

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1304/94

Transfer Application No: --

19-12-94
DATE OF DECISION: _____

M.R.Anthony

Petitioner

D.V.Gangal

Advocate for the Petitioners

Versus

U.O.I. & Ors.

Respondent

V.S.Masurkar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.Kolhatkar, Member(A)

The Hon'ble Shri --

1. To be referred to the Reporter or not ?

2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.1304/94

M.R.Anthony .. Applicant

-versus-

Union of India & Ors. .. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Mr.D.V.Gangal
Counsel for the
Applicant.
2. Mr.V.S.Masurkar
Counsel for the
Respondents.

ORAL JUDGMENT: Date:19-12-94
(Per M.R.Kolhatkar, Member(A))

In this O.A. the applicant has challenged notice u/s.5 of Public Premises (Eviction of Unauthorised Occupants)Act, 1971, dt. 17-11-94 at page 10 of the O.A.

The facts of the case are as below :

2. The applicant was dismissed from service of the respondent No.1 on 27-9-88. Subsequently the appeal against the order was also rejected. This tribunal vide order dated 23-9-1991 in O.A.100/89 quashed the punishment order dated 27-9-88 with liberty to the disciplinary authority to proceed with the enquiry from the stage of supplying Inquiry Officer's report to the applicant. It appears that subsequently these steps were taken and the applicant was removed from service w.e.f. 3-9-92 and the appeal against the said order was also rejected on

18-6-93. It is common ground that this order held the field as of today not having been revised either in review or otherwise interfered with in any O.A.

3. So far as the eviction from the quarters is concerned, there were two interim orders from this Tribunal. In the order dated 20-3-89, status-quo as on 1-2-89 in respect of quarters in the applicant's possession was directed to be maintained subject to the condition that the respondents were given liberty to initiate proceedings against the applicant under the Public Premises(Eviction of Unauthorised Occupants)Act, upto but not including the stage of issue of an eviction notice. Subsequently in MP 366/89 decided on 20-4-89 notice calling on applicant to pay market rate was challenged and the Tribunal directed that the respondents should continue to recover rent at the same rate as they were recovering as on 1-2-89 in respect of the quarter in the applicant's possession.

4. In this background we have to consider the present notice u/s.5 of the P.P.Act. Learned counsel for the applicant submits that this eviction order relies on notice to showcause u/s.4 of the P.F.Act which was issued on 26-7-89. It is evident that this notice was issued in the context of penalty ~~of-the-applicant~~ imposed on the applicant by respondent No.1 which was quashed by this Tribunal. No further showcause notice in terms of removal of the applicant by the

order dated 3-9-92 and the appellate order dt. 18-6-93 confirming the original penalty has been issued. This is common ground. The main point urged by the counsel for the applicant is that this being the position the eviction order issued under section 5 of the P.P.Act is illegal and liable to be quashed.

5. The contention of the counsel for the respondent is that since circumstances of the case remained unchanged the final eviction order issued u/s 5 is fully within the ambit of law. It is also contended that the original application is liable to be dismissed because a large number of civilians are waiting for allotment of married accommodation for about 20 years and a relief in favour of the applicant who has been removed from service for acts of misconduct of instigating workers and attempt to sabotage Govt. properties should not be granted.

6. It is common ground that as settled in the Full Bench Judgment in Rasila Ram and Others v. Union of India & Ors., reported at page 346 of Full Bench Judgment of Bahri Brothers, Delhi, Vol. I, 1989 edition, the Hon'ble Full Bench held ~~that~~ in para 10 that "If the Government employee is aggrieved by the orders of the Estate Officer, he can approach the Tribunal at that stage, but if he chooses to file an appeal before the District Judge, he may not file any application before the Tribunal until completion of his case before the appellate authority (Dist. Judge)." It would,

therefore, appear that the applicant is entitled to challenge the eviction order so long as he has simultaneously not invoked appellate procedure under PP Act. It is therefore clear that this Tribunal can interfere with the order of the eviction apart from the circumstances as indicated in B.N.Singh's case.

7. We have considered the eviction order dated 17-11-94 preceded by the showcause notice dt. 26-7-89 which is obsolete and invalid and consider the eviction order also as illegal and liable to be quashed. We hereby quash the same. We,however, make it clear that respondents are at liberty to issue fresh showcause notice to the applicant u/s. 4 of the PP Act and proceed against him and evict him thereafter as per provisions of law. We also direct that the applicant should make payment of monthly rent punctually at the same rate as he was paying till September,1994, pending action under PP Act.

8. O.A. is thus allowed / No order as to costs.

M. subject to what is stated in para 7

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*M.R.Kolhatkar
Subject to what is stated above*

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