

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 576/98

Date of Decision: 21/1/99

Shri K.B. Kale

Petitioner/s

Shri V.D. Surve

Advocate for the
Petitioner/s.

v/s.

Union of India & Anr.

Respondent/s

Shri V.S. Masurkar

Advocate for the
Respondent/s

CORAM:

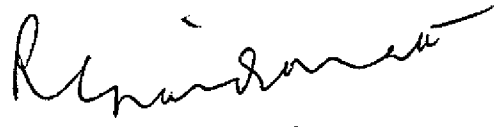
Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri

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

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *No*

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.576/98.

DATED THE 21ST DAY OF JANUARY, 1999.

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

Krishna Bapu Kale,
working as Film Checker,
Films Division,
Ministry of Information & Broadcasting,
24, Dr.G.Deshmukh Marg,
Mumbai-400 026.

... Applicant.

By Advocate Shri V.D.Surve.

V/s.

1. Union of India,
through Estate Manager having
its Office at Old C.G.O. Building Annexe,
3rd Floor, New Marine Lines, ~~Mumbai~~
Mumbai-400 020.

2. The Assistant Administrative Officer,
Films Division,
Ministry of Information & Broadcasting,
24, Dr.G.Deshmukh Marg,
Mumbai - 400 026.

... 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 allotment of quarters and challenging the order of demand for damage rent. Respondents have filed reply. I have heard both the counsels regarding admission and interim relief.

2. Applicant was allotted quarter No.19/209, Type-II (spl.) Ghatkopar. During a surprise visit on 5/2/97, the administration found that some third persons were residing in the quarters who whom the applicant is alleged to have sublet the quarters. A showcause notice was issued to applicant and subsequently impugned order of cancellation of allotment dt. 21/2/97 was passed. Subsequently, the department has issued a statement of arrears of normal rent

by

and damage rent due to the department from the applicant. There was a direction that the damage rent should be recovered from applicant's pay. Being aggrieved by these two orders, the applicant has approached this Tribunal, for quashing of the letter dated 21/2/97 of respondents. As far as demand for damage rent is concerned, the applicant's case is two fold, one is that he ~~does~~ not have to pay any damage rent and that he had not sublet the quarter. Even otherwise, the damage rent cannot be determined by Accounts Officer, but it ~~should be~~ assessed by the Estate Officer as he is the only person who can assess the damages under Section 7 of the P.P. Act after giving opportunity as per the provisions of the said Act.

3. Respondent's have filed a reply stating that show cause notice was issued and the applicant appeared before the Assistant Estate Officer and practically admitted subletting his premises and therefore the order of cancellation was issued. It is also ~~stated~~ that the applicant has not preferred any statutory appeal against the cancellation. As calculated as per rules, the damage rent will be deducted from the pay of the applicant.

4. As far as cancellation of allotment is concerned, admittedly, the administration has issued a show cause notice to the applicant and the applicant was called upon ~~as~~ to show cause as to why the allotment should not be cancelled. It is also brought ~~on~~ record that applicant himself appeared in person before the Assistant Estate Officer ~~on~~ on 20/2/97 and admitted that ~~his~~ residential address is Room No.4, Lal Bahadur Shastri Nagar Housing Society, Dharavi, Mumbai and he further stated that he does not know the details of the members living in his quarters. What is important is that he stated that he is prepared to vacate the quarters and vacated the quarters

0

Rv

on 6/5/98.

In a matter like this no further enquiry is necessary. When the applicant himself has appeared in person before Assistant Estate Officer and further stated that he does not know the members who are living in the quarter, when third persons are staying in the quarters which is seen from the Surprise Inspection Report. The Counsel for applicant argues that date of hearing on 21/2/97. In my view this makes no difference as the statement is recorded by Competent Authority on 20/2/97. When the matter is decided on the statement of applicant, no prejudice is caused to him whether the statement is recorded on 20/2/97 or 21/2/97 and applicant's signature has been taken.

The fact that applicant voluntarily stated that he is going to vacate the quarter and infact did vacate the quarter on 6/5/98, which shows his guilty mind.

5. In the facts and circumstances of the case, I find that Principles of natural justice have been observed and the Competent Authority has rightly cancelled the allotment of quarter to the applicant., and the damage rent has been calculated by Disciplinary Authority as per rules. The Learned Counsel for applicant did not bring to my notice any error or mistake in the calculation of damage rent but the argument is that the Accounts Officer himself cannot demand damage rent under Section-7 of P.P.Act.

6. In my view it is no longer res-integra and is covered by a direct decision of Full Bench of this Tribunal in the case of Ram Poojan v/s. Union of India, reported at 1996(1)ATJ-544 and subsequently followed by a decision of Division Bench of this Tribunal in OA-1217/93



S.P.Tiwari v/s. Western Railway decided on 25/9/98 to which I was a party, it has been held that damage rent can be recovered by administration., according to service rules and there is no necessity to invoke Section-7 of P.P.Act.

7. It is seen that the applicant is a class-IV official. The damage rent appears to be Rs.41,000/-. It is open to the applicant to make a representation to the administration to waive a portion of the penal rent. If it is permissible under the rules, the administration may exercise descretion for waiving a part of damage rent. Having regard to the status of the applicant, while making recovery per month, the administration is directed to deduct the damage rent from the salary of the applicant at reasonable instalment, no exceeding Rs.500/- per month.

8. In the result, the application is rejected at the admission stage subject to above observations with no orders as to costs. Earlier ex-parte Interim order dated 16/7/98 is vacated.

abp.


(R. G. VAIDYANATHA)
VICE CHAIRMAN