

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-560 038.

Dated:- 30 MAR 1994

APPLICATION NUMBER: 189 of 1994.

APPLICANTS:

Sri.G.Thothathiri

v/s.

RESPONDENTS:

Estate Officer/Executive Engineer,  
CPWD, B'lore Central Dvn, and Others.

To.

1. Dr.M.S.Nagaraja, Advocate,  
No.11, Second Floor, 1st Cross,  
Sujatha Complex, Gandhinagar,  
Bangalore-9.
2. The Estate Officer/Executive Engineer,  
Central Public Works Department,  
Bangalore Central Division, 17th Cross,  
Second Block, Koramangala, Bangalore-560 034.
3. Sri.M.S.P admarajaiah, Senior Central Govt.  
Stng. Counsel, High Court Bldg, Bangalore-1.

*Received  
27.03.94  
[Signature]  
[Signature]  
[Signature]*

Subject:- Forwarding of copies of the Orders passed by the  
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/  
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above  
mentioned application(s) on 28th March, 1994.

Issued  
30/3/94  
B.

*of*

*[Signature]*  
for DEPUTY REGISTRAR  
JUDICIAL BRANCHES. 30/3

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

O.A. NO. 189/94

MONDAY THIS THE TWENTY EIGHTH DAY OF MARCH 1994

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

G. Thothathiri,  
Aged 56 years,  
S/o Sri M. Gangadharam,  
No.1, Y Block, C.P.W.D. Quarters,  
Vijayanagar,  
Bangalore-560 040.

Applicant

[By Advocate Dr. M.S. Nagaraja]

v.

1. The Estate Officer/Executive Engineer,  
Bangalore Central Division, CPWD,  
17th Cross, 2nd Block,  
Koramangala,  
Bangalore-560 034.
2. Union of India represented  
by Secretary to Government,  
Ministry of Urban Development,  
Nirman Bhavan, New Delhi.
3. The Director General,  
Geological Survey of India,  
Calcutta.

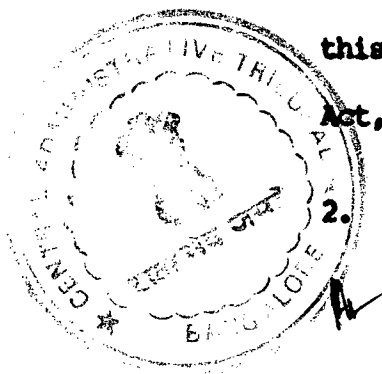
Respondents

[By Advocate Shri M.S. Padmarajaiah  
Senior Standing Counsel for Central Government]

ORDER

Shri A.N. Vujjanaradhya, Member[J]:

1. Aggrieved by the order of eviction of the applicant from the quarters dated 29.12.1993 Annexure A-4, passed by the Estate Officer, Respondent ['R' for short] No.1, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985. Briefly stated the facts are as belows *per the Applicant*
2. The applicant while he was working in Bangalore was allotted



quarters in Central Government Pool Quarters at Vijayanagar, Cr. No.Y-1 Type 5. The applicant was entitled to Type 5-B quarters at that time. Consequent on his transfer to Shillong where he has been staying alone leaving the family in Bangalore who continued to reside in the quarters allotted. The applicant has hardly about 2½ years of service left for superannuation. The basic salary of the applicant being Rs.5,000, he is entitled to Type 5-B quarters but he had occupied Type 5 quarters. According to the instructions of the Government of India, government officers transferred and proceeding to States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh, Mizoram and Andaman and Nicobar Islands are entitled to retain their quarters at the last station where they were working before posting. Thus the applicant is entitled to retain the quarters at Bangalore where his family members are remaining. In spite of instructions of Government of India, in the matter, without taking just and objective view of the situation, R-1 without even ascertaining the age of the applicant and the normal date of retirement, issued notice dated 2.12.1993 [Annexure A-2] under Section 4(1) of Public Premises [Eviction of unauthorised Occupants] Act, 1971 ['the Act' for short] stating that the applicant was in unauthorised occupation of the quarters consequent on the cancellation of the allotment of the quarters with effect from 4.10.1993 and asked the applicant as to why eviction order should not be passed. The applicant has replied to this notice as in Annexure A-3. However, without giving an opportunity to the applicant and without even considering the submissions made by him, R-1 passed an order arbitrarily and unilaterally on 29.12.1993 as in Annexure A-4 directing the

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eviction of the applicant from the quarters. The order of eviction is bald and cryptic and no reasons have been assigned nor is the due procedure followed before eviction of the applicant from the quarters. Hence the application for the following reliefs:

1. To quash Annexure A-4 i.e., order No.1[10-C]/93/BODI/433 dated 29.12.1993 of the Estate Officer/Executive Engineer, C.P.W.D., Bangalore as illegal and unjust.
- ii. To direct the respondents to direct the applicant to retain the quarters allotted to him in 1976 at Bangalore, till the date of his superannuation.
- iii. To award the cost of this application.

