

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH.

Original Application No. 842 and 608/96

10-09-97

Date of Decision : _____

S.S.Roy and R.K.Pathania ... Applicant/Petitioner/sShri M.S.Ramamurthy. ... Advocate for the Petitioner/s

V/s.

Union of India & Ors. ... Respondent/sShri M.L.Sethna & Shri V.S.Masurkar. ... Advocate for the Respondent/s.

Coram:

Hon'ble Shri M.R.Kolhatkar, Member (A).

(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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO. 842/1996, and
2. ORIGINAL APPLICATION NO. 608/1996.

pronounced, this the 10th day of April 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

1. Original Application No.842/1996.

S.S.Roy,
C/o. Ms.Sumona Roy,
B/405, Adarsha, Spring Mill
Compound, Dadar (East),
Mumbai - 400 014.

... Applicant.

(By Advocate Shri M.S.Ramamurthy)

V/s.

1. The Union of India ,
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi - 110 001.
2. The Estate Officer,
3rd floor, Old CGO Building,
101, M.K.Road, Churchgate,
Mumbai - 400 020.
3. The Secretary,
Ministry of Urban Development,
Government of India,
Nirman Bhavan,
New Delhi - 110 011.
4. Director of Estate,
Ministry for Urban Development,
Govt. of India, Nirman Bhavan,
New Delhi 110 011.
5. Chief Engineer,
Central Public Works Department,
(West Zone), Office of the
Chief Engineer, (WZ)), CGO Annexe,
M.K.Road, Churchgate,
Mumbai - 400 020.
6. The Chief Commissioner of
Income Tax,
Gujarat,
Ahmedabad.

... Respondents.

(By Shri M.I.Sethna and Shri V.S.
Masurkar).

2. Original Application No.608/96.

R.K.Pathania,
Commissioner of Income-tax(IX)
Income Tax Department,
Mumbai.

... Applicant.

(By Advocate Shri M.S.Ramamurthy)

V/s.

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Bloc,
New Delhi - 110 001.
2. The Director of Estates,
Directorate of Estates,
Nirman Bhavan,
New Delhi -110 001.
3. The Estate Manager,
Government of India,
3rd Floor, Old CGO, Building
Annexe, 101, M.K.Road,
Churchgate,
Mumbai - 400 020.
4. The Assistant Commissioner
of Income Tax (HQRS)
O/o. Chief Commissioner of
Income Tax, Aayakar Bhavan,
M.K.Road, Churchgate,
Mumbai - 400 020.

... Respondents.

(By Advocate Shri M.I.Sethna and
Shri V.S.Masurkar).

Q R D E R

¶Per Shri M.R.Kelhatkar, Member (A)¶

In these cases, the common question which arises for consideration is whether in the case of unauthorised occupation of Government premises in the sense of the Government Officers over staying in the Government Quarters beyond the due period/are liable to pay damage rent at the rates laid down by the Government viz. Rs.45/- per Sq.Mtr. per month w.e.f. 1.9.1989 in respect of Type - V and above and Rs.100/- per Sq.Mtr. per month w.e.f. 1.4.1991 in respect of Type - V and above in the Metropolitan City of Bombay. In the case of O.A. 842/96 this works out to

Rs.16,560/- p.m. in respect of the flat in question and in respect of O.A. 608/96 this works out to Rs.53,489/- p.m. In O.A. 842/96 there is also the question of the action of the Department of having sought the adjustment of the damage rent against pensionary benefits. Although the issues therefore are basically the same the facts are slightly different and I would deal with the same in the following paragraphs.

O.A. No. 842/96

2. In this O.A., the applicant was posted as Director General of Investigations in Mumbai on 6.2.1991. The applicant was posted out of Mumbai w.e.f. 31.3.1992. The allotment was accordingly cancelled w.e.f. 31.5.1992 and order of eviction was passed on 24.12.1993. The applicant was initially transferred to Madras and subsequently was shifted to Ahmedabad Gujarat. The basic fact remains that the duty of the Officer did not require him to be in Bombay. He actually vacated the quarters on 13.1.1995 and has since superannuated from service on 1.3.1996. The grievance of the applicant is that he has been asked to pay a damage rent at the rate of Rs.16,560/- p.m. from 1.6.1992 to 13.1.1995 and including arrears on account of short recovery, has been asked to make a payment of Rs.5,29,274/-.

