

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.20/502/2019

Hyderabad, this the 4th day of March, 2020



Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

J. Rajeswar, S/o. J. Jagannayakulu,
Age: 63 years, Occ: Retd. Senior Audit Officer,
R/o. LIG 53, Sector V, MVP Colony,
Visakhapatnam.

... Applicant

(By Advocate: Mrs. S. Anuradha)

Vs.

1. Union of India,
The Comptroller and Auditor General of India,
9, Deen Dayal Upadhyaya Marg,
New Delhi – 110 124.
2. The Estate Manager,
Government of India, 3rd Floor,
Old CGO Building, Annexe,
101, M.K. Road, Mumbai – 20.
3. The Principal Accountant General (AE),
Andhra Pradesh and Telangana,
Hyderabad – 500 004.

... Respondents

(By Advocate: Mr. T. Sambasiva Rao, Proxy counsel for
Mr. V. Vinod Kumar, Sr. CGSC)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. OA is filed challenging the withholding a sum of Rs.73,000 from the DCRG of the applicant towards penal market rent of Govt. quarter.



3. Brief facts are that the applicant while working as Senior Audit Officer in the respondents organisation was transferred from Mumbai to Vizag on 21.12.2015 and in this context applicant represented for retention of the quarter at Mumbai on health grounds of his daughter, which was not responded to and instead a sum of Rs 73000 was withheld from the DCRG of the applicant after he superannuated on 29.04.2016 for retaining the quarter from 4.3.2016 to 30.3.2016 towards applicable market rent. Aggrieved, OA has been filed.

4. Applicant contends that the rules quoted by the respondents apply to retired employees and not to the case of the applicant since he was an in service employee when the representation was made and that the respondents did not care to respond to the same. Respondents remaining silent till the applicant retired from the service and thereafter, on superannuation imposing the market rent and that too, for a short period of overstay, is arbitrary. Recovery from a retired servant is against law laid by the Hon'ble Supreme Court in **State of Punjab & Ors vs Rafiq Masih (White Washer)** in Civil Appeal No. 11527 of 2014.

5. Respondents in the reply statement have opposed the claim by indicating that the 2nd respondent gave reasons for rejecting the retention of the quarter vide letter dtd. 19.05.2016 wherein it was made explicit that applicant has not applied within the stipulated time and has also not paid any licence fee in advance as required under the relevant rule. Therefore, the applicant is liable to pay market rent of Rs.36,767/- @ Rs.43,838 p.m. for the period 4.3.2016 to 30.3.2016 and arrears of licence fee of Rs.4,444/- working out to a total amount of Rs.35,928/- after reckoning the amount of Rs.5283 paid by the applicant on 30.5.2016. 2nd respondent made it clear that till the issue of No Demand Certificate by his office, final dues to be paid to the applicant be withheld. One another reason furthered is that the medical certificate in respect of applicant's daughter is from Vizag whereas applicant is seeking retention of quarter at Mumbai. Rule 72 of the CCS (Pension) Rules provide for withholding 10% of the Gratuity of a retired employee when the licence fee due to be paid is unknown.

6. Heard both the counsel and perused the pleadings on record.

7. I) The issue is about levying penal rent for overstaying in the Government quarter without valid permission from the competent authority. Applicant retired on 29.4.2016 and he has claimed that before his retirement, he has made a representation before retirement but along with the OA no such representation was enclosed except the spate of correspondence made on the subject between the applicant and the concerned respondent authorities from 19.5.2016 till 20.10.2018 on disputed issue. This has a bearing on resolving the issue since the claim made by the applicants that the Rule cited by the respondents applies to

retired employees and not to serving employees. When the Ld. Counsel for the applicant was questioned as to why the representation made was not enclosed, her response was that the respondents have only submitted that penal rent was imposed for not applying in time for retention and in regard to the representation. This is no valid submission since the vital proof to resolve the issue being absent does not give credence to the submission of the applicant. There can be no building without a foundation. Without the foundation of the representation trying to construct a building in the form of a relief is not pragmatic to say the least.

