

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No. 822/1999

Thursday this the 31st Day of August, 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)

Shri V.B. Nikalje,
(Ex. Sr. Selection Supervisor (Operative),
(Telegraph Deptt.)
R/o C.V. Nikalji
Rashmi Apartment,
Bibewadi, Pune -411 037. Applicant

(Applicant represented by Ms. N.Gohad with Shri S.P.Saxena,
Advocate)

vs.

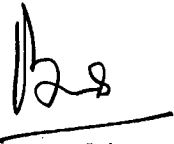
1. Union of India through
The Secretary
Ministry of Telecommunications,
New Delhi 110 001.
2. The Divisional Engineer
Building Internal Planning II
Pune Telecom, Pune.
3. The General Manager
Telephones, Bajirao Road,
Pune - 30.
4. The Sub-Postmaster
Salisbury Park P.O.,
Salisbury Park, Pune -1. Respondents

(Respondents represented by Shri V.S. Masurkar, Advocate)

ORDER

[Per B.N.Bahadur, Member (A)]:

This is an Application made by Shri V.B. Nikalje seeking the relief for a declaration that Respondents are not entitled to claim damage rent for the Govt. quarters occupied by the Applicant during the period in which the Stay Order dated 7.2.1987 (of the High Court) was operating. The case made out by the Applicant is that he retired voluntarily on 30.11.1986, and continued to occupy Govt. quarters beyond his retirement till 31.12.1994 on the basis of an Interim Order passed by the High



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Court of Bombay (Exhibit A.1) permitting the Applicant to reside in the quarters on the usual rent. He vacated the quarters on 31.12.1994, and contests the claim of over one lakh rupees, raised as damage rent by Respondents to be recovered from Applicant's pension.

2. The Applicant has expounded these facts in the remaining parts of his Application, specially giving the background of the *Panshet Dam* disaster, and how an understanding was given that these houses would be transferred to them by adjusting rent paid. This did not happen, and several employees filed W.Ps. before the High Court of Bombay. The Applicants lost in the High Court, as per details on record.

3. The learned Counsel for the Applicant argued her case and took me over the facts of the case in detail, and made the point that when the Applicant was protected by a Stay Order, it was wrong to charge the damage rent for the period under stay. (The Applicant is protected currently also by an Interim Order of this Tribunal.) Learned Counsel made the point that no Show Cause notice has been issued to the Applicant, and takes support of decision in O.A. 519/94 (A.9) made by this Bench. It was admitted that the Full Bench judgement coming on a reference in this O.A. was against the Applicant. Learned Counsel also cited the case of *Dominic James (1992 (21) ATC 735)* which, she stated, clearly helps the applicant's cause.

4. Another point made was that as per Limitation Act 1963, (Entry 52 in Schedule) arrears of rent could be recovered only upto a period of 3 years from their becoming due and hence this demand of Respondents is invalid, being hit by Limitation. Learned Counsel cited the case of *Sethumadhavan Nair [(1995) 29 ATC 742]* in defence of Applicant.

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5. The Respondents have filed a reply. Their learned Counsel argued the case before me. It was stated that while the basic facts were correct, it has to be remembered that the final orders of the High Court dated 17.8.1995 had dismissed the Petition. A copy of the Orders was produced at the time of the arguments. Learned Counsel stated that the Petition was dismissed, and the Rule discharged. This has to be taken to imply ^{that the Order} effect of the Stay Order goes away, retrospectively, and that the Interim order cannot give any rights to the Applicant. This, in fact, is the first issue before me for a decision. Learned Counsel discounted the applicability of the two cases cited by Counsel for Applicant, and cited the cases of *N.Mohanan* [(1997 (1) SC SLJ 193)] and the of *Veepathu* [1998 (2) ATJ 110]. He also stressed on the point that a notice should be held to be issued vide communication at A.5.

6. Regarding the point of limitation, vis-a-vis entry No.52 of the Limitation Act 1963 cited by counsel for Applicant, learned Counsel for Respondents made the point that Govt. charges "licence fee" and not "rent". He further stated that all similarly placed persons had been subjected to similar recoveries and no discrimination was involved.

