

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 207 of 2001

Dated this Thursday, the 13th day of June, 2002

D.D.Shah Applicant.

Shri L.G.Waigantar Advocate for the
Applicant.

VERSUS

Director General Employees Respondents.
State Insurance Corporation,
Kotla Road, New Delhi & ors.

Shri V.D.Vadhavkar Advocate for the
Respondents.

CORAM : Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

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

S.L.Jain
(S.L.Jain)
Member (J)

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Hon'ble Mr.S.L.Jain - Member (J)

O.A. 207 of 2001

D.D.Shah,
Retired Insurance Inspector/
Superintendent of Indian Inhabitant,
R/o M/s Silverline Developers,
G-3, Shantivan Building No.4,
A-Wing, Near Sonal Park,
R.M.T. Park, Navghar Cross Road,
Bhyander (East), District Thane.
(By Advocate Shri L.G.Waigantar)

- Applicant

Versus

1. Director General Employees
State Insurance Corporation
Kotla Road, New Delhi.
2. Insurance Commissioner,
O/o Employees' State Insurance
Corporation, Panchdeep Bhavan,
Kotla Road, New Delhi.
3. Shri A.W.Khadgi,
Inquiry Officer,
Joint Director (dI), Western Zone,
O/o Regional Director,
Employees State Insurance Corporation,
Panchdeep Bhavan,
Lower Parel, Mumbai.
4. S.C.Bharadwaj,
Presiding Officer,
O/o Regional Director,
Regional Office,
Maharashtra Insurance Corporation,
Panchdeep Bhawan,
Lower Parel,
Mumbai.
(By Advocate Shri V.D.Vadhavkar) - Respondents

O R D E R (Oral)

By Hon'ble Mr.S.L.Jain, Member (J) -

The Applicant prays for quashing of the order dated 12.12.2000 and 6.5.2000 passed by the Appellate authority and Disciplinary Authority respectively by which reduction of his pay by one stage is ordered.

Pr. J. Jain —

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2. The facts of the case are that the Applicant while in service of Respondent no.4 was allotted government quarters. A surprise check was carried out of the staff quarters on 7.12.1995, three persons who were not members of the Applicant's family were found in the said allotted quarters of the applicant. A charge sheet was issued to the Applicant in relation to the subletting of the quarters by the Applicant. After due enquiry the applicant was penalised by the disciplinary authority against which he preferred an appeal which was rejected.

3. The learned counsel for the applicant argued that the Estate Officer had taken action against the Applicant under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, passed the order against which the applicant preferred an appeal which was decided by the City Civil Court allowing the same and held that the case of subletting by the Applicant is not proved. The learned counsel for the applicant contended that in view of the said order, the respondents are not entitled to initiate the disciplinary proceedings against the Applicant in respect of the charge of subletting levelled against him.

4. On consideration of the arguments of both sides we are of the considered opinion that the disciplinary proceedings as well as proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 can simultaneously be continued or even after the order passed under the said Act or even after decision of the appeal it can be initiated. Had it been a case that based on the same material, the respondents have initiated the disciplinary proceedings or arrived at a finding of guilt in disciplinary proceedings, the matter would have been otherwise but if after the initiation of disciplinary proceedings the

P. C. G. —

respondents brought some additional material to arrive at a conclusion, then such proceedings cannot be said to be a bar by any process of law. As a result, we do not find any fault in initiation of disciplinary proceedings. Be that as it may, the proceedings were in respect of same cause of action which was decided by the Estate Officer and thereafter the appeal filed by the applicant was allowed and the applicant was not held guilty of subletting the government quarters.

5. The learned counsel for the applicant argued that he was not provided assistance of a Defence Lawyer for which he had asked for. Suffice to say that the Presenting officer was neither a Law Graduate nor an Advocate as such the applicant was not entitled to have assistance of an Advocate to defend his case.

6. The learned counsel for the Applicant further argued that he could not get a Defence Assistant and, therefore, proceedings continued and concluded against him without appointment of the Defence Assistant. It is true that during the disciplinary proceedings the applicant was not defended by the Defence Assistant but he himself has cross-examined Shri P.B.Mani and Shri S.R.Suri - the departmental witnesses. As such when he has availed an opportunity to cross-examine the departmental witnesses, now he cannot raise this plea that he could not secure the help of a Defence Assistant. It is none of the job of the respondents to provide Defence Assistant to the charged employee. It is for the charged employee to seek the consent of the person concerned and suggest the name of the Defence Assistant and

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intimate the disciplinary authority and the enquiry officer accordingly.

7. Keeping in view the fact that the Applicant's appeal under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has been allowed by the competent judicial authority, we have to examine whether only the said evidence is available in the present case or in addition to it some more material is brought on record. After perusal of the file of the disciplinary proceedings, we find that during disciplinary proceedings Shri S.R.Suri stated that out of the three persons found in the premises i.e. quarters allotted to the Applicant, Shri Rajesh Kumar could not disclose his full address, the other two gave their addresses but the same could not be verified as it was not within their purview. The three persons found in the quarters of the Applicant at the time of surprise check were Miss Leena Gawde, Shri Rajesh Kumar and Shri Felique Sheron. It is true that Rajesh Kumar stated that he was not residing with the Applicant but used to come to take food for the last three months. The other two witnesses viz. Miss Leena Gawde and Mr. Felique Sheron who disclosed their addresses where they were residing but the departmental authorities did not verify about the correctness of that statement. In the circumstances, the only conclusion that can be arrived at is that these three persons were present at the quarters of the applicant during the surprise check on 7.12.1995 at 10.45 p.m.

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8. During the disciplinary proceedings Shri P.B.Mani was also examined. On perusal of the statement we do not find that any incriminating statement in respect of the Applicant regarding subletting has been made by him.

9. The charge levelled against the Applicant was subletting the quarter allotted to him. It is an admitted fact that even at the time of surprise check, the Applicant's wife was available in the said quarters. So it is not a case of subletting of the entire quarter. There is nothing on record to show that even part of the said quarter was occupied by any of the above-mentioned three persons. Parting of the possession for consideration by the allottee is essential to establish the subletting.

10. It is true that the Applicant throughout proceeded to defend his case only on the basis of the fact that there is an order in his favour by the City Civil Court in respect of subletting.

11. We have perused the file regarding the Disciplinary case of the applicant. The appeal memo challenging the order of the Disciplinary Authority discloses that the respondents have erred in coming to the conclusion that the applicant subletted the premises. Under the circumstances, we are not in agreement with the learned counsel for the respondents that the applicant is now raising new pleas for the first time in judicial review. As such in judicial review we have to decide whether there is a case of

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no evidence . The learned counsel for the respondents also drew our attention to the judicial review's scope of the powers of the Tribunal are limited one the Tribunal has no jurisdiction appreciate evidence. It is a case of no evidence and the findings arrived at are perverse, the Tribunal has to examine the evidence on record. Keeping the said principles in mind, we have discussed the evidence in the order in para 7 and our finding is that the findings arrived at by the departmental authorities was based on no evidence and as such perverse.

12. In the result the order of the Disciplinary Authority and Appellate Authority dated 6.5.2000 and 2.12.2000 respectively are quashed and set aside. . Consequent to it, the applicant is entitled to consequential benefits. No order as to costs.

S.L. Jain
(S.L.Jain)
Member(J)

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

mb

dt: 13.6.2002
order/Judgement despatched
to Applicant/Respondent (s)
on 1.7.2002

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