

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 810/91

199

T.A. NO:

DATE OF DECISION 1.7.92

Shri Dattatraya B. Warang. Petitioner

Mr. G.R. Menghani Advocate for the Petitioners

Versus

Chief Post Master General Respondent

Maharashtra Circle
Bombay - 400 001.

Mr. V.M. Bendre Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Mr.~~ Ms. Usha Savara, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

U. Savara
(USHA SAVARA)
MEMBER(A)

mbm*

(8)
CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 810/91

Shri Dattatraya B. Warang.

... Applicant.

V/s.

Chief Post Master General
Maharashtra Circle
Bombay - 400 001.

CORAM: Hon'ble Ms. Usha Savara, Member (A)

Appearance

Mr. G.R.Menghani for the
applicant.

Mr. V.M. Bendre for Mr.
P.M.Pradhan for the
respondents.

JUDGEMENT

Dated: 1.7.92

¶ Per Ms. Usha Savara Member (A) ¶

The applicant is Assistant Post Master (LSG) Mandvi Head Post Office, Bombay residing at quarter No. A 6/3, P&T Colony, Santacruz (E) Bombay. He has filed the application assailing the impugned order dated 20.8.1988 (Anx.A) whereby the allotment of quarter No. A 6/3, P & T Colony in favour of the applicant has been cancelled by the respondents. It is prayed that the respondents be restrained from evicting the applicant from quarter No. A 6/3, P & T Colony, and also from deducting penal rent from the applicant's pay in respect of the said quarter. Finally, it is prayed that penal rent, deducted may be ordered to be refunded to the applicant with 18% interest from the date of deduction till date of payment.

Succinctly put, it is the applicant's case that a surprise check was carried out at the quarters in Santacruz on 3.3.'91. The inspecting authority filed a report with the respondent to the effect that one Shri Raju was found in the quarter. Immediately,

after receiving the report, the respondent issued an order on 20.8.'91 (Ex.A) cancelling the allotment of the quarter No. A 6/3 from 3.8.'91 on the ground that outsiders/unauthorised persons were staying in the quarters without any approval of the Chief Post Master General. By the same order the employees whose allotment was cancelled were required to be charged full penal rent in respect of their quarters. These allottees were also called upon to vacate the quarter within 15 days from the day of the receipt of the said order dated 20.8.'91 failing which eviction proceedings would be initiated against them. It is the case of the applicant that no show cause notice was issued to him before cancellation of the allotment. Shri Masand, counsel for the applicant declared that not only was the impugned order unilateral and arbitrary, it was also violative of principles of natural justice. It was further submitted that though a representation was made to the respondent on 28.8.'91 explaining that there was no outsider staying in the quarter excepting his immediate family comprising of his wife, and his 3 sons and his brother-in-law (as declared in the application form) no reply was given by the respondent. It was also mentioned in the representation that the Inspecting authority had deliberately ~~distorted~~ facts as its demand for illegal gratification was not fulfilled. However, no reply was received from the respondent forcing the applicant to file the O.A. An interim order was passed on 10.12.'91 restraining the respondents from evicting the applicant and also restraining him from charging penal rent.

Mr. V.M.Bendre appeared on behalf of Shri P.M.Pradhan contested the applicant's claim vehemently. It was submitted that one Shri Raju, aged 27 years, was sharing the premises of the applicant, when the surprise inspection took place. It is alleged that at that time there was nobody else at home except Shri Raju, and some of his articles were also lying in the quarter. Taking the entire facts into consideration, the Estate Officer was satisfied that the quarter had been sublet in violation of the terms and conditions of allotment of the quarter, and therefore, he passed the order dated 20.8.'91 cancelling the allotment on the ground that the applicant had not taken prior permission for sharing or subletting the quarter, and had allowed an unauthorised person to occupy the quarter. The applicant was also directed to pay penal rent from the date of the surprise checking i.e. 3.8.'91. Shri Bendre confirmed that the applicant had declared in the application form that he would occupy the quarter with his wife, his 3 sons - Rajendra, Ninad and Sanjay, as well as his brother-in-law. While denying that there were any illegal demands on the applicant, Shri Bendre went on to explain that no prejudice had been caused to the applicant because of the cancellation order, and that he would have been given a hearing by the Estate Officer before eviction proceedings were taken. There is no provision for issuance of show cause notice prior to cancellation of allotment and therefore, the principles of natural justice have not been violated.

I have heard the learned counsel for both the parties. The short point for adjudication is merely whether a show cause notice should be given prior to cancellation of allotment of quarter. It is difficult to accept the proposition that no prejudice is caused

to a Govt. servant who is threatened with penal rent, and eviction within 15 days. Shri Bendre fairly conceded the possibility that Shri Raju could very well have been applicant's unemployed so, whose name has been, undeniably, mentioned in the application from itself. If there is the slightest possibility of this being so, then, certainly untold prejudice has been caused to the applicant for no fault of his. He has lost prestige and status, to say nothing of the mental tension or torture caused by the impugned letter dated 20.8.'91. The procedure adopted by the Department of not issuing the show cause notice after the inspecting authority has made its surprise check is to be condemned, as being violative of the rules of natural justice. The basic requirement of the principle of natural justice is that there must be fair play in action, and decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons - as held by the apex court in AIR 1984 S.C. 273 (Shri K.L. Tripathi Vs. State Bank of India). This principle has been overlooked completely while passing the order dated 20.8.'91 on insufficient material interpreted in a manner to suit the occasion.

In the circumstances, I have no hesitation in quashing the order dated 20.8.'91 as being arbitrary and violative of principles of natural justice. The counsel for the applicant has avowed that penal rent has been deducted from the pay bill of the applicant in spite of our interim order dated 10.12.'91, and this has not been denied by the counsel of the respondents, but he has produced the correspondence to prove that this was not done deliberately, but there was a bonafide mistake on the part of the respondents. In view of this, no contempt proceedings are being contemplated. However, the respondents will refund the entire penal rent recovered

from the applicant within one month of receipt of this order, and only charge him normal rent as per rules from 3.8.'91 onwards. However, this order does not preclude the respondents from taking action against the applicant after giving him a show cause notice in accordance with rules.

The O.A. is disposed of in the above terms, with no order as to costs.

U. Savara
1.7.92
(USHA SAVARA)
MEMBER (A)

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