7. The first Question that arises for a decision is whether protection would, or would not, be available to the Applicant, in view of the stay of the High Court granted vide Exhibit A.1 from recoveries now ordered. The Question hinges on a purely legal point. Hence, I have carefully seen the two cases cited by the Counsel for Respondents viz. the cases of *N. Mohanan* and *Veepathu*. In the former case, it has been held that Interim Order does not create any right. In that case, an appointment had been provided to the applicant there through an Interim Order

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but the Petitioner ultimately did not succeed in the SLP before the Hon'ble Supreme Court, which had decided that it would not be open for the Petitioner to claim that the appointment should be continued and that he should be regularised.

8. The other case cited on the same point has been decided by the Kerala High Court, ~~It~~ is held again on the strength of the aforesaid *Mohanan's* case decided by the Supreme Court that no rights can be created by an Interim Order. No case decided by Supreme Court has been cited by the Learned Counsel for the Applicant on the legal aspect in defence of applicant. The case cited (519/99) does not help the Applicant and in fact the Counsel for Applicant agreed that judgement of the Full Bench, to which one issue was referred went against the Applicant. Similarly, I have also seen the cases of *Sethumadhavan Nair* and *Dominic James*. The case of *Dominic James* is indeed in favour of the Applicant, because it has been held there that damage rate of rent could not be charged where an employee stayed in Govt. accommodation under the Court Order. However, this order made by a Single Member of the Tribunal cannot provide any benefit to Applicant in the face of ratio of the Supreme Court cited in *Mohanan's* and *Veepathu's* case above. No different view can naturally be taken by me on this legal issue. Hence the interim order would not afford protection to Applicant.

9. The other issue in the case relates to the question of limitation argued by learned Counsel, Ms. Gohad. Attention was drawn to Entry No.52 of the Schedule to the Limitation Act 1963, where indeed the period of limitation for recovery of arrears of rent is three years from the date when the arrears become due. In this case before me the arrears finally became recoverable ~~became due~~ ^{became} when the High Court finally disposed of the matter

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i.e. on 17.8.1995. Now the Applicant's contention is that the process of recovery was started only in 1999 (Ex.A5) and thus is time barred. In this case it must be noticed that it is not as though a surprise has been sprung in 1999 to inform the Applicant that the amount in question is due. The Applicant is aware of this even prior to 1987, and in fact, has agitated the matter in the High Court. He has had a full opportunity to plead his case, and it cannot be said that a fresh notice would be necessary again. The case of Sethumadhavan Nair vs.A.G. & ors. (1995) 29 ATC 742 has been cited by the Learned Counsel for Applicant in support of Applicant's case for limitation. I have seen this judgment (pronounced by the Ernakulam Bench of this Tribunal). The case there was for recovery of an amount relating to H.R.A. for the period between 3.8.1981 to 31.3.1992. It was held that since the recovery order was issued on 23.7.1992, the recovery could only be restricted to the amount due from a date three years earlier i.e. with effect from 23.7.1989. Now, in the case before me it cannot be said that the recovery order has been issued in 1999. It is only that the process of actual recovery has been started in 1999, but the decision regarding the recovery due was communicated even before 1987. Thus it is difficult to that the Respondent Department will be estopped from recovering the amount because of the four year delay between 1995 and 1999 in the actual process of recovery.

Of course, Respondents cannot, obviously, ask for any interest. Ans

10. There is also some weight in the contention of the learned Counsel for the Respondent that what is being charged here is Licence Fee, and that such amounts have been recovered from all other similarly placed persons and that no discrimination has been made in the case of the Applicants. No details have been placed before the Tribunal by applicant to

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prove that the Department has not recovered such amounts from any, or even a few, of the similarly placed persons. Hence it will be difficult to provide a relief to the Applicant at the cost of financial loss to the Govt., specially in the background of the litigation upto the level of the High Court.

10. In the facts and circumstances of the case, therefore, no relief can be provided to the Applicant. The Application is, therefore, dismissed, with no orders as to costs.

11. The Interim Orders of this Tribunal issued on 23.9.1999, and continued from time to time are hereby vacated.

B.N. Bahadur
(B.N. Bahadur)

Member (A)

31/08/2000

sj*