II) Besides, if the daughter of the applicant had to stay at the Mumbai on health grounds, in all practicality, it would have been expected that a doctor at Mumbai would have been approached for issue of a medical certificate. The doubt raised by the respondents that a doctor at Vizag has issued the certificate raises some questions which cannot be ignored. Further, the 2nd respondent has responded to a series of representations made by the applicant vide his letter dated 19.5.2016 (Annexure A-3) and even to the applicant's appeal by the later letter dated 18.7.2016 (Annexure A-4), the relevant portion of which reads as under:

"With reference to your Appeal dated 01.06.2016, I write to inform you that this office has already intimated vide letter dated 19.05.2016 that your request for retention of quarter under SR 317-B-22 has not been acceded as you have not applied for retention within stipulated period of time and not paid any licence fee in advance. Further, you had submitted a medical certificate in respect of your daughter, issued from Visakhapatnam, whereas you had requested for retention of quarter in Mumbai. Therefore your request for retention of quarter was not granted. Hence you are liable to pay market rent for a period from 04.03.2016 to 30.03.2016 as per rules.

You are therefore requested to pay an amount of Rs.35,928/- (Rupees Thirty Five Thousand Nine Hundred Twenty Eighty only) by Demand Draft drawn in favour of "The Estate Manager, Govt.



of India, Mumbai" immediately so as to enable this office to issue No Demand Certificate in your favour. Further you are also requested to submit the No Demand Certificate application in prescribed form which is available on our website www.estates.nin.in."



III) Therefore, as per rules the applicant has to pay the penal rent. Averment that he could not upload the application should have been brought to the competent authority in time for resolution and there is no record submitted to justify that such an attempt was made. The withholding of 10% DCRG is as per Rule 72 of the CCS (Pension) Rules when the licence fee to be recovered is not known is permissible as per the relevant portions extracted here under:

"(5) If, in any particular case, it is not possible for the Directorate of Estates to determine the outstanding licence fee, that Directorate shall inform the Head of Office that ten per cent of gratuity may be withheld pending receipt of further information.

(6) The recovery of licence fee (where it is not possible for the Directorate of Estates to determine the outstanding licence fee) as well as damages (for the occupation of Government accommodation beyond the permissible period after the date of retirement of allottee) shall be the responsibility of the Directorate of Estates and the withheld amount of gratuity under sub-rule (5) above, the retiring Government employees, who are in occupation of Government accommodation, shall be paid immediately on production of "No Demand Certificate" from the Directorate of Estates after actual vacatin of the Government accommodation;"

IV) The action of the respondents is as per the above provisions and the Tribunal cannot find fault with the respondents for acting in accordance with the same. Applicant, being a Senior Auditor well versed with a wide ambit of rules, would have raised many audit objections in his career for breach of rules and therefore, the Tribunal is sure that he would appreciate that expecting a decision in his favour by ignoring the applicable

rules in vogue, of which he has a good knowledge, is a very difficult proposition.

V) The Ld Counsel for the respondents argument that the applicant was in unauthorised occupation of the quarter has substance since the applicant was not granted permission to retain the quarter for the period in question. In regard to unauthorised occupation of a Govt. quarter the law is well settled as was observed by a Full Bench of Hon'ble Allahabad Bench of this Tribunal in ***Ram Poojan vs. Union of India & Another, ATC 1996 (34) FB 434***, as under:

“41. In the light of the discussions hereinabove, our answer to the two questions formulated for our consideration in the reference order is as follows:

- (a) *In respect of a railway employee in occupation of a railway accommodation, in our considered opinion, no specific order cancelling the allotment of accommodation on expiry of the permissible/ permitted period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/ damage rent can be levied.*
- (b) *Our answer is that retention of accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorized occupation and there would be an automatic cancellation of an allotment and penal/ damages can be levied according to the rates prescribed from time to time in the Railway Board's circular.*

42. We further hold that it would be open to the Railway Authorities to recover penal/ damage rent by deducting the same from the salary of the railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. We also hold that resort to proceedings under the said Act is only an alternative procedure which does not debar recovery as per the provisions of the Railway Board's circulars. “

Hence, the respondents are entitled to deduct the market rent due of Rs.35,928/- and release the balance of gratuity withheld at the earliest, but not later than 8 weeks, since the applicant is a senior citizen.



VI) Lastly, one more averment of the applicant that any recovery from a retired employee is against the law laid down in Rafiq Masih case need to be respondent to, for completing the adjudication on the matter. The recovery from the applicant has arisen for not paying Govt. dues towards quarter rent and in case of Rafiq Masih it is about refund of recovery of any excess payment made to the employee/pensioner under certain conditions. Recovery of Govt. dues of the nature of quarter rent provided under the Rules is thus not covered by Rafiq Masih case. The amount was due to be paid by the applicant under the relevant rules, but he did not and hence, the said judgment would not come to the rescue of the applicant.

VII) Therefore, viewed from any angle, there is no merit in the OA to intervene on behalf of the applicant and hence, the OA is accordingly dismissed, with no order to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

/evr/

