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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.: 680 OF 1995.

~~Transfer Application~~

Date of Decision 21.12.95

Shri Pundlik Pillage Dhokne,

Petitioner/~~X~~

Shri D. V. Gangal,

Advocate for
the Petitioner~~s~~

Versus

Union Of India & Others,

Respondent/s

Shri S. C. Dhavan,

Advocate for
the Respondents

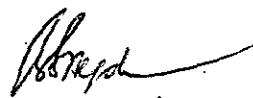
CORAM :

Hon'ble Shri. B. S. Hegde, Member (J).

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(1) To be referred to the Reporter or not ? ✓

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


(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
GULESTAN BUILDING NO.6, 3RD/4TH FLOOR
PRESCOT ROAD, FORT, BOMBAY - 400 001.

ORIGINAL APPLICATION NO.: 680 OF 1995.

Thursday this, the 21 day of December 1995.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

Pundlik Pillage Dhokne ... Applicant
(Advocate by Shri D.V. Gangal).

VERSUS

Union Of India & Others ... Respondents
(Advocate by Shri S.C. Dhavan)

: O R D E R :

{ PER.: SHRI B. S. HEGDE, MEMBER (J) }

1. Heard Shri D. V. Gangal, Counsel for the applicant and Shri S. C. Dhavan, Counsel for the respondents. The short point for consideration is whether the eviction order passed by the Respondent No. 3 vide dated 20.06.1995 is justified and valid in law. The applicant in this O.A. has challenged the legal and constitutional validity of the cancellation and eviction of the quarter from the occupation of the applicant on the ground that the applicant has partially sub-letted the quarter but nowhere it is stated to whom it has been subletted and to what period, etc. Even the cancellation letter do not specify to whom the quarter has been subletted, thereby, the impugned order is arbitrary, unreasoned, etc.



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2. The respondents in their reply have raised a preliminary objection that having passed an order under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, by the Competent Authority, it is not open to the Tribunal to entertain the petition filed before the Tribunal, as the Tribunal is not the Court of appeal to decide the allotment/cancellation of the railway quarters, which is a prerogative of the railway administration, thereby, this Tribunal has no jurisdiction to entertain an order passed by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. If the applicant has any grievance, he can file an appeal under Section 9 of the Public Premises (E.U.O.) Act, 1971 before the District Court. The respondents further contend that the applicant has been given sufficient opportunities to defend the allegations made him, which he did not avail and in this application he has not disclosed any cause of action, therefore, the application is liable to be dismissed.

3. The applicant has filed this application against the order of the Estate Officer, Respondent No. 3, vide dated 20.06.1995. It is stated that the respondent No. 2, Divisional Railway Manager, Central Railway, Bombay V.T., has filed an eviction case before Respondent No. 3 for evicting the said applicant, Shri Pundlik Pilaji Dhokne, from Railway Quarter No. K-25 at Bhandup which was allotted to him. A surprise inspection of the above said quarter was held by the Estate Supervisor who is working

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under D.R.M., Bombay, on 19.08.1994 alongwith Inspector of Works of the concerned area. During the inspection, it was found that the Railway Quarter No. K-25 at Bhandup was partially subletted by the proper allottee to the outsider who are not anyway concerned to the Railway organisation. It is an undisputed fact, that the quarter is meant to be utilised by the railway employees for their personal stays and they are not authorised to sublet fully or partially to outsiders. The Estate Supervisor after verification has submitted his report to the Competent Authority who in turn issued a Show Cause Notice vide dated 30.09.1994 for which the applicant has not submitted any reply. Though he stated in the O.A. that he submitted a representation vide dated 27.10.1994, the same has not been received by the Competent Authority. Since the applicant had not taken prior permission in subletting the quarter to outsider and the fact of subletting is not intimated to the authorities, the respondents is left with no other alternative but to take action in accordance with law. On the basis of the report submitted by the Estate Supervisor, the Estate Officer issued a notice under Section 4(i) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the applicant was given sufficient opportunities to rebut the allegations but he did not submit any reply to the Show Cause Notice, which is clear from the roznama of the Estate Officer vide dated 06.06.1995. The applicant appeared for hearing before the Estate Officer but he failed to cross-examine the departmental witness who was present before the Estate Officer neither he rebutted the allegations made against him. Failing to rebut the allegations made against

R/S

him, the Estate Officer passed the following order vide dated 06.06.1995, which is reproduced below :-

"Roznama dated 6.6.1995.

