

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.742/01

Dated this Wednesday the 29 th day of May, 2002.

Shri Ananda Mahadeo Koli Applicant
(Applicant by Shri S.S.Karkera, Advocate)

Versus

UOI & Ors. Respondents

(Respondents by Shri Suresh Kumar, Advocate)

CORAM:

HON'BLE SMT SHANTA SHASTRY, MEMBER (A)

(1) To be referred to the Reporter or not? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal? x

(3) Library. ✓

Shanta F
(Shanta Shastri)
Member (A)

sj*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.742/2001

DATED THIS ~~Wednesday~~ ^{29th} MAY 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

Shri Ananda Mahadeo Koli,
working as Transportation Inspector,
Thane (Central Railway), H.Q. Thane,
residing at Flat No.304,
Purandare Colony Syndicate,
Kalyan (West),
Dist. Thane.
Pin. 421 301.

..... Applicant

(Applicant by Shri S.S. Karkera, Advocate)

vs.

1. The Union of India,
Through the General Manager,
Central Railway, C.S.T.
Mumbai 400 001.
2. The Sr. Divisional Operating Manager
Central Railway,
C.S.T. Mumbai 400 001.
3. The Sr. Divisional Personnel
Officer, o/o Divisional Railway Manager,
C.S.T., Mumbai 400 001. Respondents

(Respondents by Shri Suresh Kumar, Advocate)

O R D E R

[Per: Smt. Shanta Shastri, Member (A)]

The applicant is working in the Railways. He was allotted a Railway Quarter bearing No. F.248 at Kalyan in March, 1990. The Vigilance Department carried out inspection of the said Quarter on 1.4.1997. Thereafter the allotment of the Quarter was cancelled with retrospective effect from March, 1992 vide Order dated 27.2.1998. The applicant was also directed to pay damage rent of Rs.7,138/- per month. The applicant challenged the cancellation and imposition of damage rent in.

O.A.872/99. The Tribunal then ordered vide Order dated 14.10.1997 by way of an interim measure for recovery of Rs.3,500/- per month till the disposal of the O.A. Thereafter the O.A. was disposed of on 12.9.2000, by quashing the order dated 27.2.1998, by granting liberty to the respondents to issue Show Cause Notice and recovery of damage rent as already ordered was directed to be continued till the compliance of the orders.

2. The respondents thereafter issued a Show Cause Notice on 20.2.2001 as to why damage rent should not be charged. The applicant submitted his reply to the same on 10.3.2001. He also submitted a reminder thereafter on 19.7.2001. The respondents have now passed the impugned order dated 10.9.2001 making the applicant liable to pay damage rent for the period from 1.3.1992 to 31.12.1998 as per the rules prescribed by the Railway Board from time to time.

3. After the inspection by the Vigilance Department a Chargesheet was also issued to the applicant on 16.10.1997, for subletting of the Quarter from 1992 to 1997. A detailed enquiry was conducted and the applicant was found guilty of subletting the quarter. The Disciplinary Authority based on the enquiry report imposed the penalty of withholding of increment for a period of one year vide order dated 10.3.1999.

4. The applicant submits that he had applied for sharing of accommodation in the year 1994 in the prescribed form and the same was forwarded along with respondents' letter dated 25.8.1994 and 12.5.1995 through proper channel. He never sublet his Quarter. Even in periodical checking and inspection of Quarter

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under review conducted by the respondents it was never pointed out that the applicant had sublet the Quarters from 1992 onwards. During the vigilance check on 1.4.1997, the applicant was not there and the Inspecting Officer has forcibly taken statement and signature of the applicant's wife and servants and one small boy. The respondents thereafter had not taken any action whatsoever to evict the applicant under the provisions of the Public Premises (Eviction and Unauthorised Occupants) Act 1971. Eleven months thereafter respondents cancelled the allotment of the Quarter vide order dated 27.2.1998 with retrospective effect from March, 1992 imposing the damage rent at the rate of Rs.48/per square meter amounting to Rs.7,138/- from March, 1992.