After the application was admitted, interim stay of the order in Annexure A-4 was passed and it was continued until further orders. Thus the applicant is continuing in possession of the quarters in question.

3. The respondents have filed reply controverting the contentions of the applicant, further contending that this Tribunal has no jurisdiction to entertain the application as the applicant did not occupy the quarters allotted to him which is one type below which he was occupying the order of eviction was properly and legally passed.

4. We have heard Dr. M.S. Nagaraja, learned counsel for the applicant and Shri M.S. Padmarajaiah, learned Senior Standing Counsel for the respondents and have perused the records.

5. Dr. Nagaraja for the applicant mainly contended that R-1 has not followed the prescribed procedure in the sense that he did not give any personal hearing or held enquiry as per Section 4 of the Act, besides the order being ~~a~~ cryptic and devoid of reasons, the order in Annexure A-4 is illegal and unjustifiable.



He also contended that it is this Tribunal which has the jurisdiction to entertain and decide the application in view of the decision of the Full Bench of this Tribunal. On merits the contention of the learned counsel is that the applicant was entitled to Type E-1 or 5-B quarter, but was allotted only Type B quarters, the maximum available in Bangalore which he is entitled to retain on his transfer to North Eastern states as per OM dated 30.3.1985 emphasising what he called as official mala fide in passing the impugned order.

6. Shri Padmarajiah, learned Standing Counsel for the respondents, on the other hand controverted the above contentions and supported the action of R-1 contending that the order in Annexure A-4 was passed in accordance with law and that the applicant has remained in unauthorised occupation to the detriment of the eligible officers waiting for allotment. Learned counsel also contended that the Tribunal has no jurisdiction to entertain this application as the decision of Full Bench in RASILA RAM V. UNION OF INDIA AND OTHERS is stayed by the Supreme Court.

7. We shall first consider the question of jurisdiction of this Tribunal to entertain the application of the applicant and dispose of the same. According to the learned Standing Counsel because the decision of the Full Bench in Rasila Ram's case reported in Full Bench judgments [CAT] Volume 1 page 346 is stayed by the Supreme Court, which fact is not disputed, this Tribunal has no jurisdiction to entertain this applicant and as such he urged for the dismissal of this application. The effect of the order of stay by Supreme Court was considered by another Full Bench of this Tribunal in GANGA RAM AND OTHERS V. UNION OF INDIA AND OTHERS reported in Full Bench judgments CAT Volume II page 441. Paras 16 and 17 of this judgment read thus:

"16. It will thus be seen that it is not a speaking order at all. It does not give any reason nor makes any declaration of law. Consequently, it is not a binding order under Article 141 of the Constitution. It will only have an effect in the case of Shri Rasila Ram and Three [SLPs [Civil] No.9345 to 9348 of 1980 - OA No.89/88, 1667/87, 1497/87 and 1802/88]. Until the decision of the Full Bench is set aside, reversed or modified by the Supreme Court, the Full Bench decision of the Tribunal in the case of Rasila Ram [supra] remains effective.

17. We thus conclude that the interim order that has been passed in the case of Union of India v. Rasila Ram & Three others is not a declaration of law under Article 141 of the Constitution nor is it binding on any case other than those which were the subject matters of the SLPs and the OAs from which they arise. We accordingly answer the question referred to us."

From the above observation of the Full Bench it is clear that it is the decision rendered by the Full Bench in the case of Rasila Ram which holds the field and, therefore, this Tribunal does have jurisdiction to entertain the application of this nature and decide the same. Consequently we are unable to uphold the contention of the learned Standing Counsel.

8. We shall now turn to the question whether R-1 has followed the prescribed procedure in passing the impugned order of eviction as in Annexure A-4. The applicant on receipt of notice as in Annexure A-2 dated 2.12.1993 from R-1 had replied taking several grounds as in Annexure A-3 dated 16.12.1993. Sections 4 and 5 of the Act which are the relevant provisions applicable were considered by the High Court of Karnataka in THE INDIAN BANK V. BLAZE AND CENTRAL [P] LIMITED reported in AIR 1986 KARNATAKA 256 and the relevant portion of the discussion found at page 268 may be advantageously quoted as the same highlighted the scope the said Sections and the procedure to be followed:

"Under the Act also there are similar in-built safeguards. S.3 requires that a gazetted officer or officer equal in

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rank alone could be appointed as Estate Officer. S.4 requires the giving of not less than 10 days to show cause against eviction. S.5 requires the Estate Officer to consider the cause shown, if any, against the notice and empowers him to pass an order if only he is satisfied after inquiry that the person concerned was in unauthorised occupation of the public premises. When an order of eviction is passed against a person found to be in unauthorised occupation of the public premises, thirty days time has to be given to him to comply with the order. ..."

