

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:160/2001

DATE OF DECISION: 9.8.2001

Shri V.G. Ghete Applicant.

Shri G.S. Walia Advocate for
Applicant.

Verses

Union of India and others Respondents.

Shri Suresh Kukar Advocate for
Respondents

CORAM

Hon'ble Smt. Shanta Shastry, Member (A)

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

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

(3) Library. ✓

Shanta
(Shanta Shastry)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:160/2001

THURSDAY the 9th day of AUGUST 2001

CORAM: Hon'ble Smt. Shanta Shastry, Member(A)

V.G. Ghete
Residing at
8/6, Panch Pandav Colony,
Brahma Pada, Ulhasnagar.

...Applicant.

By Advocate Shri G.S. Walia

V/s

1. Union of India through
General Manager,
Western Railway,
Headquarters Office
Churchgate, Mumbai.
2. Divisional Railway Manager
Mumbai Division,
Western Railway,
Mumbai Central, Mumbai.
3. The Manager,
Canara Bank,
Ulhasnagar Branch,
Ulhasnagar.

...Respondents.

By Advocate Shri Suresh Kumar.

ORDER (ORAL)

{Per Smt. Shanta Shastry, Member(A)}

Heard Shri G.S.Walia counsel for the applicant and Shri Suresh Kumar counsel for the respondents at the stage of admission.

2. In this OA the relief claimed by the applicant is to direct the respondents to pay full pension to the applicant for the month of February 2001 payable on 28.2.2001 or 1.3.2001 and

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onwards and not to withhold the full pension. A further prayer is that no deduction from the pension of the applicant towards damages rent as ordered by letter dated 9.2.2001 by the respondents be allowed to be made.

3. The applicant has filed a rejoinder on 30.7.2001, wherein he has brought to the notice of the Court that his son who had occupied the official quarter was evicted there from or is supposed to have vacated the same. The exact date on which the eviction has taken place is not given. Now the applicant has raised the plea in this rejoinder that he is not liable to pay damage rent or the same cannot be deducted from his pension or Dearness Relief as no proceeding under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 have been taken against him nor has he been given details of the amount of deduction to be recovered as damages rent. this action of respondents is violative of principles of natural justice. The whole of the gratuity has already been adjusted against damages rent.

4. According to the learned counsel for the applicant he had repeatedly asked the respondents to evict the applicant's son. However no action was taken by the respondents and only now the son has been evicted. The applicant states that he is not responsible for the stay of his son in the quarter allotted to him. Further this Tribunal has granted stay to the applicant directing the respondents not to withhold full pension of the

applicant. The learned counsel for the applicant submits that it is permissible to raise a new plea in the rejoinder and in support of his contention the judgement of the Supreme Court reported in AIR 1965 SC 1578 para 17 wherein it has been held that the plea raised in the rejoinder can be relied upon, has been cited by him.


5. The learned counsel for the respondents submits that the applicant in the OA had nowhere made any plea regarding the recovery of damages rent. In fact the applicant had approached this Tribunal as well as the High Court earlier for not making deduction of damage rent from his gratuity. The same was rejected. According to the learned counsel for the respondents the rejection was against the prayer of the applicant not to recover the penal rent or damage rent without enforcing the action under the Public Premises (Eviction of Unauthorised Occupants) Act. The learned counsel for the respondents states that he will produce the relevant judgement filed in the Tribunal as well as in the High Court.

6. Be that as it may, I find that when the applicant filed the OA the only prayer sought therein was not to make any recovery of damage rent from his pension and not to withhold full pension. As far as withholding of pension is concerned, this Tribunal had already directed the respondents earlier not to withhold the pension and the same has been complied with. The second part is about recovery of damages rent from the pension.

Obviously in view of the relief already granted, in terms of prayer (a), it is now confirmed that the respondents are now making the recovery against the Dearness Relief, which is permissible, as Dearness Relief is not treated as part of pension.

7. The applicant has filed a rejoinder in which he has now sought the relief of waiving of the damages rent. This goes beyond the relief claimed in the original application. If a new relief is to be claimed then the proper course would be to file M.P. for amendment of the OA. The applicant has contended that a new plea can be raised in the rejoinder. Raising a new plea is different from claiming a new relief which can be done either by seeking to amend the OA or by filing a fresh OA. It cannot be done in a rejoinder.

8. In the light of the position mentioned above the OA has become infructuous nothing more survives and is therefore disposed of with no order as to costs. If the applicant has any further grievance he is at liberty to agitate the matter afresh as per law and rules.


(Smt. Shanta Shastri)
Member(A)