

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 642/95

Transfer Application No: --

DATE OF DECISION: 7-12-1995

Krishna Baburao Pawar

Petitioner

Mr. B. Ranganathan for Mr. S. R. Atre

Advocate for the Petitioners

Versus

U.O.I. & Ors.

Respondent

Mr. S. S. Karkera for Mr. P. M. Pradhan

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 X  
the Tribunal ?

*M.R. Kolhatkar*  
\_\_\_\_\_  
(M.R. KOLHATKAR)  
Member(A)

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.NO: 642/95

Delivered this the 7<sup>th</sup> day of December 1995

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

Krishna Baburao Pawar,  
C-35/08, P & T Quarters,  
SAHAR Bombay - 400 099.

(BY Mr.B.Ranganathan for  
Mr.S.R.Atre for the  
applicant.)

.. Applicant

-versus-

1. The Chief Postmaster  
General,  
Maharashtra Circle,  
G.P.O. Bombay - 400 001.
2. The Director of Postal  
Services,  
Bombay (City) Region,  
G.P.O. Bombay - 400 001.
3. The Welfare Officer  
O/O The Chief Postmaster  
Maharashtra Circle,  
G.P.O.  
Bombay - 400 001.

(BY Mr. S.S.Karkera for  
Mr. P.M.Pradhan for  
the respondents.)

.. Respondents

O R D E R

(Per M.R.Kolhatkar, Member(A))

In this O.A. u/s. 19 of the A.T. Act  
the applicant has challenged order dt. 9-11-1994  
Annexure A-I to the applicant. This order which  
gives a list of 26 people including the applicant  
at Sr.No.3 recites as below :

"During the course of surprise checks of  
following quarters in P&T Colony, Sahar,  
Bombay -99 on 23-7-94 it is found that  
outsiders unauthorised persons are staying  
in the quarters without any approval from

from this office. The rules of allotment of P&T Qtr. do not permit such unauthorised occupation of Govt. accommodation i.e. P&T Qtr. by unauthorised persons. The allotments of quarter in the favour of following allottees are cancelled w.e.f. 23-7-94 i.e. date of checking and penal rent is charged for violation of allotment rules @ enhanced rate.

All allottees should therefore vacate the quarter within 60 days from the date of issue of this letter failing which eviction proceedings will be initiated against them to vacate the Govt. Accommodation without entertaining any correspondence which may be noted. "

The applicant states that he has been staying in this quarter since 1988 and he is residing in it <sup>family</sup> ~~by himself~~ & / &

The allegation in the order that he had sublet the quarter is false. In the month of July '94 a friend of his came down to Bombay for medical treatment and was allowed to stay along with him for about a week. On 23-7-94 the applicant was on leave for some family work when the officers visited the premises behind his back and obtained certain statement from the applicant's son and daughter and also questioned his friend Shri Antony. The applicant is not aware as to what statement were taken nor was <sup>he</sup> given any showcase notice and the allotment of quarter was cancelled on 9-11-94 with retrospective effect viz. 23-7-94 and he was also asked to pay penal rent from the same date and to vacate the quarter within sixty days. The applicant states that recovery of penal rent was started in September '94. He made a

representation on 17-11-1994, at Annexure A-IV, page 20. This representation states that no one else stays in the quarter and his ration card, CGHS card and the Gas connection contained the same address. Shri Antony was a friend of his friend, he was under medical treatment and had come to him for rest for seven to eight days and in this connection he has enclosed a certificate dt. 31-7-94 from Dr. Harish N. Bhatt regarding Shri Antony being under his treatment for Asthma & Bronchitis and his being recommended rest for 15 days from 11-7-94. He followed up <sup>up</sup> this by another representation dt. 31-12-1994 in which apart from other submissions made earlier he stated that he was not aware of the rules regarding permission to be taken from the department. The applicant has also enclosed correspondence entered into on his behalf by the Union, the gist of which was that the Welfare Officer was biased and was taking action against innocent people like the applicant but employees who acted as agents for subletting quarters were <sup>allowed to go</sup> /scot free. The applicant states that rules regarding consequence of breach of rules and conditions are contained in ~~the SR 317-B(21)~~ <sup>under</sup> and although <sup>under</sup> the said rules the employees are made liable for penal rent as well as cancellation of quarters in the event of subletting the same cannot be done without affording the applicant a reasonable <sup>made</sup> opportunity to prove the charges <sup>made</sup> /against him. The cancellation is also malafide and as such arbitrary, illegal and bad in law. The relief sought by the applicant is to quash and set aside the impugned

