

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1114 /1995

Date of Decision: 07.08.1996.

Shri C. K. Nath,

Petitioner/

Shri S. P. Saxena,

Advocate for the  
Petitioner/s

V/s.

Union Of India & Others.

Respondent/s

Shri R. K. Shetty,

Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri **M. R. KOLHATKAR, MEMBER (A).**

~~XXXXXX Shetty~~

- (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).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1114/95.

Dated, this Wednesday, the 7th day of August, 1996.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

C. K. Nath,  
Quarter No. 23/1,  
Stavely Road,  
PUNE - 411 001.

... Applicant

(By Advocate Shri S.P. Saxena)

VERSUS

1. The Union Of India through  
The Secretary,  
Ministry of Defence,  
DHQ PO,  
New Delhi - 110 011.

2. Chief Engineer,  
Poona Zone,  
PUNE - 411 001.

3. Commander Works Engineer,  
Dr. Koyaji Road,  
PUNE - 411 001.

4. Station Commander,  
Station Headquarters,  
Sub Area,  
PUNE - 411 001.

... Respondents.

5. The Garrison Engineer (N),  
Dr. Koyaji Road,  
PUNE - 411 001.

6. The Asstt. Garrison Engineer,  
E/M (N),  
PUNE - 411 001.

(By Advocate Shri R. K. Shetty).

: ORDER :

PER.: SHRI M. R. KOLHATKAR, MEMBER (A)

In this O.A., the applicant challenges the action of the respondents directing him to (i) vacate the quarters allotted to him (Quarter No. 23/1, Stavely Road, Pune - 411 001) and (ii) to pay the damage rent @ Rs. 1200/- per month for sub-letting the said quarters. It appears that some damage rent had been recovered till the interim order of the Court dated 20.09.1995 and it is not disputed that the damage rent recovered has since been refunded to the applicant.

2. It appears that for the first time on 06.08.1993 (exhibit A-5) the applicant was directed to vacate the accomodation because he was not staying with his family and moreover he had rented part of the accomodation to someone. In the reply dated 11.08.1993, the applicant denied that he was not staying with his family and he further stated that the other person staying with him was his brother Eknath who is working in Provost Unit S.C. and sometime comes and stays with me. He also denied that he had given the quarter to anyone ~~on~~ rent or sublet it. However, since his wife is unwell and taking treatment in Pune, his brother stayed with him for some time. Thereafter, it appears from the letter dated 02.03.1994 that a surprise check was carried out by the Board of Officers on 25.08.1993 and it was found that the applicant had sublet the quarter. By this letter dated 02.03.1994 the allotment was cancelled with immediate effect. He was directed to vacate the quarter by 15.03.1994 failing which damage rate of rent would be charged w.e.f. 16.03.1994. By the order dated 12.04.1994, he was asked to vacate the quarter by 02.05.1994 failing which damage rent would be

charged. The order dated 18.04.1994 states that the damage rent would be charged w.e.f. 03.05.1994. It appears that the applicant was called to the office and then he gave the letter dated 28.04.1994 at exhibit A-7 in which he ~~agreed to~~ purported to ~~the~~ vacation of the quarter by 25.05.1994. The applicant however contends that this letter was obtained from him under coercion. The applicant submits that on the day of surprise inspection, namely 25.08.1993, he was away in hospital. The main contention of the applicant is that he was only sharing accommodation with his brother and sharing accommodation does not amount to sub-letting. In this connection, he relies on Ministry of Works & Housing (Directorates of Estates) O.M. No. 12035(17)/78.Pol.II dated 26.05.1978 which reads as below :-

" Sharing of Accommodation - Definition of Close Relations.

The undersigned is directed to say that in the allotment rules, it is provided that any sharing of accommodation by an allottee with 'close relations' shall not be deemed to be Subletting.

A doubt has been raised what is actually meant by 'close relations'. It is clarified that the following relations will be treated as close relations :-

1. Father, Mother, Brothers, Sisters, Grand Father, Grand Mother and Grand Sons & Daughters.
2. Uncles, Aunts, First Cousins, Nephews, Nieces, directly related by blood to allottee.
3. Father-in-law, Mother-in-law, Sister-in-law, Son-in law, Daughter-in-law.
4. Relationship established by legal adoption."

