

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3327 OF 2006

Union of India and anr. ... Petitioner.

V/s.

Sayed Naimuddin ... Respondent.

Mr. Suresh Kumar for the Petitioner.

Mr. Burhan V. Bukhari for the Respondent.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE : 30th AUGUST 2018.

ORAL JUDGMENT:(Per M.S.SONAK,J.)

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 10.11.2005 made by the Central Administrative Tribunal (CAT), Mumbai allowing O.A. No. 66 of 2004 instituted by the respondent. In O.A. No. 66 of 2004, the respondent had applied for the following reliefs:

a] To quash and set aside the orders dated 9/11-4-2003 and 15.07.2003, by which, '*damage rent*' was recovered from the respondent's salary on the grounds of alleged overstaying in the Railway quarters;

b] For refund of the amounts recovered in pursuance of the aforesaid orders along with interest at the rate of 18% per annum.

3] Mr. Suresh Kumar, learned counsel for the petitioners, submits that the respondent was transferred from Mumbai to Ujjain with effect from 26.3.2002. Despite availing the facility of retaining the Railway quarter upon payment of normal rent for period up to 25.11.2002, the respondent failed to vacate the Railway quarter up to 25.2.2003. Mr. Suresh Kumar points out that since the respondent was transferred back to Mumbai from Ujjain on 28.1.2003, the request of the petitioner for allotment of the same quarter was considered with effect from 26.2.2003. However, since for the intervening period between 26.11.2002 to 25.2.2003, retention of the quarter by the respondent was wholly unauthorised, damage rent was recovered from the salary of the respondent. Mr. Suresh Kumar submits that since there was no dispute on facts , the action of the petitioners ought not to have been set aside on the grounds of any alleged

violation of principles of natural justice or fair play. Mr. Suresh Kumar points out that even if the Show Cause Notice were to be issued to the respondent, since the facts were undisputed, the respondent would have no defence to plead. Mr. Suresh Kumar submits that non-issuance of Show Cause Notice has accordingly caused no prejudice whatsoever to the respondent and the CAT, therefore, was not justified in interfering with the petitioners' action of recovery of damaged rent for the period between 26.11.2002 to 25.2.2003.

4] Mr. Burhan Bukhari, learned counsel for the respondent, points out that the petitioners, before concluding that the respondent was an unauthorised occupant at the quarters between 26.11.2002 and 25.2.2003, ought to have complied with principles of natural justice and fair play. He points out that such a conclusion of unauthorised retention and consequent recovery of damage rent has visited the petitioner with serious civil consequences and therefore, compliance with principles of natural justice and fair play was a must. Mr. Bukhari points out that the respondent has produced before the CAT Medical

Certificates and medical treatment papers, which indicated the respondent was suffering from serious heart ailments. He points out that the petitioners have regularised the respondent's occupation in the Railway quarter, without imposing any conditions in the regularisation order. After all these, there was absolutely no justification for unilateral recovery of damage rent and such recovery has quite correctly been set aside by the CAT. Mr. Bukhari submits that there is neither any jurisdictional error nor any unreasonability in the view taken by the CAT and therefore, this Court may dismiss this petition.

5] The rival contentions now fall for our determination

6] Although, there may not be any serious dispute about the fact that the respondent continued in occupation of the Railway quarter for the period between 27.3.2002 and 26.2.2003, the records bear out that the respondent's occupation of the Railway quarter at least up to 25.11.2002 was in pursuance of express approvals granted by the petitioners themselves. Insofar as the occupation between 26.11.2002 and 25.2.2003, i.e., occupation of about 3 months or thereabouts, the petitioners, without

issuing the respondent any Show Cause Notice or without even minimum compliance with principles of natural justice and fair play have straight-away proceeded to impose damage rent and further even recover the same from the salary payable to the respondent.

7] At no stage, the respondent admitted that his occupation of the Railway quarter between 26.11.2002 to 25.2.2003 was illegal or unauthorised. The petitioners arrived at such a conclusion almost unilaterally and without even minimum compliance with principles of natural justice and fair play. In the facts and circumstances of the present case, the petitioners will not be entitled to invoke "*useless formality theory*" so as to avoid compliance with principles of natural justice and fair play. If a Show Cause Notice were to be issued to the respondent, it cannot be said with certainty that the respondent would have no defence to offer. This is more so because ultimately the petitioners have themselves chosen to "*regularise*" the occupation of the respondent and further allowed him the very same service quarter consequent upon his re-transfer to Mumbai.

8] The CAT has referred to the decision of this Court in ***K.B. Yadav vs. Union of India (W.P. No. 1885 of 2003 decided on 19.9.2003)***, in which, it is held that the action of recovery of damage rents without issuance of Show Cause Notice or compliance with principles of natural justice deserves to be set aside. To the same effect are the observations made by this court in case of ***Shri. N.C. Sharma vs. Union of India - 2004 (1) ATJ 481***, where again it was held that the principles of natural justice have to be adhered and an opportunity will have to be given to the concerned employee before the recovery or adjustment are effected on the ground of any alleged unauthorised occupation of the Railway quarters. Since, the view taken by the CAT is in consonance with the ruling of the Division Benches of this Court, there is no good ground made out to interfere.

9] That apart, in the present case, the petitioners have themselves “regularised” occupation of Railway quarters by the respondent. The factum of regularisation is not denied. All that is

stated in the affidavit-in-reply before the CAT is that the regularisation will not prevent the petitioners from charging any damage rent. The order of regularisation was not conditional. The order of regularisation did not state that the regularisation was subject to payment of any damage rent. On the contrary, the record indicates that the petitioners took into consideration the respondent's representation backed by the medical records and thereafter regularised his occupation. In these circumstances, the action of imposition and recovery of damage rent and that too, without minimum compliance with principles of natural justice, was quite rightly interfered with, by the CAT.

10] For all the aforesaid reasons, there is no good ground to interfere with the impugned judgment and order and this petition is therefore, dismissed. Rule is discharged. There shall be no order as to costs.

(M. S. SONAK, J.)

(A.S.OKA, J.)

Dinesh
Sadanand
Sherla

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by Dinesh
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