

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.788/2000

Tuesday this the 13th day of March 2001

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

Surinder Kumar Sawhney,
Usha Bhasin (BHASIN) 8,
Straway Society, Juhutara,
Mumbai 400 049.
(By Advocate Ms.S.D.Ghulane)

...Applicant.

Vs.

1. Union of India, through
Directorate of Estates,
Nirman Bhavan,
New Delhi.
2. The Estate Manager,
O/o. The Estate Manager,
Old C.G.O. Building Annexe,
3rd Floor,
101, M.K.Road,
Bombay - 400 020.
3. Sr. Accounts Officer (Pension),
The Pay and Accounts Officer,
IRLA Group, Ministry of Information
& Broadcasting, A.G.C.R.Building,
Indraprashtha Estate,
New Delhi - 110 002.
(By Advocate Shri V.S.Masurkar)

...Respondents.

O R D E R

{Per Shri B.N.Bahadur, Member (A)}

The Applicant in this case, Shri Surinder Kumar Sawhney
comes up before the Tribunal seeking the relief as follows:

"1. This Hon'ble Court may be pleased to call for

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the records pertaining to the issuance of the order dated 2.2.2000, 13.4.1999, 31.5.1999 and 13.7.1999, being Exhibit A-1 and after examining the legality and validity of the same to quash and set aside the order dated 2.2.2000, 13.4.1999, 31.5.1999 and 13.7.1999.

2. To hold and declare that the respondents are not entitled to recover any penal rent in excess to what is provided in the rule as well as in the judgment of Hon'ble Supreme Court.

3. To hold and declare that Estate Manager has no power under the provisions of P.P. Act 1971 to assess the damage rent.

4. To hold and declare that order dt. 13.4.1999, 31.5.1999 and 13.7.1999 is violative of principles of natural justice as no hearing was given to the applicant before passing the order dt. 13.4.1999, 31.5.1999 and 13.7.1999.

5. This Hon'ble Tribunal may be pleased to grant any other relief to which the applicant may be found entitled and in this respect, may pass any such order or direction or suitable writ as deem fit.

6. Cost of this application may be provided."

2. The facts of the case, as brought forth by the Applicant, are that he sought voluntary retirement from service, and accordingly retired w.e.f. 1.6.1998. On retirement he was not paid the retiral benefits due to him, except dues from the Provident Fund. He states that he had filed OA 87/1999 claiming payment of retiral dues viz. Pension, Commutation value of Pension, Gratuity, C.G.E.I.S., Leave Salary etc. along with interest at the rate of 18% p.a. and the OA was decided on 25.3.1999 (copy at A-6). The Applicant seeks to challenge the action of Respondents in recovering rent in excess of what is provided in Rules for the period of over-stay in government accommodation. He alleges that these orders have been issued without following

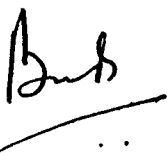
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the principles of natural justice, and rent from 1.2.1999 to 30.5.1999 has been charged at the rate of Rs.23,815/- p.m. It is the contention of the applicant that the rent for over-stay cannot be charged at a rate more than twice the normal Licence Fee. The applicant, then goes on to expound the grounds he takes and the position of Rules specially S.R. 317 and Government O.M. which he quotes. Further details are also provided in the application.

3. The Respondents in the case have filed a written statement in reply, denying all material averments except those specifically admitted. It is stated that applicant was allotted Flat No. A-5, Type - IV, Hyderabad Estate, Mumbai while being employed in the Films Division, Ministry of I & B at Mumbai. The allotment of the flat was cancelled w.e.f. 1.10.1998 in view of the voluntary retirement of the applicant w.e.f. 1.6.1998.

4. It is further stated that the Applicant had requested for retention of the accommodation on medical grounds beyond 1.6.1998 and accordingly the applicant was granted retention for the maximum period of four months under S.R. 317-B-22 (R-1). The applicant, however, did not vacate the accommodation on expiry of the period of retention allowed and over-stayed till 31.5.1999 without any authority. Before any action for eviction could be taken, OA 87/99 was filed in this Tribunal which was disposed of on 25.3.1999.



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5. The Respondents then, state their case with reference to the S.R. 317-B-22 saying that four months is the maximum period of retention allowed, and anything beyond that is treated as unauthorised occupation. Hence, the Licence Fee charged for over-stay is correct. The claim for charging Licence Fee at twice the rate would not be justifiable as per Rules. The Respondents seek to take support of the decision in the case of Ram Poojan Vs. Union of India (1996(1) ATJ-544) and also by a subsequent decision of a Division Bench of this Tribunal in OA 1217/93 decided on 25.9.1998. It is also stated that this position was again upheld by this Tribunal on 29.1.1999 in the matter of K.B.Kale Vs. Union of India in OA 57/98. It is alleged that the Applicant was under unauthorised occupation in terms of section 2(g) of the Public Premises Act.

