage rent w.e.f. December, 1994. Admittedly, the inspection was made on 24.02.1997 and in this connection the ratio of the decision in the case of P.M. Jain quoted above, helps the case of the Applicant. It is not clear as to how adverse inference can be drawn against Applicant to the extent that the misuse had also started from an earlier date. This also is an infirmity in the impugned order. The case law cited by the Applicant certainly has relevance and applicability in the present case.

9. Learned Counsel for Respondents had cited the case of A. K. Sharma [1999 (1) SC 171]. This case refers to promotion of Law Assistants and holds inter alia that a mistake committed by Railways could not confer any right contrary to Recruitment Rules. The case is not at all applicable. Similarly, the case of the matter in Union of India V/s. Rasila Ram [2000 (2) SC SLJ 429] is not the ground that is being taken here. I have also considered the arguments made about the facts of the circumstances of the case of Shri Qureshi. These are deductions that are sought to be made against the Applicant on the basis of

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facts of Shri Qureshi's case and his circumstances. These cannot go against the Applicant, specially in the absence of the show cause notice, as discussed above.

10. In view of the discussions made above, it is clear that the Applicant has made out a convincing case for the reliefs he seeks. This O.A. is, therefore, allowed and the impugned order/communication No. ES/228-Q/Sub. dated 27.02.1999 is hereby quashed and set aside. There will be no orders as to costs.

B.N.Bahadur

09-03-01

(B. N. BAHADUR)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO.40/2001
in
ORIGINAL APPLICATION NO.336/2000.

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

Shri S.K. Jaffar .. Applicant

Versus

Union of India & Ors. .. Respondents.

Order on Review Petition by circulation
{ Per : B.N. Bahadur, Member (A) } Date : 27.3.2002

This Revision Petition No.40/2001, has been filed by the original respondents in O.A.336/2000. The orders in the O.A.336/2000 were made on 9.3.2001.

2. The Review Petitioners viz. Original Respondents are aggrieved that the Tribunal has committed an error in law, which is apparent on the face of record. The point made is that when the Tribunal had come to the conclusion that the infirmity came about in that no notice was issued to the applicant before the impugned order was passed, it (The Tribunal) should have remitted the matter back to the disciplinary authority giving liberty to it to issue fresh show cause notice and then take a decision. Case law is cited in support of this contention. This is really the only point taken.

3. I have carefully considered the Review Petition and the contentions made therein and have gone through the order made in the aforesaid O.A. carefully. The

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full reading of the order shows that the point of non issue of notice and violation of principles of natural justice was one of the points of infirmity. More importantly it is dismissed on merits also as the (latter) part of the para 9 of the judgment will show.

It is stated there is as follows:-

"I have also considered the arguments made about the facts of the circumstances of the case of Shir Qureshi. These are deductions that are sought to be made against the applicant on the basis of facts of Shri Qureshi's case and his circumstances. These cannot go against the Applicant, specially in the absence of the show cause notice, as discussed above."

4. Thus it is clear that the O.A. has been dismissed on overall consideration of merits apart from the legal points and hence the prayer in the Review is not justified. The Review Petition accordingly fails, and is hereby dismissed. There will be no orders as to costs. Parties be informed.

B.N. Bahadur

27-3-2002
(B.N. Bahadur)
Member (A).

H.

dt. 27.3.2002

order/Judgement despatched
to Applicant/Respondent (s)
on 19.4.2002.

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