Before the Estate Officer, Shri A.B. Solanki,
Senior Divisional Personnel Officer,
Bombay V.T. ... Applicant

V/s.

Shri Pundlik Dhonke (Pillage)
Rly. Qtr. No. K-25,
at Bhandup. ... Respondents.

Respondent is working as Gang Man under PWI(M) TNA. He was allotted Rly. Qr. No. K-25 at Bhandup. Respondent has subletted this Rly Qtr. to outsider. A departmental notice dated 30.9.94 was served upon him asking him to vacate the said quarter and hand over the peaceful possession to the applicant immediately, since he ceases to be eligible to occupy and continue the stay in the said quarter. In spite of the departmental notice received, the respondent did not vacate the said railway quarter and continued to occupy the same uptill now.

Since the respondent failed to vacate the said quarter and continued occupation in the same railway quarter, the applicant made an application before the Estate Officer for eviction of the respondent from the said Railway Quarter under the provision of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

On receipt of an application from the applicant for eviction, a Show Cause Notice under section 4(i) of P.P. (E.U.) Occupants Act, 1971 was served upon the respondent asking him to show cause within 7 days from the date of receipt of the same, such an order eviction should not be made. The respondent acknowledged the receipt of the said notice under Section 4(i) of P.P. (E.U.) Occupants Act, 1971 and did not submit reply to the show cause notice.

Subsequently, the matter was fixed for hearing and recording evidence on 10.04.1995. The necessary summon date 30.03.1995 was served upon the parties. The same was acknowledged by the respondent.

Respondent attended court on 10.04.1995 and the matter was adjourned to 24.4.1995. Court was not sitting on 24.4.1995 and the next date for hearing was fixed on 6.6.1995.

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The matter came up for hearing on 6.6.1995 before me both parties were present. The Representative of the applicant said that the respondent has subletted his Rly. Qtr. to outsider. He said that the departmental notice dated 30.9.1994 was served upon respondent asking him to vacate the said railway quarter since he ceased to be eligible to continue occupation due to cancellation of allotment of the said quarter in his name consequent upon his subletting the railway quarter to outsider. He said that the respondent acknowledged the receipt of the same and inspite of the receipt, he continued the occupation. He said since allotment of the said quarter stands cancelled the respondent is not entitled to continue occupation of the said quarter and as such, he is unauthorised occupant of the said quarter and liable for eviction from the said Railway Quarter under P.P. (EU) Occupants Act, 1971. He said that the quarter is badly required for allotment to other Railway Staff who are in service and eligible. He therefore strongly and forcefully submitted that the respondents should be evicted from the said Railway Quarter under Section 5(i) of P.P.(E.U) Occupants Act, 1971. Since respondent is in unauthorised occupation of the said quarter.

The respondent was given an opportunity to cross examine but he has failed to cross examination.

On thorough examination of documents produced before me and from the statement of the Parties, I, have come to the conclusion that the respondent is unauthorised occupant of in the said Railway Quarter and he has no right or authority to continue occupation in the quarter. He is liable for eviction under P.P.E. Act Section 5(i).

ORDER

I order that respondent Shri Pundlik Dhonke (Pillage) and all other persons residing in the said quarter should be evicted from the said Rly. Qtr. No. K-25 at Bhandup under Section 5(i) of P.P. (EU) Occupants Act, 1971."

4. On the last occassion, after hearing the Leamed Counsel for the parties, the Tribunal had directed the respondents to produce the Estate Officer's report as well as the report submitted by the Surprise Check Squad for the perusal of the Tribunal, which has been produced today by the



Learned Counsel for the respondents, Shri S.C. Dhavan.