3. As against this recovery the applicant is entitled to the following pensionary dues :

1. Commutation of Pension : Rs.1,58,908/-
2. Leave Encashment : Rs.1,14,304/-
3. C.G.E.I.S. : Rs. 26,264/-
4. DCRG Rs.2,04,402/-
LESS : Rs.1,64,255/-
Balance of HBA & Int. : Rs. 40,147/-

Total : Rs.3,39,623/-

The contention of the applicant is that a notice under Sec.4 of the Public Premises Act was issued on 20.10.1993, even prior to this notice however he had made a representation on 12.10.1992 addressed to the Union Minister, the said representation remained un-replied. So far as the notice was concerned he had sent a letter dt. 1.11.1993 seeking an adjournment, but the same was not considered and order of eviction under Sec. 5 of the P.P. Act was passed on 24.12.1993. Later on, the Estate Manager mechanically sent a bill dt. 24.1.1995 raising a demand for Rs.5,29,274/- . In the meanwhile, the applicant received a letter dt. 27.3.1996 rejecting his representation dt. 15.2.1995. The applicant in continuation of his earlier representation to the Minister had dt. 12.10.1992 sent a representation to the Secretary Urban Development on 15.2.1995 to which he received a reply on 27.3.1996 as below :

" I am directed to refer to D.O. letter No.CG/SSR/PER/94-95, dt. 15.2.1995 regarding payment of licence fee at double the normal rate in relaxation of existing rules. The matter has been considered in consultation with Directorate of Estates, Ministry of Urban Affairs, New Delhi. They have invited our attention to the 'one man' committee ordered by the Supreme Court to enquire into cases decided by the Cabinet Committee on accommodation either for waiving or reduction of the rental liability. In view of this position, representation submitted by Shri S.S.Roy, CCIT (Retd.) has been rejected.

You are requested to kindly inform Shri S.S.Roy, CCIT (Retd.) suitably."

3. In this background, the applicant has challenged the order dt. 3.7.1996 calling upon the applicant to pay Rs.5,29,274/- as damage rent levied at the rate of Rs.16,560/- p.m. which according to him is arbitrary, unjust, unreasonable and not enforceable in

Law and has prayed for a declaration that the applicant was not in unauthorised occupation of flat in question and a further direction to the respondents to release all retiral dues of the applicant. The applicant has contended that the respondents are at the most entitled to charge the applicant double the licence fee for occupation of the flat at Mumbai for the period 31.6.1992 to 13.5.1995 and anything in excess of the above is illegal.

4. The applicant has also relied on the latest Judgment of the Supreme Court in Shiv Sagar Tiwari V/s. Union of India & Ors. (1996(2) SCALE 680) which was a Public Interest Litigation in respect of the out of turn allotment of Government Accommodation in Delhi, but it deals with various aspects of the question of allotment of Government Accommodation in a comprehensive manner. The applicant also relies on the Supreme Court Judgment in Union of India V/s. Wing Commander R.R.Hingorani (1987) 2 ATC 939 which lays down that the Government is not competent to recover the commuted portion of pension of a pensioner the amount due to it towards damages on account of unauthorised occupation of Government accommodation.

5. On the other hand, the counsel for the respondents ~~also~~ relies on Supreme Court Judgment in State of Orissa & Ors. V/s. Sadasiva Mohanty (1987 (1) SC SLJ 52) in which Rules prescribing charge of rent at the rate of 5 times the standard rent if a Government servant overstays beyond four months were upheld.

