

24/2
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 124/96.

Date of Decision: 28-8-97

Nirmal Chandra Das,
Applicant.

Shri M. S. Ramamurthy,
Advocate for
Applicant.

Versus

Union Of India & Others,
Respondent(s)

Shri V. G. Rege,
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M. R. KOLHATKAR, MEMBER (A).

~~XXXXXXShriXXXX~~

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 124/96.

Dated this November, the 28th day of August, 1997.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Nirmal Chandra Das

Residing at :
Room No. A-4, Block No. F-2,
Sector-15, Nerul, New-Bombay.

Working as :
Assistant Commissioner Of
Central Excise,
Division-III, Bombay-II
Collectorate,
Ganga Building,
L.B.S. Marg, Vikhroli (W),
BOMBAY.
(By Advocate Shri M.S. Ramamurthy).

... Applicant

VERSUS

1. Union Of India through
The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.

2. Commissioner of Customs,
Bombay Customs House,
Ballard Estate,
Bombay - 400 038.

3. Asstt. Commissioner Of
Customs (Prev.) (G),
Bombay Customs House,
Ballard Estate,
Bombay - 400 038.

... Respondents.

4. The Commissioner Of Central
Excise, Bombay -II
Collectorate,
Piramal Chambers,
Lal Baug, Parel,
Bombay - 400 012.

(By Advocate Shri V. G. Rege).

: ORDER :

I PER.: SHRI M. R. KOLHATKAR, MEMBER (A) {

While the applicant was working in the
Customs House at Bombay, he was allotted quarter No.

176, Block No. 9, situated at Antop Hill, Bombay, which

was part of the so-called Customs Pool, on or about 07.06.1987. The applicant came to be promoted to the post of Assistant Collector and was transferred and posted at Ahmedabad w.e.f. 17.02.1993. The applicant requested permission to retain the quarter vide his letter dated 14.06.1993 and permission was granted to retain the same upto 16.10.1993, namely two months, which is permissible retention in the event of transfer and six months as a special case. The applicant was asked by the letter dated 12.10.1993 to vacate the quarter on or before 16.10.1993. By his letter dated 03.11.1993, he requested permission to retain the quarter for daughter's education and medical treatment for a further period (unspecified), which request was rejected. The applicant by his letter dated 08.12.1993 wrote as below :

"In view of my daughter's education in college who is in 11th standard, I may kindly be allowed to retain the above quarters for few months more till the completion of her study against the payment of market rent. I will be ever thankful if the same is granted."

This request was rejected by letter dated 19.01.1994. Notice under Section-4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was issued to the applicant on 06.05.1994. On 01.07.1994, the applicant submitted his reply to the above notice and while remitting a sum of Rs. 10,000/-, he requested permission for continued occupation of the quarter. The cheque was encashed by the respondents. The applicant was however again asked to vacate the quarter and make a further payment of Rs. 19,396/-. The applicant has, in all, made the payment of Rs. 31,362.00.

2. In the meanwhile, on 29.09.1994 the applicant was reposted at Mumbai. The applicant by his letter dated 30.09.1994 intimated that he has been transferred back on duty to Central Excise, Bombay-II and since he was staying in the above quarter for many years, he may be allowed to retain the said quarter on payment of official rate of rent. This request, however, was rejected by the Estate Officer, (Collector Of Customs), vide his letter dated 11.11.1994 and he was also informed that he would be charged damage rent till he vacates the quarter and he was advised to apply for allotment of quarter from Central Excise Pool. The applicant eventually vacated the quarter on 24.07.1995. He has been asked to pay an amount of Rs. 36,974/- as balance of damage rent.

