

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 549/92

~~Divided by application No.~~

Date of decision 9.6.93

Shri Bimrao Ganpat Wagh Petitioner

Sgri E.K. Thomas Advocate for the Petitioner

Versus

Union of India and others Respondent

Shri V.S. Masurkar- Advocate for the Respondent(s)

Coram :

The Hon'ble Shri V.D. DESHMUKH, MEMBER(J)

The Hon'ble Shri

1. Whether the Reporters of local papers may be allowed to see the Judgement ? Yes
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 ?


(V.D. DESHMUKH)
MEMBER(J)

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 549/92

Shri Bhimrao Ganpat Wagh

... Applicant.

V/s.

Union of India through
the commanding Officer,
Air Force Station
Cotton Green, Bombay.

Estate Manager,
Old CGO Building, Annexe,
3rd floor, 101 M.K. Road,
Bombay.

... Respondents.

CORAM: Hon'ble Shri V.D. Deshmukh, Member (J)

Appearance:

Shri E.K. Thomas, counsel
for the applicant.

Shri V.S. Masurkar, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 9.6.93.

(Per Shri V.D. Deshmukh, Member (J))

The application is admitted and taken
for hearing.

The applicant is working as Chowkidar
under respondent No.1 since 1968, and was allotted
quarter No. 4358/120 Type A, S.M.Plot, Bombay in 1988.

The applicant by this application challenges
the eviction order dated 25.5.92 passed by the respondent
No.2, the Estate Manager, Bombay. The relevant
circumstances are that the applicant received the notice
dated 4.9.91 from the Assistant Estate Manager, Bombay
that the applicant partially sublet the quarter to some
unauthorised persons by reason of which the allotment
was liable to be cancelled. The applicant contends that
the show cause notice was received by him and he
reported before the Assistant Estate Manager on 16.9.91
alongwith the documents which according to him established
that he was staying in the said quarter and he had not
sublet the quarter to any one. The applicant personally

produced documents such as C.G.H.S. Card, Ration Card and Medical papers and correspondence which he had received in the said quarter.

The respondent No. 2 has filed the written statement and as per the written statement the inspection of the applicant's quarter was carried out by the team of officers sent by the Director of Estates on 25.6.91 at 4.30 P.M. and it was found that three bachelors said to be of the same department were staying in the quarter and these three bachelors stated that they were sharing the accommodation with the original allottee and that the original allottee i.e. the applicant comes occasionally. It is also the case of the respondents that the applicant admitted before the Assistant Estate Manager on 16.9.91 that he had kept three persons in his flat as sharers and pursuant to the above said check report and alleged statement made by the applicant the cancellation order was passed on 12.11.91.

The applicant contends that he never received a copy of cancellation order and he had not made any statement as alleged by respondent No.2 before the Assistant Estate Manager. He states that he does not know English as he is not much educated and without explaining the contends his signature was taken on certain paper on 16.9.91 when he appeared before the Assistant Estate Manager. Before the impugned eviction order dated 25.5.92 was passed ^{on} and the applicant was served with the show cause notice dated 27.1.92. The applicant contends that it was only from the notice that he came to know about the cancellation order dated 12.11.91 and there after he personally approached the office of the respondent No.2. The said notice was received on 27.1.92. However according to the applicant copy of the cancellation order was given to him some time after 27.1.92. He also alleges that when the copy was delivered his signature



was taken with pre-date i.e. 19.11.91.

The applicant after receiving the copy of the cancellation order dated 12.11.91 preferred an appeal against the cancellation order before the Deputy Director of Estates (Policy) New Delhi. The said appeal was dated 29.2.92 and he also sent an advance copy of the said appeal directly to the Estate Manager Bombay by registered post. In these circumstances it is the case of the applicant that eviction order dated 25.5.92 which is entirely based on the cancellation order dated 12.11.91 is not sustainable as his appeal against the cancellation order was pending.

The applicant also contends that pursuant to the show cause notice he went to the office of the respondent No.2 on 10.2.92 and waited from 10 A.M. to 5 P.M. but the Estate Manager was not present throughout the day. He further approached the office of the Estate Manager on 11.2.92 and 12.2.92, but again according to him the Estate Manager was not available, and the applicant was informed that the Estate Manager had gone to Baroda. It is his contention therefore that he did not have any opportunity of hearing before the Estate Manager and to his ~~utmost~~ surprise he received the final eviction order dated 25.5.92.