5. The applicant submits that he was issued a major penalty chargesheet under Rule 9 of the Railway Servant's (Discipline and Appeal) Rules 1968 for the alleged subletting of the quarter. The Disciplinary Authority had imposed the minor penalty of stoppage of increment for one year, the applicant did not prefer any appeal. The punishment order was issued much after the cancellation of the allotment of the Quarter. The applicant submits that he himself vacated the quarter on 31.12.1998. The applicant states that the respondents recovered an amount of Rs.70,000/- from the salary of the applicant from September, 1999 till October, 2001. According to him imposing of damage rent is clearly illegal and contrary to the provisions of the Rules by taking the grounds of Disciplinary Proceedings. The applicant also submits that the reason given by the respondents for charging damage rent on the alleged ground of departmental

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enquiry was not a part of the Show Cause Notice and is in violation of principles of natural justice. The respondents cannot recover damage rent with retrospective effect. The applicant also urged that respondents had not taken into consideration the letter of the respondents dated 24.3.1998, wherein the Senior Divisional operating Manager had recommended the case of applicant for continuation in the said Quarter and the applicant had continued accordingly in the Quarter. Therefore, the impugned punishment order needs to be quashed and set aside.

6. The learned counsel for the applicant is relying on the judgement of this Tribunal in the case of A.C. Isaac vs. Controller General of Defence Accounts reported in 1991 (15) ATC 411 wherein it was held that damage rent could not be imposed from the date prior to the date of ^{detection of} sharing of the accommodation.

7. The respondents submit that the applicant had already approached this Tribunal in an earlier O.A. and the Tribunal had granted liberty to the Respondents to issue proper Show Cause Notice to the applicant and reasonable time to make a representation thereon and to pass a speaking order and intimate applicant accordingly. The respondents have, therefore, issued the requisite Show Cause Notice to the applicant, considered his representation and after careful consideration issued the letter dated 10th September, 2001 which is impugned confirming the liability of the applicant to pay the damage rent, from the period from 1.3.1993 and 31.12.1998. In view of this, the

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applicant is now liable to pay the damage rent. It has been established beyond doubt in the Disciplinary Proceedings also that the applicant had sublet the accommodation. The action of the respondents is as per Rules and, therefore, the O.A. deserves to be dismissed.

8. I have heard the learned counsel for the applicant as well as the respondents and have carefully considered the pleadings. During the course of the hearing the learned Counsel for the ^{applicant} ~~respondents~~, kept harping that it was illegal on the part of the respondents to raise the recovery of damage rent from retrospective date i.e. from 1.3.1993 and 31.12.1998. The applicant already argued that from 1992 to 1997, there was no detection of any subletting by the applicant. It is only in 1997 that the subletting was detected. Therefore, if at all the damage rent is to be charged it should be charged from the date of detection as has been held in the case of *A.C. Isaac (supra)* in O.A. No.53/90 decided by the Ernakulam Bench of the Tribunal reported in 1991 (15) ATC 411 wherein it was held that since no ground had been indicated by the respondents for charging the standard rent from 1.2.1988, when the subletting was detected on 16.8.1988, and therefore, there was no reason as to why penal rent should be imposed from a date prior to the date of detection. The applicant's case is slightly on a different footing than that of *A.C. Isaac (supra)*. In the applicant's case penal rent has been imposed and that too from 5 years prior to the detection of the subletting. Also Disciplinary Proceedings were concluded establishing the subletting by the said applicant from 1.3.1992. The applicant has argued that the Disciplinary Proceedings cannot be the basis for imposing damage

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rent with retrospective effect. In my considered view, since it has been conclusively established in the Disciplinary Proceedings that the applicant had sublet his Quarter from 1.3.1992, this fact cannot be ignored and therefore, though the subletting was actually detected only in 1997, the applicant becomes liable to pay the damage rent from 1.3.1992. At the same time as per the provisions damage rent becomes payable in cases of unauthorised occupation and from the date the quarter is cancelled. Since the respondents had not cancelled the allotment of the Quarter earlier, they cannot cancel it with retrospective effect at a later stage. The applicant has also pointed out how he was allowed to continue to occupy the quarter by the Senior Divisional Manager. In view of this, I hold that it is wrong to charge the damage rent to the applicant with retrospective effect from 1.3.1992 to 31.12.1998. The recovery should be only from the date of actual detection of the subletting by the applicant. Accordingly, the impugned order dated 10.9.2002 is quashed and set aside in respect of the liability of the applicant to pay damage rent from the period 1.3.1992. It shall be only from the date of detection of the subletting of the Quarter. The respondents, therefore, shall recover from the applicant damage rent only from the date of detection of subletting of the Quarter i.e. from 1.4.1997 till 31.12.1998 and shall refund any excess amount if already recovered from the applicant within a period of one month from the date of receipt of a copy of this Order.

9. Accordingly, the O.A. is partly allowed. No costs.

Shanta
(Smt. Shanta Shastri)
Member (A)

sj*

21/29/5/92
Order/Judgement despatched
to Applicant/Respondent(s)

25/6/92

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