

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 876 of 2001..

Dated this Monday the 10th day of June, 2002.

Shri Sahdeo Sadoo, _____ Applicant.

Advocate for the
Shri D. V. Gangal, _____ Applicant.


VERSUS

Union of India & Others, _____ Respondents.

Advocate for the
Shri S. C. Dhavan, _____ Respondents.

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

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



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

mbm

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ORIGINAL APPLICATION NO.: 876 of 2001.

Dated this Monday the 10th day of June, 2002.

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

Shri Sahdeo Sadoo,
Working as Gangman
under the Section Engineer,
Central Railway,
Talegaon.

...

Applicant.

(By Advocate Shri D. V. Gangal)

VERSUS

1. Union of India through
the General Manager,
Central Railway,
Headquarters Office,
Mumbai C.S.T.,
Mumbai - 400 001.
2. Divisional Railway Manager,
Pune Division,
Central Railway,
Pune - 411 001.
3. Sr. Section Engineer (P.Way),
Central Railway,
Talegaon,
Dist. Pune.

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Respondents.

(By Advocate Shri S. C. Dhavan)

O R D E R

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


The applicant in this case is aggrieved by the action of the respondents in recovering a sum of Rs.1764/- from his salary since August, 2001 which action has been taken in view of the



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impugned order dated 22.10.2001 (copy at Annexure-A1). By this order, the respondents state that in a surprise check carried out on 22.5.2001, at Quarter No.RB-1 72/2 i.e.Government accommodation allotted to Sahdeo Sadoo applicant, it was found that the same was sub let to one Smt.Manda Kakde. Instructions of recovery are detailed in this impugned order. The applicant states that he is in fact staying in these quarters, at Talegaon along with his wife and children. He was served with an order dated 13.7.2001 by respondent no.3 stating that a surprise check was conducted on 22.3.2001 and that it was found that quarters had been sub-let to one Smt.Kakde for a rent of Rs.200/- per month. Details of action of recovery are provided by the applicant.

2. The applicant has further stated in the OA that he has made representations dated 17.10.2001 and 18.10.2001 and refers, in his defence to allegations to a certificate of the Sarpanch dated 16.10.2001 annexed to the OA at Annexure - A8 (Page 20). In this the Sarpanch has stated that Smt.Kakde who is a permanent resident of village Vadeshwar Ta. Maval, Pune, has a house of her own and she stays there permanently with her family. However, in view of repairs etc. which lasted for about 15 days in May, 2001, she had gone to her relative - Shahdeo Sadoo, a railway servant staying at Talegaon and that she returned to Pune after the repair work was over. The respondent no.2 has passed an order dated 22.10.2001 disposing of the reference. The ground taken by the applicant were argued by his learned counsel and these will be dealt with ahead.



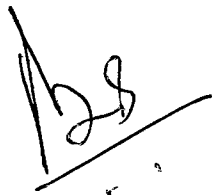
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3. The respondents have filed a written statement in reply, resisting the claims of the applicant and stating that at the time of the enquiry, the applicant has in fact admitted and signed the statement that he had partially sub-let the quarter on rent at Rs.200/- per month. He is now estopped from contending otherwise, or to claim the benefit of the principles of natural justice by way of show cause notice when he clearly admitted his default.

4. Replying to the averments made in OA parawise on merits, the applicant reiterates the above point alleging that the applicant was not staying with his family or alone in the quarters allotted on 22.5.2000 when a surprise check was conducted. Four officials including the Assistant Personnel Officer conducted the check of the quarters and found it sub let to Smt.Kakde who herself has accepted the position that she was staying there with her husband Shri Ankush Kakde and that the Inspection Report was recorded in the presence of above officers and the statement signed by applicant - Shahdeo Sadoo. The statement has also been signed by Smt.Kakde who has affixed her thumb impression. In the further part of the written statement, the relevant rules are cited and calculations on damage rent, etc are explained in detail. Certain case law is cited on the point that no show cause is necessary.