The circumstances discussed above would clearly show that as the eviction order dated 25.5.92 was primarily based on cancellation order dated 12.11.91, it was necessary in the interest of justice that the appeal filed by the applicant before the competent appellate authority be decided atleast before this application was disposed of. Hence the directions were given on 14.12.92 that the appeal-cum-representation against the cancellation order dated 12.11.91 which was pending



before the Deputy Director of Estate (Policy), Nirman Bhavan, New Delhi be disposed of within four weeks from the receipt of the copy of the order. Copy of the order was also directed to be given to the counsel for the respondents. The OA thereafter came to be adjourned from time to time. However till this date no specific instructions are given to the learned counsel for the respondents, Shri Masurkar as to whether the directions given by this Tribunal are complied with or not. It may be pointed out that on 18.3.93 this Tribunal was informed that the appeal was not decided till then. When the application was for hearing on 4.6.93 Shri Masurkar requested for time to seek instructions whether the appeal-cum-representation was decided or not as per the directions given on 14.12.92. No doubt the above said appellate authority is not a party in the present application. However as admittedly he is the competent authority to decide the appeal, the directions ^{could be} ~~can~~ be legally given to the said authority and it was obligatory that the directions be complied with. However I do not propose to take any serious view of the matter at this stage. In any case ultimately the appeal has to be decided and till the appeal is decided the applicant shall be entitled to proper protection. At the same time I must observe that it is most unfortunate that the directions given by this Tribunal are treated in such casual manner.

On reading the eviction order dated 25.5.92 it is obvious that the entire order is based on cancellation order dated 12.11.91. There could be no doubt that the respondent No.2 had received copy of the appeal filed by the applicant against the cancellation order and it is difficult to appreciate how the eviction order could be issued on the basis of the cancellation order during the pendency of the appeal against the same.

: 5 :

The impugned order no doubt states that the opportunity of hearing was given to the applicant on 10.2.92. This Tribunal had given directions on 7.10.92 on M.P. 825/92 that the eviction proceedings be made available to the Tribunal and be produced at the time of final hearing. However Mr. Masurkar states that today no instructions are given to him and the relevant documents are not furnished to him. It is beyond my comprehension as to how respondent No.2 can ignore the directions given by this Tribunal and put his own counsel in an awkward situation. After reading the written statement of respondent No.2 it is apparent that even the contentions of the applicant are not satisfactorily replied. It is stated in para 5 that personal hearing was fixed on 10.2.92 but the applicant had expressly stated in his application that he attended the office of Estate Manager on 10.2.92 and waited there for ^{the} entire day and he also attended the office on 11.2.92 and 12.2.92, but he was informed that Estate Manager had gone to Baroda. None of these contentions are specifically replied in the written statement. There is also nothing to show as to whether any proceedings were held before the eviction order was passed.

The applicant has contended that his signature had been taken on the alleged statement of his without explaining the same to him, that although the copy of cancellation order dated 12.11.91 was furnished to him after 27.1.92, a previous date was put on the copy of the order, and no particulars of the alleged checking were furnished to him. He has also contended that no documents such as panchanama by the team of officers was shown to him. No document is also produced before this Tribunal. These points will have to be dealt with ^{by the} appellate authority. In the circumstances I find that the

eviction order is liable to be set aside with proper directions regarding the appeal pending before the appellate authority. Hence the following order.

The impugned order dated 25.5.92 is quashed. It is directed that the appeal-cum-representation filed by the applicant against the cancellation order dated 12.11.91 which is pending before the Dy. Director of Estate be decided within a period of three months from the receipt of the copy of this order. The appeal shall be decided in accordance with law and by passing a speaking order. If the decision of the appeal is against the applicant, the respondents shall be at liberty to take proper action against the applicant and the applicant shall also have the liberty to avail of his remedies as per law, including an application before this Tribunal. There shall be no order as to costs.



(V.D. DESHMUKH)
MEMBER (J)

NS