3. The applicant has challenged charging of 17.10.1993 damage rent, both for the earlier period (period from / to 29.09.1994) and for the later period. The details of the amount charged to the applicant, which are attached as exhibit-1 to the sur-rejoinder of the respondents, are as below :

CALCULATION OF RENT

Normal rent for 2 months
i.e. w.e.f. 17.2.93 to 16.4.93 Rs. 220/-
(Rs. 110/- X 2 months)

Double the std. rent for 6 months
w.e.f. 17.4.93 to 16.10.93
(Rs. 220/- X 6 months) Rs. 1,320/-

Water Charges for 8 months Rs. 96/-

Damage rent for the period of 6months
and 14 days w.e.f. 17.10.93 to
30.4.94
(Rs. 60/- X 51.56sq.mt.) X6 months.14d.Rs.20,005/-
Water Charges for above period @Rs. 12/-Rs. 75/-

Damage rent for the period of 15months
and 3 days w.e.f. 1.5.94 to 2.8.95
(Rs. 60 X 51.56sq.mt.) X 15months 3daysRs.46,708/-
Water charges for the above period Rs. 182/-

TOTAL :: Rs.68,606/- c/f.

Total b/f .. Rs. 68, 606/-

LESS

Amount deposited vide challan Nos.

E-540 dated 24.9.93 Rs. 1,632/-

E-702 dated 06.06.94 Rs. 10,000/-

E-771 dated 02.08.94 Rs. 10,000/-

E-935 dated 22.09.94 Rs. 10,000/-

Rs. 31,632/-

Rs. 36,974/-

4. The contention of the applicant is that, the proceedings under Section 4 or 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, have not been taken before effecting the deduction on account of damage rent/penal rent, that, no notice was given to the applicant before proceeding to deduct the damage rent and so far as the failure of the respondents to regularise his occupation in the re-posting period (i.e. from 29.09.1994 onwards) is concerned, the respondents are following a discriminatory policy. In the case of one Shri A.H. Murshedkar, a similarly placed Assistant Commissioner of Central Excise of Bombay-II Collectorate, no damage/penal rent was charged for the occupation of the quarter by him, allotted out of Customs Pool while he was posted in Central Excise. It is further contended that the amount of damage rent is exorbitant and every time the amount of damage rent~~sought~~ is the same to be recovered~~sought~~ is increasing.

5. The respondents have contended that notice under Section 4 of the Public Premises Act, was issued as far back as 06.05.1994 and notice under Section 7 of the Public Premises Act, for payment of Rs. 36,974/- was issued on 06.03.1996.

So far as the case of Shri Murshedkar is concerned, the facts are not similar. Shri Murshedkar, on his transfer to Meerut for a period of 8 months, was charged rent including damage rent as per rules and on his retransfer to Bombay in September 1992, he was allowed to retain the quarter from the Customs Pool because at that particular point of time the quarters held by the officers working under the Customs Commissionerate were more than the allotted quota for them (at Pedder Road). However, so far as the applicant's case is concerned, when the applicant was retransferred to Mumbai, ~~more~~ Officers working in the Central Excise were occupying the quarters ^{pool of} which were forming a part of the ~~C~~Customs Department. In the circumstances, the request made by the applicant for retaining the Customs quarters was rightly rejected.

6. On this point, the ^{counter} contention of the applicant is that, all quarters allotted to the Excise and Customs Officials/staff belong to the common revenue pool and that, among the officers belonging to Central Excise, the applicant was not the junior most person who should have been asked to vacate. According to the applicant, no rules or regulations have been framed by the respondents as to how adjustments between Customs Pool and Central Excise Pool are to be made. According to the applicant, occupation of the quarters meant for Excise or Customs Officers, by the Officers of the two wings indiscriminately, does not per se render the occupation unauthorised and therefore, before any claim for penal rent or damage rent is raised, the officer concerned will have to be clearly informed about his having clearly forfeited his right to continue in

occupation because of overwhelming rights of others necessitating allotment of the said quarters to another officer.

7. I have considered the matter. It is clear from the sequence of narration of the facts that the penal rent claimed ~~from~~ the applicant could clearly be divided into distinct two parts : (i) Penal rent paid from 17.10.1993 upto 29.09.1994 and (ii) Penal rent paid from 29.09.1994 to 24.07.1995 when the applicant came on re-transfer.