6. I, first of all, consider the propositions laid down in Shiv Sagar Tiwari's case and their applicability to the facts of the present case. According to the

counsel for the applicant the damage rent being charged in this case viz. Rs.16,560/- p.m. is confiscatory ^{can} and by no stretch of imagination be called reasonable. He has referred to the fact that in Shiv Sagar Tiwari's case the Hon'ble Supreme Court has observed in para 51 "As already noted, in cases of over-stay, twice of licence fee becomes payable. We would like to make a distinction regarding the licence fee to be charged depending upon the type of quarter allotted, for Type III we would require this to be twice of the licence fee; for Type-IV and above three times the licence fee." The counsel for the applicant would therefore say that as the Quarters in question is Type-IV and above the ends of justice would be met if the Tribunal directs the Department to charge thrice the licence fee in the present case also. This contention of the counsel for the applicant ^{however,} is not borne out by an overall reading of the Judgment. It would be seen that the Supreme Court in the above quoted paragraph was concerned ~~with~~ with the charging of licence fee and not with charging of the ^{that of} damage rent. In the present case, however, the issue is / charging of the damage rent. On this point para 70 ^{judgment} of the Supreme Court reads as below :

"8. At what rate penalty has to be realised from those who were unauthorisedly occupying the Government quarters?

70. The penalty which becomes payable by those who have either continued the occupy premises beyond the permitted period or have not vacated the premises despite cancellation of allotment, has to be as per the rules holding the field to which we have already referred. We may refer in this connection to Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 also, which deals with payment of rent or damages in respect of public premises. Its sub-section (2) has provided that where any person is, or has at any time been in unauthorised occupation of ^(any) public premises, the Estate Officer may, having regard to such

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principle of assessment of damages as may be prescribed, assess the damages on account of the use of the occupation. Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 has mentioned about the factors to be taken into consideration in assessing the damage.

71. The aforesaid being the position, the subject matter regarding the rate of penalty is governed by statute and we have nothing to add."

7. It would thus be seen that the Hon'ble Supreme Court in Shiv Sagar Tiwari's case did not deal with the question of the damage rent or penalty rent because according to the Supreme Court the same was to be regulated by the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. 8. On this point the counsel for the applicant would then argue that the relevant sections are Section 7(1) and (2) thereof and the same reads as follows :

"7. Power to require payment of rent or damages in respect of public premises.

- (1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such installments as may be specified in the order.
- (2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such installments as may be specified in the order."

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 / Rule 8 on the

112

subject of assessment of damages reads as below :

"8. Assessment of damages : - In assessing damages for unauthorised use and occupation of any public premises the estate officer shall take into consideration the following matter, namely :

- (a) the purpose and the period for which the public premises were in unauthorised occupation;
- (b) the nature, size and standard of the accommodation available in such premises;
- (c) the rent that would have been realised if the premises had been let rent for the period of unauthorised occupation to a private person;
- (d) any damage done to the premises during the period of unauthorised occupation;
- (e) any other matter relevant for the purpose of assessing the damages."

9. The contention of the counsel for the applicant is that the Estate Officer has mechanically fixed the rate as laid down by the Government vide orders of the Government under F.R. 45-A reproduced in Government of India decision No.12 viz. Ministry of Urban Development O.M. No.180012/73/III dt. 27.8.1987. These Rules were effective from 1.11.1987. The rates to be charged from 1.4.1991 have been laid down by the O.M. No.18011/8/89-III dt. 1.4.1991 and 23.4.1991. These are to be seen at page 196 to 199 of Orders under F.R. Swamy's Compilation 12th Edition 1994.

10. The counsel for the applicant invites my attention to para 12(vi) of the above instructions which reads as below :

"The rate of damages as above would be the rate to be charged from the unauthorised occupant and if he/she is not agreeable to pay it, the damages to be recovered from him/her will have to be pleaded before the Estate Officer in terms of Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971."

The contention of the applicant is that these rates and unreasonable viz. Rs.16,560/- p.m. are exorbitant and no opportunity was given to the applicant to show why the rates are unreasonable and should not be charged in his case.

11. I am not inclined to accept the contention of the applicant that the proceedings against him under section 4 of the P.P. Act were taken ex parte because the supposition that he has a right to be given adjournment is difficult to accept nor I am able to attach weight to the contention of the applicant that when his representation was pending before the Minister, the Estate Officer should have held the proceedings in abeyance or that he should have been given a waiver of damage rent. The reason why I hold that the pendency of the representation before the Ministry is of no significance is because of the fact that Hon'ble Supreme Court in Shiv Sagar Tiwari's case has clearly held that the Government has powers to waive licence fee but not the damages. In para 49 of the Judgment it has been observed as below :

"It would be appropriate to refer in this connection to FR 45-A sub-rule(III) on the subject of calculation of standard licence fee. Sub-rule (V) has visualised that in special circumstances for reasons to be recorded, the Central Government may inter alia, by special order waive or reduce the amount of licence fee to be recovered from an officer."

