

(30)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
T.A No. 407/87

198

DATE OF DECISION 1-4-1992Union of India PetitionerMr. A.I.Bhatkar Advocate for the Petitioner(s)

Versus

Mr. P.N. Malhotra Respondent

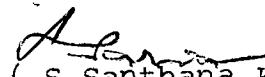
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y. Priolkar, Member (A)

The Hon'ble Mr. S.Santhana Krishnan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No


 (S. Santhana Krishnan)
 Member (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
* * * * *

(31)

Tr. A. No. 407/87

Union of India ... Appellant

v/s

P.N. Malhotra ... Respondent

CORAM : Hon'ble Member (A), Shri M.Y. Priolkar
Hon'ble Member (J), Shri S. Santhana Krishnan

Appearances:

Mr. A.I. Bhatkar for Mr. M.I.
Sethna, Counsel for the
applicant.

None present for the
respondent.

JUDGMENT:

Dated : 1-4-1986

(Per. S. Santhana Krishnan, Member (J))

The present respondent as Plaintiff filed Civil Suit No. 1387/1979 before the Civil Judge, S.E., Pune for recovery of Rs. 15,330.55 against the defendant therein who is the present applicant. The learned Civil Judge as per the judgment dated 30.7.1984 decreed the suit for Rs. 11,753.30 and proportionate costs with interest at 9% per annum from the date of the suit till realisation. Aggrieved by this, the defendant filed civil appeal No. 1076/1986 before the District Judge, Pune which was pending in that Court. In view of the constitution of the Tribunal the case is transferred before the Tribunal for disposal of the said appeal.

2. Respondent absent. But he filed his written arguments. Heard the counsel for the applicant and perused necessary records.

3. The present respondent was working under the present applicant and that he ceased to be in the service under the new assignment with effect from 28.2.1978. He was occupying a Government quarter while he was in service. The applicant's contention is that he failed to hand over the quarters but continued to occupy the same even

[Signature]

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thereafter. The applicant issued a notice also terminating the tenency on 15.6.1978. Subsequently the present respondent was evicted only on 25.8.1981. The present applicant contended that an amount of Rs.13271.15 is due as market rate of rent for the quarters occupied by the respondent ~~after~~ 28.2.1978. ~~But~~ the applicant has not specifically stated what is the market/rent the respondent is liable to pay. They contend that after ~~the~~ retirement of the respondent ~~he~~ is liable to pay the rent for the quarters at market rate and he was originally paying only Rs.64/- per month as the normal rent for the quarters. It is their contention that as the respondent failed to pay the amount due to them they are not liable to pay the arrears of salary and other amounts claimed by the respondent in his suit. The respondent in his plaint contended that apart from the pay, D.A. and Insurance amount which the applicant is liable to pay to him by way of salary and other allowances, the applicant is liable to pay Rs.7,700/- as the amount due regarding encashment of earned leave at his credit which is admittedly 162 days. He also claims that after retirement he is entitled to go ~~and reside~~ in his home town namely Jallunder and for that purpose he is entitled to claim as TA & LA Rs.1,231/-. The learned Civil Judge after considering the evidence let in by the plaintiff and the documents filed by him found that the plaintiff is not entitled to recover this amount as he has no inclination to go and settle at Jallunder City ~~and that~~ he has ~~not~~ given a declaration which he is bound to give before retirement that he is proposed to go and settle at Jallunder. The learned judge further found that the respondent has no intention to settle down at Jallunder and hence negated this claim.

4. Regarding the encashment of earned leave the learned Judge found that the respondent as per the calculations of the applicant is entitled to claim only Rs.7,422.35 and not Rs.7,700/- and disallowed the claim of Rs.277.65.

5. ~~xxxxxx~~ The respondent contends in his reply as well as the written arguments that he is entitled to claim this amount in this ~~Transferred Application~~, but he cannot do so as he has not filed either ~~cross~~ appeal or cross objection when the case was pending before the District Judge, Pune. He also failed to file any original application claiming this amount when the case was transferred before this Tribunal. Hence the respondent is not entitled to claim the disallowed amount by the Civil Judge before the Tribunal.

6. The only other question that will have to be considered by this Tribunal is whether the contention of the applicant that the respondent is not entitled to recover even Rs.11,753.30 as awarded by the Civil Judge is correct.

7. In the appeal grounds filed before the District Judge, Pune except stating that the Hon'ble Court failed to appreciate the fact that the Government is entitled to recover rent at the market rate in case an employee overstays the quarters, the applicant has not stated what is the market rate rent the respondent is liable to pay and whether the applicant gave any notice to the respondent before his retirement claiming the amount and what was his reply. The learned Civil Judge points out in his judgment that the applicant who was defendant before him failed to give any particulars in the written statement and also failed to let in in oral evidence



to establish the same. Even thereafter the applicant failed to give any particulars in the appeal grounds.

8. Even in the application filed before this Tribunal the applicant has not even stated whether they issued any notice to the respondent calling upon him to pay the market/rent and whether he refused to pay the same. On the otherhand they placed reliance on the letter dated 29.6.1978 which states that if an employee overstays the Director of Estate/Regional Officers will deal with him in his capacity as a private party. The applicant failed to produce any letter or circular which gives the power to them to adjust the market/rent if any due to them from the salary of the employee. The respondent filed his reply before the Tribunal where he points out that the letter dated 29.6.1978 clearly shows that no dues of any retiring person should be withheld for want of 'no demand certificates'. Even the letter filed by them dated 9.6.79 does not mention of any market rent which he is liable to pay.

9. Unless the applicant specifically states in his statement what is the market/rent the respondent is liable to pay and how they decided the market rent they cannot recover the/withheld pay and allowances due to the respondent. Even if the respondent failed to pay any amount as market/rent, the applicant ought to have fixed the same, inform the same to the respondent, issue a show cause notice and then only they can proceed to recover the amount from the respondent. On the other hand the respondent has established that he was depositing Rs.64/- per month as rent which he was originally paying even from 1.3.1978 upto 31.1.1980. This is not disputed by the applicant. As the applicant failed to give any particulars as to how they fixed the market/rent and how

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the respondent is liable to pay this amount to the applicant, the learned Civil Judge rightly found that the applicant cannot refuse to pay the salary and other arrears due to the applicant and the remedy of the respondent if any is to recover the amount by taking other legal remedy available to them and they cannot prevent the plaintiff recovering from the amount claimed by him. He also awarded an interest only at 9% from the date of ~~suit~~ till realisation which cannot be said either as illegal or irregular.

10. In view of above discussion, the applicant failed to establish that the judgment of the learned Civil Judge is liable to be set aside for any of the reasons mentioned by them and as such we find no reason to disallow the amount which the learned Civil Judge has awarded to the respondent.

11. The application fails and is dismissed with no order as to costs.

(S. Santhana Krishnan)
Member (J)

1/4/9

(M.Y. Priolkar)
Member (A)

v/-