5. I have heard the learned counsel on behalf of both sides and have seen the papers. The matter was argued at some length by learned counsel Shri D.V.Gangal for the applicant and by Shri

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S.C.Dhawan for the respondents. Shri Gangal reiterated that the facts brought out in the OA, as recorded in brief above, and first made the point that the certificate of Sarpanch of the village Panchayat clearly shows that the applicant was indeed visiting Shri Sadoo only because repairs were being made to her own house in the village. It took about 15 days to return to the village. The affidavit of the applicant is also valuable evidence according to the learned counsel. The second and important point stressed by the applicant was that there was no show cause notice provided to the applicant and the orders have been passed without affording an opportunity of defence to Applicant. The order is thus violative of the principles of natural justice and deserves to be quashed on this ground only. The learned counsel stated that the perusal of all the papers in the case, as described above would show that there is not enough evidence and thus pleaded that the impugned order be quashed without providing any liberty to the respondents for further action against the applicant. Learned counsel for the applicant Shri Gangal had sought to take support on the grounds relating to merits, from the case decided by this Tribunal in the matter of *Bhupinder Singh Vs. Union of India & others*, (1993) 23 ATC 113).

6. Arguing the case on behalf of the respondents, their learned counsel Shri S.C.Dhawan first made the point that the case was substantially proved in view of the fact that a surprise check was made by four personnel of the Government and the fact that a statement was recorded on the basis of this surprise check

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check, on the spot. In this statement, a copy of which is annexed at Exhibit R-1 of the written statement of the respondents, it has been clearly accepted by the applicant in his own handwriting that he has sub let the quarters. Smt. Kakde had also accepted the position as was evident from Exhibit R-1. The imposition of damage rent was then explained.

7. One of the main planks of argument taken by learned counsel Shri S.C. Dhawan was that in the present case no show cause notice would be required. He cited the following case laws in support of his contention :-

(a) Ram Poojan Vs. UOI & another, (1995) 34 ATC 434 (FB))

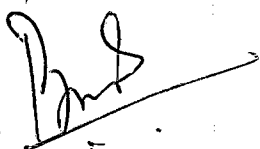
(b) Suda Iswar Rao Vs. UOI (1995) 29 ATC 279

(c) Smt. M.P. Kanal vs. UOI 1997 (1) A1SLJ 40

8. Certain other case laws were also cited in this regard. It would be logical to first consider the point as to whether in the background of the facts and circumstances and the case law on the above subject, it was incumbent on the part of the respondents to provide the applicant an opportunity by serving him with a show cause notice.

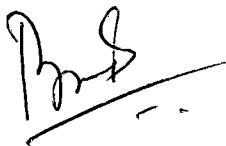
9. It must be seen here that the famous case of Ram Poojan (supra) makes a point that in cases where there is a full knowledge that the quarter has to be vacated like on transfer or retirement or on dismissal etc. there is no necessity of a show cause notice. Ram Poojan's case does not refer to situations where sub letting is a charge. In the case before us now, there is a specific allegation of sub letting and once there is an

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allegation which is denied, a show cause notice is a must. One case cited viz. Shankar and others Vs. Union of India (1994) 26 ATC 278 is not relevant. Similarly, the case of State of Orissa and others Vs. Sadasiva Mohanty, (1997 (1) SC SLJ 52) also cited on behalf of the respondents, again refers to the overstay in the government accommodation. This Tribunal, on the other hand has taken a view in more than one case that show cause notice is necessary in case like the present one. There may be evidence that has been cited for and against. This would be considered only after an opportunity is provided and case decided by Respondents. The case of Suda Iswar Rao (supra) cited by the learned counsel for the respondents was also being seen and is seen to be a case of overstay after transfer. Hence this is also not relevant to the present facts of the case.

10. Thus it can be held that the present case carries infirmity of violation of principles of natural justice. It is indeed noted that there is evidence cited and arguments raised on merits on behalf of the applicant and Respondent, both but once I come to the conclusion that it would be necessary to provide show cause notice, then I am not going into the other merits which are left open. The respondents are at liberty to issue a show cause notice, provide reasonable time for obtaining the say of the respondents thereon and then issue fresh orders in the matter.



...7/-

ORDER

11. In view of the above position the impugned order dated 22.10.2001 is hereby quashed and is set aside. Respondents are at liberty to issue show cause notice on the case, give reasonable time for a reply, and decide the case on merits. No further recovery shall be made till such a decision is taken by Respondents.

12. There will be no order as to costs.

B. N. Bahadur

(B.N. Bahadur)
Member (A)

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