So far as the damages are concerned, however, the matter is entirely governed by the Public Premises Act.

12. 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 contentions of the applicant regarding reasonableness of the damages in terms of Section 7 of the Public Premises Act read with Rules thereunder.

This brings us to the
13. question of the prayer of the applicant that the respondents may be directed to pay the balance amount of pensionary benefits to the applicant amounting to Rs.3,39,623/- without linking the same to the recovery of damage rent in terms of Hingorani's case.
Judgment

In para 12 of Hingorani's judgment it is stated as below :

" The learned Additional Solicitor General has very fairly brought to our notice Circular No.F 7(28)E.V/53 dated August 25, 1985 issued by the Government of India, Ministry of Finance to the effect:

When a pensioner refused to pay government dues. - The failure or refusal of a pensioner to pay any amount owed by him to government cannot be said to be 'misconduct' within the meaning of Article 351 of the C.S.R. (Rule 8, C.C.S. (Pension)Rules, 1972). The possible way of recovering/demanding government dues from a retiring officer who refuses to agree in writing, to such dues being recovered from his pension is either to delay the final sanction of his pension for some time which will have the desired effect for persuading him to agree to recovery being made therefrom or take recourse to court of law.

It bears out the construction that the words "money due or to become due on account of pension" occurring in Section 11 of the Pensions Act, 1871 includes the commuted portion of the pension payable to an employee after his retirement. It must accordingly be held that the government had no authority or power to unilaterally deduct the amount of Rs.20,482.78 from the commuted pension payable to the respondent, contrary to Section 11 of the Pensions Act, 1871."

Thus, Hingorani's Judgment dealt with commuted value of pension, it did not deal with other pensionary benefits. However, in my view, the pensionary benefits amounting to Rs.3,39,623/- can be taken in the sweep of definition of pensionary benefits in the case of Hingorani. The Government has no right to hold back the pensionary benefits of an employee on the ground of damage rent being due from the applicant which is in excess of the amount of the pensionary dues, except as permissible under Rules 71 & 72 of CCS (Pension) Rules.

At the same time I must consider the equities of the situation. The applicant did stay in the Quarters when he had no authority to stay there and to that extent has deprived other government employees of the enjoyment of the Quarters. The applicant himself has in terms of Tiwari's Judgment suggested that three times the licence fee may be adjusted from the pensionary benefits and the balance may be repaid to him. I am therefore, of the view that the interest of the Government revenue as well as of the interest of justice would be safeguarded by requiring the applicant to make payment of damage rent at thrice the licence fee for the period of unauthorised occupation before release of the pensionary benefits. ^{provisional} ~~or of respondents to withhold Dearness Relief.~~ I therefore dispose of this O.A. by passing the following order.

O R D E R

1. The order of the Estate Officer dt.6.5.96 assessing the damage rent at Rs.5,29,274/- is hereby quashed and set aside. The matter is remitted back to the Estate Officer to reassess the damage rent giving a ~~after~~ hearing to the applicant as to the reasonableness of the damage rent in terms of provisions of P.P. Act and the rules thereunder. It is expected that the applicant would cooperate with the inquiry and would enable the Estate Officer to finalise the matter within a period of three to six months from the date of ~~Liberty to applicant to the passing of the present order.~~ challenge re-assessed damage rent if so advised.
2. So far as the pensionary benefits are concerned, the same may be refunded to the

applicant after adjusting thrice the licence fee against unauthorised occupation of the Government accommodation by the applicant for the period from 1.6.1992 to 13.1.1995. The payment in this regard may be made to the applicant within three months of the date of communication of the order. In the facts and circumstances of the case I am not inclined to grant any interest to the applicant on delayed payment.

There will be no order as to costs.

O.A. NO. 608/96.