6. I have heard the Learned Counsels on both sides and perused the papers in the case, and the case law cited. The Learned Counsel for the applicant first took me over the facts of the case stating that while the retirement came into effect from 1.6.1998 the Quarter was vacated on 30.5.1999. She gave the detailed background of the case, with reference to the facts cited in the OA and took strenuous pleas on the basis of the grounds made out in the written application especially regarding the SRs cited. It was argued by her that the action of the Respondents in the manner in which the rent was charged was

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illegal. Hearings under Public Premises Act were fixed on 18.5.1999 and were attended by the applicant, however, the Estate Officer was not present. It was further argued that any rent charged in excess of the prescriptions in the Rules specially S.R. 317-B-22 were clearly levies outside the authority of law. Further, the Estate Manager is not authorised to pass orders regarding damage rent and this was another point that was taken.

7. Another argument made by the Learned Counsel for Applicant was that since retiral dues were not paid the applicant could not pay the damage rent levied. Learned Counsel for the applicant sought to take support of the order made by a Single Bench of this Tribunal in the matter of B.N.Jadhav Vs. Union of India on 12.10.2000 in OA No.939/99 (copy of this order is on record at page 43).

8. Arguing the case on behalf of the Respondents, their Learned Counsel first took me over the paragraphs 4 to 6 of the Judgment made in OA No. 87/99 filed by this applicant saying that processing of Pension Papers take greater time than three months in cases where voluntary retirement is sought, as distinguished from cases where retirement comes on the date of superannuation. He also drew attention to para 6 of the aforesaid order on the same question of delay in sanctioning pensionary benefits. Counsel for Respondents then took me over the written statement of the Respondents at paras 8 onwards. It was stated by him that the applicant has alleged in para 5.3 of the OA that no

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proceedings under section 7 of P.P. Act, 1971 were initiated. The position in this regard has been clarified by the Respondents in para 13 of their reply. Where it is stated that there is no necessity to invoke provisions of Section 7 of the said Act in view of the ration of the case decided in the matter of Ram Poojan Vs. UOI already referred to. It was stated that O.M. cited at 21 No.18011/1/99-Pol. III, dt. 27.10.1999 had come into effect after the cause of action had arisen and this would need to be borne in mind. In other words, the Learned Counsel for Respondents argued that this OM would not be applicable.

9. On consideration of the facts of the case, the grounds and arguments taken and the papers in the case, it is seen that the Applicant retired on voluntary retirement basis w.e.f. 1.6.1998 and was admittedly allowed to stay on in the premises allotted to him till 31st January, 1999 i.e. for a period of eight months. Also admittedly, he vacated the premises on 30th May, 1999. The period for which now I have to consider the issues raised is the period between 1.2.1999 to 30.5.1999. It is clear from the facts of the case that the issue will need to be resolved purely from the Rules of the Government, and their applicability, made properly or otherwise. Also with regard to case-law brought to my notice.

10. Let us first take up SRs quoted. SR-317-B-21 is at once seen to be irrelevant, as it relates to sub-letting/misuse of

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accommodation, which is not the case before me. S.R. -317-B-22

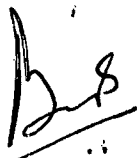
reads as under:

"Where, after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the officer to whom it was allotted or of any person claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charged, as may be determined by Government from time to time, or twice the licence fee he was paying, whichever is higher:"

Two ingredients are evident. The first being that Government can decide what the damage rent rates would be like. The second is that this could be twice the Licence Fee, whichever is higher. The phrase "whichever is higher" brings the entire argument made by the Applicant's Learned Counsel to a nought. There is no question, therefore, as argued, that the charges made have to be restricted to twice the Licence Fee being paid.

11. The next support sought by Applicant/his Counsel related to the provisions of OM of the Government of India, Directorate of Estates dt. 27.10.1999. It is not clear how this OM helps the Applicant. The calculations as available on record through the communications of Respondents only give gross figures and the rate per sq. ft. is not mentioned. This is a matter which has in any case, not been specifically raised for adjudication viz. as to what rate per sq.ft. would be applicable as damage rent.

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It is upto the two parties to go into mutually, in case pure calculation errors are involved. The basic point is that the OM does not help in regard to the issue at hand. The Judgment in Tiwari's case (1996 (3) SLR 609) raised in support by the Applicant is not relevant in the present matter. Similarly, the Judgment in OA 939/99 decided by a Bench of this Tribunal also clearly relates to the subject of misuse of Government accommodation (SR 317-B-21); hence this Judgment is also not applicable. One argument raised by the Learned Counsel for the Applicant related to the lack of competence on the part of the officer who has issued the communications at A-1 A-2 A-3 and A-4. It is not the case here that an Officer is exercising judicial or quasi-judicial function and therefore lacks legal competence. The officer/officers are only conveying or going by Government instructions and hence this objection is also not valid.

12. Thus on a total consideration of the case, as discussed above, I am not convinced that a case has been made out for provision of the relief/s sought, through judicial intervention. No relief can, therefore, be granted. The application is therefore dismissed. No costs.

B. N. Bahadur

(B.N. BAHADUR)
MEMBER (A)

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