8. So far as the previous period is concerned, the contention of the applicant that he is not liable to pay the penal rent, is clearly barred by the principle of estoppel because by his letter dated 08.12.1993, the applicant had clearly given the respondents to understand that he is prepared to pay the market rent. Therefore, contention that the proceedings under the Public Premises Act were not taken and therefore, he is not liable to pay the damage rent, cannot be sustained. I hold that the applicant is liable to pay the damage rent as per the procedure laid down by the Law. At this stage, the applicant relies on the judgement of this Tribunal in O.A. No. 842/96 and 608/96 .. Sh. S.S. Roy and Shri R.K. Pathania V/s. Union Of India, decided on 10.04.1997. In that case also, the question of quantum of damage rent was in issue and the plea of the applicant that the quantum of damage rent was exorbitant and expropriatory, was accepted by the Tribunal. In para 7 of the judgement, the Tribunal observed as follows :

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"It would be seen that the Estate Officer is required to have regard to the principles of assessment of the damages as may be prescribed. These principles are prescribed in para 8 of Public Premises (Eviction of

Unauthorised Occupants) Rules, 1971
gazetted on 14.12.1971."

In para 12, the Tribunal observed -

"I do however consider that there is substance in the contention of the applicant that he has not been given opportunity to plead regarding exorbitance/unreasonableness of the damage rent. I am therefore, inclined to hold that the order of the Estate Officer dt. 16.5.1996 at page 47 assessing the damages cannot be sustained and is required to be set aside and the matter is required to be remitted back to the Estate Officer to consider the contention of the applicant regarding reasonableness of the damages in terms of Section 7 of the Public Premises Act read with Rules thereunder."

9. It is seen from the statement of rent that damage rent has been charged at the rate of Rs. 51.56sq.mt. which for the period from 17.10.1993 to 30.04.1994 comes to over Rs. 20,000/-. The damage rent for the period of 15 months from 01.05.1994 to 02.08.1995 comes to Rs. 46,708/-. I am at this stage, concerned with the period from 17.10.1993 to 29.09.1994, the date on which the applicant was re-posted to Mumbai. No doubt, this Tribunal in O.A. No. 842/96 and 608/96 had quashed the order charging the penal rent on the ground that the penal rent was exorbitant and the say of the applicant in regarding its being excess of the principles prescribed in the rules under the Public Premises Act, was accepted by the Tribunal. In the present case, however, it is not open to the applicant to raise the question regarding the penal rent being exorbitant because it is barred by the principle of estoppel. I, therefore,

hold that the applicant is liable to pay the rent at market rate as per his own undertaking for the period from 17.10.1993 to 29.09.1994. The respondents should, therefore, recalculate the rent for the period from 17.10.1993 upto 29.09.1994 and adjust the sum against the amount of Rs. 31,632/- already recovered from the applicant. If any amount remains in balance, the same is liable to be refunded to the applicant.

10. So far as the subsequent period is concerned, namely the period from 29.09.1994 upto 02.08.1995, it is not clear to me as to why the case of the applicant cannot be regulated as in the case of Shri Murshedkar. The applicant was already in occupation of the quarter and he was a fairly senior officer and he was on the verge of retirement. The excess occupation of the customs pool by the Officers of Central Excise department, ascertained (and) appears to have been regulated by the Rule of thumb and there does not appear to have been of a procedure/considering the seniority of the officers occupying the quarter and the point at which the is utmost undeterminate occupation by a particular officer becomes unauthorised. I, therefore, hold that the order of the department refusing to regularise the occupation of the quarter by the applicant on his re-transfer to Mumbai, was clearly arbitrary and is liable to be set aside. I, therefore, hold that the applicant is entitled to be charged only the normal rent for the period of occupation from 29.09.1994 till the vacation of quarter, namely 02.08.1995. I, therefore, dispose of the O.A. by passing the following order :

O R D E R

penal
The rent for the period from 17.10.1993 to
28.09.1994 should be recalculated and
adjusted against the payment of Rs. 31,632/-
already paid by the applicant and if any
balance remains, the same may be refunded
to the applicant. So far as the subsequent
period is concerned, namely the period from
29.09.1994 upto 02. 08.1995, the applicant is
held entitled to have the quarters regularised
in his name and liable to make payment of rent
only at the normal rate. Therefore, the
action of the respondents in proposing to
recover the amount in excess of normal rent
for this period, is hereby held to be illegal
and quashed. Directed according by
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11. The O.A. is partly allowed as discussed above,
with no order as to costs.

M.R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).