15. In this O.A. the facts are comparatively simple. The applicant was transferred from Bombay to Delhi. The order in this regard was issued on 22.4.1995 which the applicant received on 12.6.1995 and he actually took charge at Delhi on 17.7.1995. The applicant was re-transferred to ~~Bombay~~ ^{Bombay} Delhi w.e.f. 20.5.1996 and actually joined at ~~Bombay~~ ^{Bombay} Delhi on 27.5.1996. He vacated the Quarters on 17.5.1996. Estate Officer's is In terms of Order the damage rent/assessed at p.m. the rate of Rs.53,489/- totalling Rs.2,34,295/- for the period from 16.1.1996 till 17.5.1996 which is being treated as a period of unauthorised occupation.

16. The applicant contends that he was required to keep his family in the allotted quarters till the end of the academic session. The examinations ~~were~~ completed on 15.5.1996 and he vacated the quarters promptly on 17.5.1996. The applicant has challenged the order dt. 22.4.1996 which is the order assessing the damage rent. The contention of the applicant is that before issue of this order no proceedings under section 4 of P.P. Act had taken place. The respondents

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have straightaway proceeded to pass the order under section 7 of the P.P. Act without holding a detailed inquiry. No notice under section 7 was also issued.

17. The facts in the present case are slightly different from the earlier case, because the applicant in fact applied for permission to stay in the quarters on medical/educational grounds and the same was granted to him. Accepting the contention of the applicant that he joined at Delhi on 17.7.1995, the applicant was entitled to retain the quarters in the normal course up to 17.9.1995 and since he was given permission to occupy the quarters for six more months the same period expires on 17.3.1996. The action of the respondents therefore to charge damage rent from 6.1.1996 instead of 17.3.1996 needs in the first instance to be looked into. Secondly, any permission on medical or educational grounds is required to be related to the actual dates of the examination. In the instant case the applicant has contended that the examinations were over on 15.5.1996 and he promptly vacated the quarters immediately thereafter viz. 17.5.1996. Therefore, secondly, the question of permission to the applicant to stay in the quarters for the actual period of examinations is required to be considered. Thirdly, the applicant, of course, is entitled to challenge the reasonableness of the rate of damages charged to him as explained in the earlier case No. C.A. 842/96. I am therefore, inclined to quash the order dt. 22.4.1996 (Ex. 'A') assessing the damage rent and remit it back to the Estate Officer with a direction to give a hearing to the applicant both on the point regarding actual period of unauthorised occupation and also the basis of the calculation of the Damage rent in terms of provisions of P.P. Act and the rules thereunder. It is expected that the applicant would co-operate with the inquiry and would

enable the Estate Officer to finalise the matter within a period of three to six months from the date of the receipt of the present order. Liberty to the applicant to challenge the order including the order as to re-assessed damage rent if so advised.

18. The O.A. is therefore disposed of in these terms with no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.

enable the Estate Officer to finalise the matter within a period of three to six months from the date of the receipt of the present order. Liberty to the applicant to challenge the order including the order as to re-assessed damage rent if so advised.

18. The O.A. is therefore disposed of in these terms with no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. 47/1997
IN
ORIGINAL APPLICATION NO. 842/96.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

S.S.Roy. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

ORDER ON REVIEW PETITION BY CIRCULATION

(Per Shri M.R.Kolhatkar, Member(A))

Dated: 10.6.97

In this Review Petition filed by the original applicant, he has sought review of that part of the Judgment dt. 10.4.1997 in which the Tribunal observed as below :

"I am not inclined to grant any interest to the applicant on delayed payment."

According to the Review Petitioner the direction to deny interest is not in accordance with settled law, as well as, Rules. Rule 68 of the CCS(Pension) Rules, 1972 provides that "If the payment of gratuity has been authorised after three months from the date when its payment became due and it is clearly established that the delay in payment was attributable to administrative lapse, interest at such rate as may be prescribed by the Government from time to time in this behalf on the amount of gratuity in respect of the period beyond three months shall be paid." So far as the case law is concerned, he has relied on Padmanabhan Nair (AIR 1985 S.C. 356) and R.Kapoor (1994)28 A.T.C. 516. According to the Review Petitioner, the CAT has no discretion to deny interest on the basis of the said statutory provision and the case-law.