Waz

order dt. 9-11-1994 and to direct the respondents to refund forthwith the amount of penal rent recovered from the salary of the applicant with 18% interest and any other orders.

2. Respondents have opposed the O.A. According to them during the course of a surprise check carried out by the respondents on 23-7-94, three persons were found on the premises viz. the son Dilip, daughter Sangita and one Mr. Antony. Mr. Antony refused to sign the statement. Result of the checking was: "Unauthorised sub-tenant exists. Shri Dilip Pawar was very rude and reluctant." According to the respondents Shri Antony was a business man of about 26 years. The applicant was bound to take necessary permission from the department before he allowed an outsider to enter the premises. Shri Dilip Pawar is major and well educated, and understood the questions put while giving replies. Therefore, the question of giving any showcause notice to the applicant does not arise. According to the respondents the applicant's wife is serving in Nityanand Nursing Home which belongs to Dr. Haresh N. Bhat and, therefore, he managed to get the certificate for Mr. Antony from Dr. Haresh N. Bhat. According to the respondents the spot checking by itself is construed as enquiry and action was taken against the applicant in terms of SR 317 (B) 21.

3. In his rejoinder the applicant has contended that the spot checking was done in his absence. His son and daughter know very little English

*M/*

and therefore did not understand what they signed. No statement of any kind whatsoever made by Antony is available. Nothing is stated in report about Antony being a businessman. The son and daughter were forced to sign documents without knowing the contents thereof. It is the fact that applicant's wife is serving in Nityanand Nursing Home but it does not ipso-facto take away from the evidentiary value of the certificate given by Dr. Hareesh N. Bhatt.

4. The applicant has relied on the case of K.K. Vijayan and another vs. Collector of Central Excise, (1987) 2 ATC 567. In this case a complaint was made against the applicant 1 and 2 that they were not actually occupying the Govt. quarters and Inspector of Central Excise was ordered to make an enquiry. At the time of Inspector's visit a third person was seen in the quarter and she made a statement that the quarters were in the sole occupation of her husband and herself. He reported accordingly and on the basis of this report, an order was passed asking applicant No.1 to vacate the quarter within two days. The argument advanced on behalf of the applicant was that a regular departmental enquiry was not held and the impugned order would be bad. The Tribunal did not accept the contention because Tribunal found that a domestic enquiry was in fact conducted. The record shows that a notice was issued to the applicant. He was permitted to file his reply. The Inquiry Officer was examined and the applicant had cross examined him. No other witness was examined and the contention that since the report was signed

by the sub-tenant, there was no need to examine any other witness was accepted by the Tribunal. The Tribunal confirmed the order with some relief as to the extent of payment of standard rent. The counsel for the applicant argues that this case really shows that holding of a domestic enquiry is absolutely necessary before taking action having the civil consequences as in the present case.

5. The respondents would contend that the terms and conditions of allotment <sup>which</sup> are to be seen at page 19 of the application clearly incorporate relevant conditions. One of the conditions is that sharing of the premises without the prior approval of the office is not permissible, sub-letting is strictly forbidden. Further condition is that any person/or officer authorised by the allotting authority on his behalf will be at liberty to inspect the premises on any day between sun rise and sun set. Thus it was in terms of ~~these~~ terms and condition <sup>that</sup> the inspection was conducted and on the basis of the inspection, action was taken in terms of SR 317(B) 21. The respondents have further stated that the action which has been taken by the department is in terms of SR 317(B) 21(1)&(2) and if the applicant would not vacate the quarters within the notice period eviction proceedings could be initiated under the P.P. Act. No such eviction proceedings under PP Act ~~have~~ been initiated because of the pendency of the case in the Tribunal. Let us consider the relevant SR 317-B-21 which has been relied upon by both the parties.