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He points out that in terms of the memorandum dated 26.05.1978, "brother" belongs to ~~the~~ category of 'close relation' whose sharing is not treated as subletting. He concedes that a formal application for sharing accomodation ~~with~~ his brother was not made because he is a low paid Driver, Group 'C' employee but he had already brought this fact to the notice of the department vide his representation dated 11.08.1993 and the department could have certainly taken note of the contention and examined the same but they did not do so and proceeded to make a surprise check behind his back and took action to issue eviction notice by an administrative order and also issued notice for payment of damage rent, again by an administrative order. Secondly, he contends that it is not open to the respondents to ask him to pay the damage rent without resorting to the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. He also contends that damage rent was recovered without giving full particulars of the damage rent.

3. The respondents ~~have~~ opposed the O.A. It is, first of all, pointed out that the allotment of quarter was made by the order dated 19.07.1989 of which the conditions are (i) that, no individual will sublet the quarter and (ii) disciplinary action will be initiated and eviction proceedings will be taken up against allottee who will be found subletting the quarter without any notice. It is contended that the respondents never accepted the factum of the relationship of Eknath with the applicant. In any case, the applicant had not filed any application for sharing of the accomodation, he therefore cannot, now at this stage

take a plea that sharing of the accomodation does not amount to subletting. Lastly, it is pointed out that the applicant himself had accepted that he was an unauthorised occupant and on that basis he had agreed to shift and sought time to shift by 25.05.1994 vide letter of the applicant dated 28.04.1994. The respondents concede that formal proceedings against the applicant under P.P. Act have not been taken. Counsel therefore submits that whatever orders may be passed by the Tribunal, he should be at liberty to proceed under the P.P. Act against the applicant for eviction and assessment and recovery of the damage rent on account of subletting.

4. At the argument stage, the applicant had relied on the judgement of this Tribunal in O.A. No. 277/95 - Shri D. K. Jagtap & Others V/s. Union Of India decided on 14.11.1995 wherein in a similar case of subletting relying on the judgement in Urman Singh V/s. Union Of India - O.A. No. 439/95, the O.A. was allowed and the action of the respondents to cancel the allotment and to charge damage rent was quashed and set aside.

5. I have considered the matter. In my view, it is not necessary to rely on the judgement in Urman Singh's case because Urman Singh's case may not be good law after the Full Bench judgement in Ram Poojan's case [1996 (1) ATJ 540] so far as damage rent is concerned. However, there is no doubt that when the applicant was initially given notice to vacate the quarter, the applicant at the first opportunity had taken the stand that he had

not sublet the quarter but he was only sharing it with his brother. The applicant's case is fully covered by the memorandum dated 26.05.1978 issued by the Ministry Of Works & Housing (Directorates Of Estates). No doubt, the applicant did not formally apply for sharing of the accomodation. However, the respondents ought to have taken note of the contention of the applicant and should have treated the application as a post facto application for sharing accomodation. This the respondents have not done. Infact, the respondents do not appear to have considered any of the contentions raised by the applicant and have proceeded to take action against the applicant in a very mechanical manner. I am therefore of the view that the O.A. must succeed and I dispose of the same by passing the following orders :-

: O R D E R :

The O.A. is allowed. The orders of the respondents directing the applicant to vacate the quarter and to pay damage rent on the ground of subletting are hereby quashed and set aside. It is declared that the applicant had not sublet the quarter to his brother Eknath, therefore, it is not even open to the respondents to proceed against the applicant under P.P. Act on the ground of applicant having sublet the quarter on the basis of surprise inspection carried out on 25.08.1993. It is ofcourse open to the respondents to proceed against the applicant as per law for breach of any terms and

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conditions of allotment which may occur in future.

There is no order as to costs.

*MR Kolhatkar*  

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(M. R. KOLHATKAR)  
MEMBER (A).

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