

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 485/98

Date of Decision: 20/4/99

Shri Kantilal

Applicant.

Shri A.I.Bhatkar

Advocate for
Applicant.

Versus

Union of India

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondent(s)

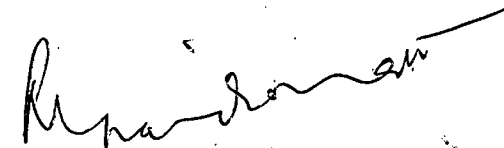
CORAM:

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

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?

abp.


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO:485/98.

DATED THE 20TH DAY OF APRIL, 1999.

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

Kantilal F
presently working as
D/Mech Gr.II, Diesel Loco-shed, Bandra,
C/O.A.I.Bhatkar ... Applicant.

By Advocate Shri A.I.Bhatkar.

v/s.

1. Union of India,
through the Divisional
Railway Manager,
Western Railway,
Mumbai Central,
Mumbai.

2. Senior Section Engineer,
(Diesel), Western Railway,
Diesel Loco shed,
Bandra, Mumbai.

... Respondents.

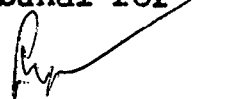
By Advocate Shri V.S.Masurkar

I O R D E R I

I Per Shri R.G.Vaidyanatha, Vice Chairman I

This is an application challenging the order of
cancellation of quarters and for other consequential reliefs.
Respondents have filed reply opposing the application. I
have heard the learned counsels appearing on both sides.

2. The applicant is working in Western Railway, he
has been allotted a quarters where he is residing. It appears
during a surprise visit, the department found that the
applicant had allegedly sublet the quarters. In view of the
surprise inspection report, the competent authority issued the
impugned order dated 6/2/96 cancelling the allotment of quarters
in favour of the applicant. Subsequently, the competent
authority issued another letter dated 27/5/98 for recovering
the penal rent from the salary of applicant. Being aggrieved
by these orders, the applicant has approached this Tribunal for



quashing the same. His case is that he has never sublet the premises in question. That the respondents have not initiated any case under Public Premises (Eviction of Unauthorised Occupants) Act 1971, that the impugned orders were passed without hearing the applicant and against principles of natural justice.

3. Respondents in their reply have justified the action taken against the applicant. Their case is that the surprise inspection disclosed that the applicant had sublet the quarters and therefore as per rules, order of allotment of quarters in favour of the applicant was cancelled, therefore, the applicant is liable to pay penal rent and is also liable to be evicted under the PP Act. Now, it is therefore stated that the applicant is not entitled to any other reliefs.

4. After hearing the learned counsels appearing on both sides and perusing relevant rules, I find that no doubt there was a surprise inspection which no doubt revealed that the applicant appears to have sublet the quarters, the statement showing the details of surprise visit are given at page-44 and 45 of the paper book. The applicant's name is shown at Sr.No.4. He is said to have sublet the quarters to Shri Dinesh Chandra Kalsara and Smt. Jayashree.D and Mrs. Sangita.M. Navale. On the basis of the surprise inspection report, the applicant's allotment was cancelled as per the impugned notice dated 6/2/96.

The relevant rules are produced by respondents at page-40 to 43 of the paperbook. Rule 3.1 at page-42 mentions that a surprise visit was done by a committee to find out whether there is subletting of quarters or not. If there is subletting then ^{action} is to be taken under extant rules. Then there is a clause on establishment of the case of subletting, "action should be taken under the rules." Therefore, the committee has to make a surprise visit and on establishment of a case of subletting action will have to be taken.

Rule-4(i) provides that the quarters can be



cancelled and then there is provision for initiating eviction proceedings under PP Act and for recovery of damage rent. When the committee makes a surprise visit and prepares a report, it must be after coming to the conclusion that there was subletting of quarters. Therefore, the learned counsel for respondents is right in his submission that there is no scope for any enquiry at this stage. In such case, principles of natural justice are attracted. Any action taken by the administration to declare that the possession of quarters is unauthorised, then the officer is liable for eviction from the quarters and further he is liable to pay penal rent. Therefore, when the action of the administration is on the ground of subletting, even if there is no provision under the rules, the principles of natural justice are attracted and therefore atleast a show cause notice should be issued to the delinquent official giving him opportunity to explain as to why his allotment should not be cancelled or why he should not be ordered to pay penal rent, etc. But in this case on the basis of instructions of surprise inspection report, notice of cancellation of allotment was issued. That the notice is bad since it is not preceded by a show cause notice to the applicant and therefore, the order is in violation of principles of natural justice. It is true that no enquiry is contemplated at that stage, but atleast a show cause notice should have been issued and after receiving his reply, the committee could come to the conclusion whether the allegation of subletting is true or not. For example, in this case, Mrs. Sangita was found in the flat, he says she is his married daughter and had come to stay in the house. If that is so then the committee could drop the proceedings. But if the committee comes to the conclusion that a married daughter cannot come and stay there then it can come to its own conclusion on the question whether subletting was there or not.

5. For these reasons, I hold that the order of




cancelled and then there is provision for instituting evictions proceedings under 27 and for recovery of damage rent. When the committee makes a surprise visit and prepares a report, it must be after coming to the conclusion that there was subletting of quarters. Therefore, the learned counsel for respondent is right in his submission that there is no scope for any enquiry at this stage. In such case, principles of natural justice are attracted. Any action taken by the administration to declare that the possessor of quarters is unauthorized, then the officer is liable for eviction from the quarters and further is liable to pay penal rent. Therefore, when the action of the administration is on the ground of subletting, even if there is no provision under the rules, the principles of natural justice are attracted and therefore at least a show cause notice should be issued to the delinquent official giving him opportunity to explain as to why his allotment should not be cancelled or why he should not be ordered to pay penal rent, etc. But in this case on the basis of instructions of surprise inspection report, notice of cancellation of allotment was issued. That the notice is bad since it is not preceded by a show cause notice to the applicant and therefore, the order is in violation of principles of natural justice. It is true that no enquiry is contemplated at that stage, but at least a show cause notice should have been issued and after receiving his reply, the committee could come to the conclusion whether the allegation of subletting is true or not. For example, in this case, Mrs. Sangita was found in the flat, he says she is his married daughter and had come to stay in the house. If that is so then the committee could drop the proceedings. But if the committee comes to the conclusion that a married daughter cannot come and stay there then it can come to its own conclusion on the question whether subletting was there or not. For these reasons, I hold that the order of

cancellation of allotment dated 6/2/96 is not sustainable in law being in violation of Principles of Natural Justice. The matter is remanded to the administration with liberty to administration to issue show cause notice to applicant and after getting his reply to pass appropriate orders according to law. Once this order dated 6/2/96 is cancelled, the consequent letter dated 27/5/98 demanding penal rent from applicant is not sustainable.

6. The learned counsel for applicant also brought to my notice an unreported judgement of Division Bench of this Tribunal dated 30/4/98 in OA-127/98, where the Division Bench has held that if the cancellation of allotment is done in violation of Principles of Natural justice, then it cannot be sustained. Though we are concerned with Railway Rules, the general principles ^{are} applicable to facts of the present case.

7. In the result, the OA is allowed. The Impugned cancellation order dated 6/2/96 is hereby quashed but giving liberty to respondents to issue show cause notice to applicant and take appropriate decision according to law. In view of the quashing of order dated 6/2/96, the respondents should not take any action on recovery of penal rent vide impugned order dated 27/5/98 only so far as it pertains to the applicant Shri Kantital. No costs.

abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN