

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO.846/99.

Dated: 6.1.2000.

Vilas Shankar Vengurlekar

Applicant.

Mr. S.P.Kulkarni,

Advocate

Applicants.

Versus

Union of India & Ors.

Respondent(s)

Mr. V.S.Masurkar

Advocate for

Respondent(s)


CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

(3) Library?

  
(R.G.VAIDYANATHA)  
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.846/99.

Thursday, this the 6th January, 2000.  
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Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

Vilas Shankar Vengurlekar,  
C/o.Vasudeo Bapu Pednekar,  
Pitru Chhaya Building,  
Room No.4, Gawan Pada,  
M.G.Marg, Mulund East,  
Mumbai - 400 081.  
(By Advocate Mr.S.P.Kulkarni)

...Applicant.

Vs.

1. Union of India through  
Chief Postmaster General,  
Maharashtra Circle, Old G.P.O.  
Building, IInd Floor, Near C.S.T.,  
Mumbai - 400 001.
2. Senior Superintendent of Post Offices,  
Mumbai City West Division,  
Dadar Head Post Office Building,  
Dadar (East),  
Mumbai - 400 014.
3. Senior Manager,  
Mails Motor Service, Mumbai,  
S.K.Ahire Marg, Worli,  
Mumbai - 400 001.
4. The Estate Officer,  
Office of the Chief Postmaster General,  
Maharashtra Circle,  
G.P.O. Building Complex, Fort,  
Mumbai - 400 001.

(By Advocate Mr.V.S.Masurkar)

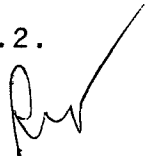
...Respondents.

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application challenging the impugned order for recovery of penal rent dt. 1.2.1999. The respondents have filed reply opposing the application. An order was passed on 18.11.1999 that the OA should be finally heard at the time of

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admission itself. The pleadings are complete. After hearing the learned counsels appearing on both sides, I am disposing of the application at the admission stage itself.

2. The applicant is a Staff Car Driver of the Postal Department. He belongs to Essential Service and he is also entitled to a telephone at his residence. It appears, the Sub-Postmaster's quarters at Grant Road was lying vacant since the incumbent of the post of Sub-Postmaster was not occupying it, the said quarter was temporarily allotted to the applicant by an order dt. 5.5.1992. Then, in 1996, the department issued a notice to the applicant <sup>to</sup> vacate the quarters within 15 days. Then, the applicant made a representation for retention of the quarters. Then, there were some correspondence between the applicant and the respondents and finally an order was passed on 23.10.1998 by the Chief Postmaster General stating that the applicant cannot continue in the quarters in question and his allotment is cancelled and that he should vacate the quarters within 15 days, failing which he will be liable for penal rent from 1.11.1998 and liable for eviction. Subsequently, the Senior Superintendent issued the impugned order dt. 01.02.1999 stating that the applicant who has since vacated the quarters on 22.1.1999 is liable to pay damage rent for the period from 06.12.1998 to 22.01.1999, but at the time of arguments the learned counsel for the respondents submitted that the date 6.12.1998 is mentioned by mistake and it should be 6.12.1992. The damage rent claimed is Rs.27,217/-. Being aggrieved by this demand, the applicant has approached this Tribunal.

According to the applicant he is not liable to pay any penal rent and he has taken number of grounds for quashing the

impugned demand. He, therefore, wants that the impugned order dt. 1.2.1999 be quashed and respondents be restrained from demanding/collecting damage rent from the applicant.

3. The respondents have justified the impugned order. According to them after the expiry of six months from the date of initial allotment the applicant should have vacated the quarters and hence he is liable to pay damage rent from 6.12.1992. The applicant must be treated as an unauthorised occupant after the expiry of six months from the date of initial allotment. It is therefore, stated that the demand is perfectly justified and there is no merit in the OA.

4. The learned counsel for the applicant contended that the applicant is not liable to pay penal rent at all. Alternatively, it is submitted that, at best the department can claim penal rent only from 1.11.1998 and not earlier. On the other hand, the learned counsel for the respondents contended that applicant is liable to pay penal rent from 6.12.1992. Alternatively, it was submitted that since notice dt.30.8.1996 was issued to the applicant to vacate the quarters within 15 days failing which he is liable to pay penal rent from 30.8.1996.

5. After hearing the learned counsels appearing on both sides, I find that the first contention of the counsel for the applicant is well founded and hence we need not go to the alternative submission that liability is only from 1.11.1998.

Admittedly, the quarters in question was allotted to the applicant by order dt. 5.5.1992 which is at page 18 of the paper book and it shows that the quarters is allotted to the applicant on temporary basis without mentioning any particular period. The only condition was that he will have to vacate the quarters on

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demand by the permanent Sub-Postmaster. After 1992 till 1996, there was no notice to applicant to vacate the quarters, there was no demand by the Sub-Postmaster for the quarters. For the first time, we find the department issued letter dt. 30.8.1996 which is at page 19 of the paper book. No doubt, in the said letter the applicant is called upon to vacate the quarters within 15 days, failing which he is liable to pay rent at market rate. If this letter was alone the last correspondence between the parties, the learned counsel for the respondents would be right in submitting that after expiry of 15 days from this letter applicant's possession was unauthorised and he is liable to pay penal rent. But, we find that even after this letter the department has allowed the applicant to continue in the said quarters and therefore the possession of the applicant will not become unauthorised after the expiry of 15 days from 30.8.1996 as contended by the learned counsel for the respondents.

6. The applicant made representation in reply to the letter dt. 30.8.1996 for allowing him to continue in the quarters. Then, we have an important letter dt. 25.4.1997 at page 21 of the paper book where the Senior Superintendent of Post Offices writes to the applicant that his request for retaining the quarters has been forwarded to the competent authority viz. the Directorate for approval. Then, it is further mentioned that if approval from the Directorate is not received then he will have to vacate the quarters immediately, failing which he is liable to pay penal rent. Therefore, as late as on 25.4.1997 the applicant was told that he can continue in the quarters till the receipt of reply from the Directorate about his request for retention. He further cautioned that he must be ready to vacate the quarters when asked

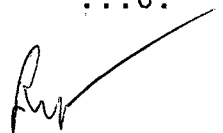
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for. Therefore, claiming any penal rent prior to 25.4.1997 will not arise at all. Then, we find that the incumbent Sub-Postmaster made a claim for the quarters for the first time on 10.8.1998 as could be seen from Ex.R-2 attached to the reply. Here the Sub-Postmaster says that he has now joined the post and he requires the quarters. It may be recalled that as per the initial allotment letter the applicant had been told that he should vacate the quarters whenever demanded by the Sub-Postmaster. Now, between 1992 and 1998 there is nothing to show that any demand was made by the Sub-Postmaster for the quarters in question. Therefore, on 10.8.1998 when the Sub-Postmaster made a request for the quarters, the applicant is liable to vacate the quarters to accommodate him.

7. Then, we find that applicant's request for retention of quarters etc. was referred to the highest authority in the Postal Department in the Circle who is Chief Postmaster General of Maharashtra Circle. The Chief Postmaster General's order is dt.23.10.1998 and it is at page 24 of the paper book. After referring to the facts, the Chief Postmaster General says that the quarters in favour of the applicant stands cancelled w.e.f. 1.11.1998 and he should vacate the quarters within 15 days from the date of the order. In view of this latest letter by the highest authority in the Postal Department of Maharashtra Circle, we need not attach any importance to the earlier letters. The highest authority has granted 15 days time to the applicant to vacate the quarters from 24.10.1998 and he has been told that he is liable to pay penal rent from 1.11.1998 unless he vacates the quarters. In view of this letter of C.P.M.G the respondents claim for claiming damage rent from 6.12.1998 falls to the

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ground.

8. Now, the question is whether the C.P.M.G's demand that applicant should vacate the quarters within 15 days is according to law or not. The learned counsel for the applicant brought to my notice the relevant rule which S.R. 311 to 313 (the extract of the relevant rules are annexed to the OA at page 30 of the paper book). This S.R. 311 pertains to designated quarters.

At page 32 of the paper book, it is provided in S.R. 313(3) III (iii) that the designated quarters can be allotted to other persons. Then, sub-rule (iv) provides as follows:

"The allotment may be cancelled on the basis of three months notice whenever the quarters are required for the use of the regular incumbent entitled to the post-attached quarters."

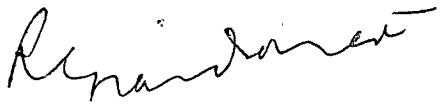
In view of the above provision, three months notice will have to be given to the official to vacate the quarters when it is required to accommodate the regular incumbent of the post-attached quarters. Now, the C.P.M.G. has passed an order on 23.10.1998 cancelling the allotment in favour of the applicant and the order is perfectly valid. But, the only thing is that he must give three months notice to the applicant to vacate the quarters as provided in the relevant sub-rule of S.R. 313, but the C.P.M.G. has given only 15 days notice. Therefore, the applicant will be liable to pay penal rent on the expiry of three months from the date of cancellation of the allotment vide notice as provided under S.R.313. The C.P.M.G's order is dt. 23.10.1998, even if we ignore the date of communication of the order, the three months from 23.10.1998 expires on 23.1.1999. Therefore, the applicant has to vacate the quarters within three

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months from the date of cancellation of the quarters by C.P.M.G. Though the C.P.M.G. has used the words 15 days notice for vacating the quarters, he should have given three months notice as provided under the Rules. Therefore, in the circumstances no penal rent can be demanded prior to 23.1.1999. But, since the applicant has vacated the quarters on 22.1.1999 the question of payment of penal rent does not arise. Therefore, in the facts and circumstances of the case, I hold that the demand of penal rent under the impugned order dt. 22.12.1998 is not sustainable in law and is liable to be quashed.

9. In the result, the application is allowed the impugned demand of penal rent under the order dt. 22.12.1998 is hereby quashed. The respondents are hereby restrained from taking any steps to recover penal rent or damage rent from the applicant for being in occupation of the quarters in question. If any amount has already been recovered from the applicant's salary in pursuance of the impugned order dt. 22.12.1998, the said amount should be refunded to the applicant within four weeks from the date of receipt of this order. No order as to costs.

  
(R.G. VAIDYANATHA)

VICE-CHAIRMAN

B.