

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
MUMBAI.**

O.A.No.554/2014

Dated this Friday the 9th day of February, 2018.

**Coram: Hon'ble Shri Arvind J. Rohee, Member (J)
Hon'ble Shri R. Vijaykumar, Member (A).**

Arjun Shivaji Veer,
ex-Peon, worked in
Central Administrative Tribunal,
Mumbai Bench, Fort, Mumbai.
Residing at:
Quarter No.15/141, Type-III,
Ekta Vihar, Sector 25,
CBD Belapur,
Navi Mumbai-400614.

.. Applicant.

(By Advocate Shri R.G. Walia).

Versus

1. Union of India,
The Registrar,
Central Administrative Tribunal
Bench at Mumbai,
Fort, Mumbai-400 001.

2. Estate Manager,
Government of India,
Office of the Estate Manager,
Old C.G.O. Building, Annexe,
3rd Floor, 101, M.K. Road,
Mumbai - 400 020.

3. The Asst. Estate Manager,
Government of India,
Office of the Estate Manager,
Old C.G.O. Building, Annexe,
3rd Floor, 101, MK Road,
Mumbai - 400 020.

.. Respondents.

(By Advocate Shri N.K. Rajpurohit).

Order reserved on : 06.02.2018

Order delivered on : 09.02.2018.

O R D E R**Per : Arvind J. Rohee, Member (J)**

The applicant approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) This Hon'ble Tribunal will be pleased to call for the records which led to the passing the impugned Order dated 07.07.2014 and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same.

b) This Hon'ble Tribunal will be pleased to Order and direct the Respondents to allow the Applicant to continue and reside in the Quarter No.15/141, Type-III-Ekta Vihar, Sector 25, CBD, Belapur, Navi Mumbai 400 614.

c) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

d) Cost of this Original Application be provided for."

2. The applicant was previously serving as Group 'D' employee in Central Administrative Tribunal, Mumbai Bench, Mumbai. He faced departmental inquiry, in which the Disciplinary Authority vide order dated 22.04.2014 imposed penalty of dismissal from service on proved charges. This order is challenged before the Appellate Authority which was still pending when this O.A. is

filed. The record shows that the applicant while in service was allotted Government Accommodation bearing No.15/141, Type-III, Ekta Vihar, CBD Belapur, Navi Mumbai by Respondent No.2. However, after he suffered dismissal from service, Respondent No.2 issued impugned order dated 07.02.2014 (Annexure A-1) regarding cancellation of allotment of his accommodation and called upon him to vacate the premises immediately. This impugned order is addressed to Joint Registrar of this Tribunal and its copy is endorsed to the applicant.

3. In this O.A. the impugned order has been challenged mainly on the ground that the order of dismissal from service has been challenged before the Appellate Authority and the appeal was then still pending. However, during pendency of this O.A., the Appellate Authority decided the appeal and confirmed the order of dismissal from service.

4. In this O.A. the following interim relief is sought:-

"(a) Pending hearing and final disposal of this Original Application the Hon'ble Tribunal be pleased to STAY the effect and operation of the impugned Order dated 7.7.2014.

(b) Ex-parte ad-interim and interim in terms of Prayer 9(a) above."

5. This Tribunal while issuing notice to the respondents vide order dated 10.09.2014 granted interim relief staying the effect and operation of the impugned order dated 07.07.2014 (Annexure A-1) on the submissions made by the learned Advocate for the applicant that the administrative appeal was then pending and till its decision applicant should be protected from eviction.

6. The record shows that this order was however subsequently continued from time to time which is still in force, although in the meantime the statutory appeal has been decided as stated earlier. The decision of the Appellate Authority has been challenged by the applicant in separate O.A.No.543/2015 which is still pending consideration, in which the order of dismissal has been challenged.

7. The respondents appeared and by a common reply dated 12.02.2015 resisted the O.A. by denying all the adverse averments, contentions and grounds raised therein. It is stated that after dismissal from service the Government servant has no right to continue in the Government accommodation and he should immediately vacate the same. A penal rent is already charged and the applicant is liable to pay it so long he does not vacate the Government

accommodation.

8. The record shows that initially vide order dated 05.07.2016, both the O.As i.e. O.A.554/2014 and 543/2015 were posted on the same day i.e. 25.07.2016. Thereafter on 04.08.2016 the Registry was directed to post both the aforesaid OAs for final hearing. However, by the subsequent order dated 27.09.2016 it was observed that since the pleadings were yet to be complete in O.A.543/2014 the said O.A. was delinked for the time being till the pleadings are complete in that case and present O.A. alone continued to be posted for final hearing, although hearing did not take place. Interim order however was continued in this O.A. granting protection from eviction from the Government accommodation. In the subsequent order dated 11.01.2017 it was again directed that both the OAs be heard together. However, on subsequent dates both the O.As was adjourned from time to time.

9. On 06.02.2018 considering the fact that the interim order regarding eviction of Government accommodation is in force since last more than 3 years, this O.A. alone was taken up for final hearing and since pleadings in other O.A.543/2015 are yet to be completed.

10. Heard Shri R.G. Walia, learned Advocate

for the applicant and the reply arguments of Shri N.K. Rajpurohit, learned Advocate for the respondents. We have carefully perused the case record.