During the course of hearing, the Learned Counsel for the applicant, Shri Gangal, relied upon the decision of the Full Bench of the Tribunal in B.N. Rangwani V/s. Union Of India in O.A. No. 279/86 of the Principal Bench, decided on 28.03.1987, stating that whatever documents are furnished by the respondents for perusal to the Tribunal, the applicant has a right to see the contents of the documents and the said ratio has been laid down by the Full Bench in the aforesaid case. That decision relates to the compulsory retirement of an official wherein the documents have not been given to the applicant. In that context, the Tribunal has held that the public servant has a right to call in question the said order before a judicial forum; it is subject to judicial review. The judicial forum, however, does not sit in appeal over the judgement of the competent authority which passed the order of compulsory retirement. It would only examine the record to satisfy itself whether the order is supported by any material and whether the material is relevant. And if there is an allegation, it would also examine whether it is vitiated by malafies or colourable exercise of power. Nowhere, it is stated that the documents should be shown to the applicant. In the instant case, the applicant has been given due opportunities to rebut the allegations made against him, which he did not avail, as stated earlier. Therefore, the ratio laid down in the aforesaid case would not apply to the facts of this case. Secondly, the Learned Counsel for the applicant also relied upon the decision in Rasila Ram & Others V/s. Union Of India & Others decided by the Full Bench of the



Tribunal on 05.05.1989. He states that the Tribunal is sitting as a Court of appeal, if the order of the Estate Officer is challenged under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The outcome of the order of the Full Bench reads as follows :-


" We have given careful consideration to the arguments of the Learned Counsel for the applicants as well as the respondents. Both sides agree that the Tribunal has jurisdiction upto the stage of cancellation of Government accomodation by the administrative authority. While the Learned Counsel for the respondents argues that the jurisdiction of the Tribunal stops once the eviction proceedings are started by the Estate Officer, the Learned Counsel for the applicants contends that the jurisdiction of the Tribunal continues even after a case has been started under the P.P. Act. We are of the opinion that as the allotment of houses, the amount of lease payable and the conditions under which allotments in favour of Government servants may be cancelled, are all service matters connected with the service conditions laid down under various rules, eviction of a Government employee from such a house cannot be separate and should logically be included under the definition of "service matters" and, therefore, within the jurisdiction of the Tribunal. We, therefore, clearly hold that eviction proceedings against Central Government employees under the P.P. Act fall within the purview of the Central Administrative Tribunal. Proceedings under the Administrative Tribunals Act do not run concurrent with the jurisdiction of the District Judge under the P.P. Act. The Tribunal can stay or quash either the eviction proceedings or the order of eviction by declaring the order cancelling the allotment as illegal. We, however, feel that in order to have harmonious interpretation between Section 33 of the Administrative Tribunals Act and Section 51 of the P.P. Act, it would be proper that when a person is aggrieved against an order of cancellation by the administrative authority, he can approach the Tribunal at the stage if he is aggrieved by such orders after making necessary representations to the administrative authorities, but where proceedings have been started under the P.P. Act, it would be proper for the aggrieved employee to contest his case before the Estate Officer and may approach the Tribunal only after final orders have been passed by the Estate Officer under the P.P. Act. 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 (District Judge). This would provide an opportunity to aggrieved Government employees to argue their cases before one more authority before approaching the Tribunal. To the basic question, whether the Tribunal has jurisdiction over eviction proceedings, our answer is in the affirmative."

On perusal of the Full Bench decision, we are of the view, that the contention of the applicant is not justified because an employee can come to Central Administrative Tribunal even after eviction order passed by the Estate Officer or even District Judge but not a concurrent jurisdiction. An opportunity is given to the applicant either to prefer an appeal before the District Court or alternatively come before the Tribunal, since it pertains to service matters, allotment/cancellation of quarters, etc. Therefore, the submission made by the Learned Counsel for the applicant, relying upon both the decisions, would not help for the cancellation of the allotment in accordance with law i.e. eviction order passed under Section 5 of the Public Premises (E.U.O.) Act, 1971. The applicant has not made out any malafide on the part of the respondents in issuing the cancellation order. Even the Estate Supervisor's report is based on not one quarter but 28 quarters. As contended by the Learned Counsel for the respondents, the Tribunal is not sitting as an Appellate Court, once it is made out that the cancellation order is made in accordance with law by the Estate Officer.

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5. Having considered the contention and the documents produced before me, I came to the conclusion that the order passed by the Estate Officer is justified and the interference of the Tribunal is not called for. However, after completion of the hearing, the Learned Counsel for the applicant humbly submitted, that in case the Tribunal is not inclined to give any relief to the applicant, keeping in view the interim relief already granted, allowing the applicant to continue in the quarter^{and} he may be permitted to stay for a period of two months after the disposal of the O.A. Having given due consideration to his contention, it is not possible to accede to his request and the said prayer is rejected. Accordingly, I find there is no merit in the O.A. and the same is dismissed. No order as to cost.


(B. S. HEGDE)
MEMBER (J).

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