

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 913/97

Date of Decision: 3.7.1998

L.B.Mansukhani

.. Applicant

Shri Suresh Kumar

.. Advocate for  
Applicant

-VERSUS-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for  
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri D.S.Baweja, Member (A)

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

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

(D.S.BAWEJA)  
MEMBER (A)

*Replied*  
(R.G.VAIDYANATHA)  
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA NO. 913/97

Friday this the 3rd day of July, 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S.Bawaja, Member (A)

Lal Bhagwandass Mansukhani,  
Supervisor B/S Gr. II,  
Garrison Engineer (NW),  
Mankhurd, Mumbai-88.

By Advocate Shri Suresh Kumar ... Applicant  
v/s.

1. Union of India through  
The Director of Estate,  
Nirman Bhavan, New Delhi.
2. The Estate Manager,  
Government of India,  
Old C.G.O. Building Annexe,  
M.K.Road, Mumbai.

By Advocate Shri V.S.Masurkar ... Respondents  
C.G.S.C.

ORDER

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application filed under Section 19 of the A.T.Act. Respondents have filed reply. We have heard the learned counsel appearing on both sides.

2. The applicant is working as Supervisor B/SG Grade II with Garrison Engineer at Bombay. He has been allotted Quarter No. 220/3133, Sector-I, Kane Nagar, Mumbai. Now the respondents have passed an order cancelling the allotment by order dated 23.4.1997. The applicant challenged that order before the appellate authority, <sup>W.H.W.</sup> and rejected his appeal as per order dated 20.8.1997. According to the respondents, the applicant has unauthorisedly subletted the quarter to a third person. But according

  
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to the applicant, he never subletted the quarter and he personally residing in the quarter and therefore, the action taken by the respondents in cancelling the allotment is unjustified and illegal.

3. Respondents have filed/reply justifying the action taken by them and stating that applicant's allotment was cancelled since he subletted the premises which came to light during surprise visit.

4. The learned counsel for the applicant has questioned the legality of the order of the Assistant Estate Manager and the appellate authority. The learned counsel for the respondents has ~~subfloyed~~ submitted the two orders.

5. It appears, the respondents' officers made a surprise check in the premises on 4.12.1996 and found that some third persons were staying in the premises. An inspection notice was prepared which is at Ex. 'B' to the written statement. On the basis of this and a complaint of neighbour, the Assistant Estate Manager issued a show cause notice. Then the respondents have some documents to show that he is not in the occupation of the quarter. Then the Estate Manager passed the impugned order dated 23.4.1997. As already seen, the applicant filed an appeal before the appellate authority and the appeal came to be rejected.

The main grievance of the applicant is that no speaking orders are passed either by the original authority or by the appellate authority. It may be so, but the authorities have given opportunities to the applicant to have his say and produced the documents.

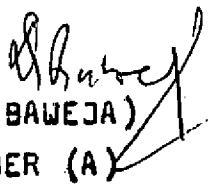
Therefore, we are satisfied that the principles of natural justice have been followed in this case. Though the original and appellate authority have not passed a speaking order as to why they do not accept the applicant's case and documents. We feel that the matter should be left at this stage and the interest of the applicant can be safeguarded by giving some directions. Even the learned counsel for the respondents submitted that notwithstanding the impugned order, the department will have to take <sup>under the P.P. Act</sup> action against the applicant when the applicant will have an opportunity of giving explanation and produced documents to show that he has not subletted the premises. He will have further opportunity of filing an appeal before the judicial authority, viz. the District Judge. Since <sup>are</sup> these two provisions <sup>need not</sup> provided in the law, In the peculiar facts and circumstances of the case, we feel that the matter <sup>be remitted</sup> to the department to reconsider the matter and to pass a speaking order.

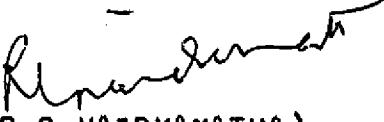
6. Now, the original authority and the appellate authority have come to the conclusion that the applicant has subletted the premises. Under Section 4 of the Public Premises Act the Estate Officer has to give show cause notice after <sup>forming</sup> confirming an opinion that the applicant is in unauthorised occupation. When the applicant shows cause against the notice, then the <sup>whether</sup> Estate Enquiry Officer has to give final verdict that it is true or not. When the final orders are passed, then the applicant can approach appropriate authority, viz. District Judge.

We make it clear that the finding given by the original authority and the appellate authority that the applicant has subletted the premises. It is

is only for the limited purpose for cancelling the allotment and ultimately this question has to be decided by the Estate Officer under the Public Premises Act without being influenced by the orders of the Assistant Estate Manager and the appellate authority. The Estate Officer will have to give findings on the basis of material placed before him both by the department and the applicant. Then, of course, the judicial authority will independently consider the contentions of both the authorities. Therefore, the two questions whether the applicant has subletted the premises or not and whether he is liable to pay penal rent are not are left open to be decided by the Estate Officer if and when respondents initiate action under Public Premises Act.

7. In the result, the OA. is disposed of subject to the observations made above. All questions on merit are left open. The interim order passed in this case is hereby vacated. No costs.

  
(D.S. BAWEJA)  
MEMBER (A)

  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

MFJ.