In the instant case R-1 is not shown to have held any enquiry and thus has not followed the prescribed procedure thereby rendering the order unreasonable and unjustifiable. Of course R-1 was not bound to hear or give a personal hearing to the applicant unless the applicant has so desired. The applicant in his reply has not desired any personal hearing and, therefore, the applicant having not been granted any personal hearing cannot be made a ground to assail the order. But the fact remains that on the several grounds taken by the applicant no enquiry was held by R-1 and as such the order cannot be supported.

9. In N.S. KAPOOR V. JAGMOHAN reported in AIR 1981 SC 136 it was held that the principles of natural justice know of no exclusionary rule dependant on whether it would have made any difference if natural justice had been observed. It was also further held that the non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. Consequently the applicant herein is not required to prove any prejudice on the part of R-1 to assail the impugned order. Drawing support from the decision in OLGA TELLIS AND OTHERS V. BOMBAY MUNICIPAL CORPORATION reported in AIR 1986 SC 180 the learned counsel for the applicant contended that violation of prescribed procedure is violation of principles of natural justice and the proposition

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that notice need not be given of a proposed action, there can possibly ~~be~~ no answer to do is contrary to the well recognised understanding of the real import of rule of hearing. He further contended that this proposition overlooks that justice must not only be done but manifestly be seem to have been done. We are of the view tht this contention is well taken and as R-1 has not followed the prescribed procedure and has not given opportunity to the applicant in not holding enquiry as required under Sections 4 and 5 of the Act. Therefore we have to quash the same.

9. The order also suffers from want of reasons and it does not demonstrate that various contentions raised by the applicant were considered. We are not prepared to accept the contention of the learned Standing counsel that this order is in substantial compliance of the provisions of law governing the same and that R-1 being an administrative officer cannot be expected to pass an order like a judicial officer. Law requires R-1 to take evidence or hold an enquiry and to hear the applicant personally if desired and to pass a reasoned order as can be seen from Sections 4 and 5 of the Act. In the absence of such compliance, we have to necessarily observe that impugned order cannot be sustained.

10. On merits it was contended by Dr. Nagaraja that under OM dated 30.3.1985, a copy of which is produced by the applicant, applicant who is in occupation of one type below his entitlement is entitled to remain in the same accommodation because of his transfer to Shillong. Our attention was drawn to para [1] of the OM which reads thus;

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1. In the case of officers who are in occupation of accommodation below their entitled type on the basis of emoluments prescribed on the crucial date for the relevant Allotment Year, the officers may be allowed to retain the same accommodation in case the accommodation occupied is from type B to type E. For this purpose, emoluments prescribed on the crucial date for the relevant allotment year will be taken into account and not the emoluments on the date of transfer. For example, if on the basis of emoluments as on 1.10.1981, an officer is entitled for allotment of E-I type accommodation and is in occupation of E type accommodation, he may be allowed to retain the same accommodation. However, the highest type of accommodation that can be allowed to be retained or allotted as alternative accommodation will be type E. In addition, the officers would also be entitled to retention/allotment of hostel accommodation according to emoluments prescribed for the relevant hostel accommodation."

The learned Standing Counsel contended that the highest type of quarters available in Bangalore is only Type V and because applicant was allotted Type V quarters he is only entitled to one stage below i.e., Type IV quarters was allotted and he did not occupy. We do not think that is necessary to go into these aspects of the matter in detail at this stage inasmuch as the application will have to be allowed only on the limited question that the R-1 has not followed the prescribed procedure and that, therefore, Annexure A-4 order cannot be sustained. We may make it clear that the applicant is entitled to put forth all his contentions before the Estate Officer at the time of enquiry.

11. In view of what is discussed above the eviction order dated 29.12.1993 as in Annexure A-4 is hereby quashed <sup>but</sup> and the 1st respondent is <sup>at liberty</sup> ~~directed~~ to hold a fresh enquiry as per law giving opportunity to the applicant and dispose of the same afresh. No order as to costs.

MEMBER [J]

MEMBER [A]