11. During the course of arguments the learned Advocate for the applicant vehemently submitted that since the impugned order of dismissal from service is still subjudice before this Tribunal and as such there is no finality to the said order, the applicant has right to continue in the Government accommodation and he is paying prescribed licence fee after his dismissal from service. In support of his contentions he placed reliance on the decision rendered by Full Bench of C.A.T., Patna Bench in **O.A.No.13,14,15,16,17,18 and 19/1987 D.N. Singh and others Vs. Union of India**, and particularly the findings recorded by the Full Bench in Para 33 and 34 thereof. For the sake of convenience and ready reference the same is reproduced here:-

"..... The second reuest of the applicants must, however, be upheld. Even the standing orders direct that if the dismissal or removal of a government servant is questioned, the order to vacate the quarters need not be issued. In several cases where pulic servants are removed or dismissed from service, when those orders are challenged before the Appellate Authorities or before this Tribunal, they are being allowed to retain the quarters until the

appeals are disposed of by the Appellate Authority and until the applications are disposed of by this Tribunal. Unless such an order is made, applicants would be exposed to great hardship. It would also be difficult to secure allotment of quarters even if their appeals are allowed. In the circumstances, the respondents are directed to allow the petitioners to retain their quarters, of course, subject to payment of such rent as was paid by them before their dismissal from service.

34. These applications are accordingly allowed, the orders of the Appellate Authority are quashed and the directions are indicated above shall issue. In the facts and circumstances of the case we make no order as to costs."

12. On the basis of the aforesaid decision the learned Advocate for the applicant submitted that since the applicant has lost the job on account of removal from service and there is no other source of income, it will cause great hardship to him in case the impugned order of cancellation of allotment is not set aside or he is directed to vacate the Government accommodation.

13. The record shows that in the decision rendered by the Full Bench C.A.T., Patna Bench in **D.N. Singh's case referred above**, it was noticed that the decision rendered by the Calcutta Bench in **O.A.241/1986 Sudhir Ranjan Karmakar Vs. Union of India & Others decided on 03.10.1986** is inconsistent

with the decision of Hon'ble Supreme Court in **Tulsiram Patel's case, AIR 1985 SC 1416** and **Satyavir Singh's case, AIR 1986 SC 555** and hence Division Bench referred all the above referred OAs to the Full Bench. The issue involved therein was regarding dismissal from service after dispensing with the departmental inquiry and whether the Appellate Authority is bound to consider whether it is reasonably practicable to hold inquiry at the time of appeal.

14. During the course of arguments the learned Advocate for the respondents submitted that the issue involved was totally different before the Full Bench and hence the findings recorded by the Full Bench relied upon by the applicant cannot be taken into consideration to hold that the impugned order of cancellation of allotment is illegal or improper, pending the appeal challenging the order of dismissal.

15. The learned Advocate for the applicant also relied upon the decision rendered by this Tribunal in **O.A.599/2006, M.K. Gupta Vs. Union of India and another decided on 27.02.2007**, in which the applicant therein was advised to vacate the quarter allotted to him failing which the eviction proceedings would be initiated through Estate

Officer. In that case also, the Full Bench decision rendered in D.N. Singh's case (referred supra) was relied upon and interim protection from being evicted was extended to the applicant therein during pendency of the O.A. in which he had challenged the order of compulsory retirement. The same analogy will be applicable to the present case also, since the O.A. challenging the order of dismissal from service is still pending adjudication. As such it can safely be said that matter is still subjudice and has not attained finality regarding dismissal of the applicant from service.

16. It is stated by learned Advocate for the respondents that in case the applicant succeeds in establishing his claim and the order of dismissal is set aside he can still apply for getting the Government accommodation on his reinstatement. However, at present since his status is only that of a Government servant dismissed from service i.e. he ceased to be in Government service he has no right to continue his occupation in the Government accommodation any more. However, even if these contentions are accepted it will not be easy for the applicant to get the accommodation again since he will be placed in wait list in case he is reinstated and applied for accommodation. On the contrary in

case he lost in the O.A. then he will have to vacate the accommodation and since he is depositing the prescribed licence fee (which was being deducted from his salary while he was in service) it cannot be said that Government is at loss. The only consequence is that unless the applicant vacates the Government accommodation the same cannot be allotted to any other wait list officials who are in queue for getting the Government accommodation. However, considering the peculiar facts of the case such consequence is quite natural.

17. It is stated that in O.A.543/2015, the respondents have not filed reply to the O.A. so far. In this O.A. vide order dated 11.01.2017 this Tribunal has already observed that in case the respondents failed to file reply before 17.03.2017 in O.A.543/2015, no further time will be given and the matter will be peremptorily heard. However, thereafter further time was granted to the respondents and the matter is now fixed for final hearing with or without reply by the respondents on 26.03.2018.

18. From the above discussion, it is obvious that it will not be just and proper to set aside the impugned order of cancellation of allotment at this stage, pending O.A.543/2015 for adjudication in

which the order of dismissal is challenged. However, interim protection granted to the applicant from eviction from Government accommodation can still be continued in the interest of justice till disposal of O.A.543/2015 since order of dismissal has not attained finality. The said O.A. can be considered and disposed of as expeditiously as possible with the assistance of both the parties.

19. The present O.A., therefore, simply stands disposed of by extending the interim protection from eviction from Government accommodation to the applicant till disposal of O.A.543/2015.

20. In the facts and circumstances of the case, the parties are directed to bear their respective cost of this O.A.

(R. Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J) .

H.