"S.R.317-B-21.(1) If an officer to whom a residence has been allotted unauthorisedly sublets the residence or charges licence fee from the sharer at a rate which the Director of Estates considers excessive or erects any unauthorised structure in any part of the residence or uses the residence or any portion thereof for any purposes other than that for which it is meant or tampers with the electric or water connection or commits any other breach of the rules in this Division or of the terms and conditions of the allotment or uses the residence or premises or ~~pro~~ permits or suffers the residence or premises to be used for any purpose which the Director of Estates considers to be improper or conducts himself in a manner which, in his opinion, is prejudicial to the maintenance of harmonious relations with his neighbours or has knowingly furnished incorrect information in any application or written statement with a view to securing the allotment, the Director of Estates may, without prejudice to any other disciplinary action that may be taken against him, cancel the allotment of the residence.

(2) If an officer sublets a residence allotted to him or any portion thereof or any of the outhouses, garages or stables appurtenant thereto in contravention of these rules, he may, without prejudice to any other action that may be taken against him be charged enhanced licence fee not exceeding four times the standard licence fee under F.R. 45-A. The quantum of licence fee to be recovered in each case will be decided by the Director of Estates on merits. In addition the officer may be debarred from sharing the residence for a specified period in future as may be decided by the Director of Estates."

It is clear from a plain reading of the rule that the Director of Estates on a finding of fact as to subletting can cancel the allotment of residence under Rule SR 317 B-21(1) and can impose the penal rent under SR 317B-21(2).

It would thus appear that these rules do not provide for issue of any showcause notice.

Can we therefore hold that since rules do not provide for the same, the department was within its right to take action in terms of the rules without any domestic enquiry ?

6. Apart from the case cited by the counsel for the applicant which is an authority for holding that a domestic enquiry is necessary before eviction proceedings by department is taken, I would also like to observe that it is axiomatic that when any action against a Govt. employee is taken which entails adverse civil consequences, the concerned Govt. employee must, in accordance with the principles of natural justice, be given an opportunity of knowing as to what the material against him is and of stating what he has to say in regard to the material. It may be that the rules specifically provide that it is not obligatory on an authority to frame any formal charge or to call any explanation of any employee. In spite of such a specific provision, the Apex Court has held that they would read down the provisions of the rule and read rules of natural justice therein.

*m* In this connection reference may be made to State of U.P.

versus Vijay Kumar Tripathi AIR 1995 SC 1130  
which was a case relating to U.P. Civil Service (CCS) Rules. The relevant rules provided that for imposition of penalty of Censure it is not necessary on the part of the authority to frame charges or to call for explanation of the employee. The Supreme Court read rules of natural justice into relevant rules. In the instant case, SR 317 B(21) is on a better footing than in the case of U.P. State because the SR ~~does not in terms countermand a domestic~~ enquiry.

7. We note that there are some inconsistencies in the factual statement made by the applicant. In his representation made to the department it was stated that Antony was his friend. In the O.A. it is stated that Antony was a friend of a friend. However, this inconsistency are not material in the face of our finding that a domestic enquiry has not been held as required by rules of natural justice while taking action in terms of SR 317 (B) 21. The O.A. therefore succeeds and the same is disposed of by passing the following order :

ORDER

O.A. is allowed.

The memorandum No. BSA-14/Cancellation of Qtrs./94-95 dt. 9-11-94 from Department of Post, Office of the Chief PMG, Maharashtra Circle, Bombay is quashed and set aside so far as it relates to the applicant. The penal rent recovered from the applicant

if any till the date of the order should be refunded to the applicant with 12% rate of interest within three months of communication of this order. Respondents are also restrained from evicting the applicant from the quarters in question in terms of the order 9-11-94. Respondents are at liberty however, to take action against the applicant as per rules after holding a domestic enquiry as per law on the basis of the checking report dt. 23-7-94

There will be no order as to costs.

*M.R. Kolhatkar*

---

(M.R. KOLHATKAR)  
Member(A)

M