

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 523/91

~~Transfer Application No:~~

DATE OF DECISION: 1. 9. 94.

Shri Chandulal Hasham Bhai Petitioner

Shri R.S. Kulkarni Advocate for the Petitioners

Versus

Union of India and others. Respondent

Shri P.M. Pradhan. Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The 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 ?


(B.S. Hegde)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(18)

Original Application No. 523/91

Shri Chandulal Hasham Bhai

... Applicant.

V/s.

Union of India through
Chief Post Master General
Maharashtra Circle
Bombay.

The Estate Officer
Office of the Chief
Post Master General
Maharashtra Circle,
Bombay,

Postmaster General Pune Region
Pune.

Senior Supdt. of Post offices
Pune City East Division
Pune.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)
Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

Shri R.S. Kulkarni, counsel
for the applicant.

Shri P.M. Pradhan, counsel
for the respondents.

JUDGEMENT

Dated: 1.9.94.

(Per Shri B.S. Hegde, Member (J))

The applicant filed this O.A.. challenging the recovery and direction that the respondents be restrained from arbitrary quantification of arrears of rent, charging of market/damage rent and further restrained from adjusting the Dearness Relief payable to the applicant until an authoritative order from competent authority as enjoined in Section 7 and 8 of P.P. Act 1971 is sent to him. The applicant also prayed for interim relief to direct the respondents to defer the adjustment of Dearness Relief payable alongwith the pension to the applicant. The Tribunal by its order dated 16.7.92 having

considered the case of the applicant directed the respondents not to recover any further amounts towards rent including damage rent from the pension and dearness allowance payable to the applicant till the decision of the O.A.

2. The brief facts of the case are that the applicant was employed in Postal department and he retired from service with effect from 31.7.82. Though he retired from service as early as 1982 he vacated the quarter only on 17.8.91. The admitted facts are that the respondents have acquired the land in Survey No. 537 at Gultekadi, Pune for constructing tenaments for flood affected employees of Panshet Dam. In the year 1964, the tenaments were constructed. In the year 1966 the tenaments were allotted to the employees including the applicant. The Applicant was occupying the said tenament till 17.8.91. He retired on superannuation with effect from 31.7.82; till then he was paying the rent at the rate of 10% of the pay. The same was recovered from his salary every month.

3. The main contention of applicant is that the respondents be directed to transfer the residential blocks in the occupation of employees on the same terms and conditions on which transfer of residential blocks in Mukundnagar colony at Pune was effected. It is true that the residents of Pune city were seriously affected because of breach of Panshet Dam which flooded and damaged a large number of residential premises in 1961. The Collector of Pune there upon requisitioned a large number of plots in exercise of the powers conferred by Section 5 of the Bombay Land Acquisition Act, 1948, for public purpose viz.

for the construction of tenements for the floor affected employees of the P & T Department. The allotment letter clearly recites that the allottee will forgo house rent allowance admissible to him with effect from the date of taking over the unit. The allotment was made subject to the rules and orders in force in respect of allotment of Government quarters. Some of the allottees thereafter retired from service on reaching the age of superannuation but declined to vacate the premises; the applicant was one among them. The P & T Department was compelled to commence proceedings for eviction under the Public Premises (Eviction of Unauthorised Occupants) Act. Their requests for transfer of the allotted premises on ownership basis has been turned down by the respondents in the year 1982. Thereafter the same petitioners including the applicant approached the Bombay High Court seeking a writ of mandamus compelling the respondents to transfer the allotted premises. The respondents in their reply contended that the quarters are allotted only to such of the employees those as are in service. They denied the contention of the applicant that the sale of quarters at Mukundnagar colony at Pune in the year 1972 has anything to do with the sale of quarters at Gultekadi, Pune as a matter of right.

4. The Bombay High Court while admitting the writ petition No. 59/83 filed by the petitioners (applicant was one of them), passed the following order:

By

" The respondents are restrained from charging higher rent than the petitioners were paying at the time of their retirement and from taking any action whatsoever for their eviction or dispossession of the said

blocks including notice of eviction or any other proceedings as stated in the accompanying copy of petition pending the hearing and final disposal of this writ petition. This Writ Petition was filed on 17.1.83."

The Bombay High Court while disposing the Writ petition vide their order dated 16.2.89 passed the following order:

"In our judgement, the question as to whether permission should be granted to purchase the Government quarters by the retired employees cannot be determined by rule of thumb but a policy decision will have to be taken by the Central Government by looking to the facts and circumstances of each case. In such a case, it is not permissible to issue writ as claimed by the petitioners. In these circumstances, we are unable to grant any relief to the petitioners and the petitions must fail.

Accordingly, rule in each of the petitions is discharged but without any order as to costs.

At that point of time the learned counsel for the applicant draws the attention of the court that they will not be evicted from the premises and give some more time to vacate the premises. Accordingly the court has given eight week's time."

As against the decision of the Bombay High Court the applicant had filed an S.L.P. No. 5629 - 46/89 before the Hon'ble Supreme Court. The Supreme Court vide its order dated 17.5.89 before admission directed the respondents not to evict or dispossess petitioners from the premises occupied by them. The petitioners, however will be liable

to pay rent for the premises in question as per Government Housing Accommodations 'Rules' from the month of May 1989. However arrears of enhanced rent will not be recovered until further orders. The Additional Solicitor General appeared on behalf of the respondents and after hearing the arguments the court issued notice returnable in July 89 with a direction that in the meanwhile, the eviction or dispossession of the petitioners from the premises in question be stayed subject to the condition that the petitioners pay market rent from May '89. Recovery of arrears of enhanced rent will not be effected until further orders. Pursuant to the Supreme Court direction, the respondents by their letter dated 7.6.89, directed the applicant to pay market rate of rent of the said quarters occupied by him at Rs. 245/- per month. Instead of adhering to the directions of the respondents the applicant wrote a letter dated 25.6.89 questioning the claim made by the respondents and did not make any payment as directed. The Supreme Court ultimately dismissed the S.L.P. on 26.7.89. However, they made an observation that the employees may not be terminated till 31.12.89 and they will be liable to pay rent in accordance with law. Subsequent to the Supreme Court order the respondents vide their letter dated 27.11.89 issued a notice to the applicant directing that in accordance with the judgement of the Supreme Court, he should vacate and pay the rent for the occupation of the quarter in accordance with the rules. An amount of Rs. 17030/- is yet to be received. Again one more notice was sent to the applicant, Annexure A-10 dated 2.3.90 directing to vacate the premises and hand over the vacant possession to the Government as ordered by the Hon'ble Supreme Court.

5. The main thrust of the arguments of the applicant in this case is that the respondents are not liable to charge the market rent as he was not in un-authorised occupation. He also contends that in any event the respondents cannot recover or deduct any amount payable out of retirement benefits such as Dearness Relief. During the course of hearing, the respondents have furnished the statement of amounts to be recovered from the applicant from the day of his retirement till he vacated the premises, which is reproduced below:

Period	Applicant			Government		
	Rate.	Period.	Amount.	Rate.	Period.	Amount.
1.8.82 to 30.9.82	65.00	2 months	130.00	65.00	2 months	130.00
1.10.82 to 20.11.82	125.00	2 months.	250.00	130.00	2 months.	260.00
1.12.82 to 19.1.89	245.00	73 months & 19 days.	18035.15	260.00	73 months & 19 days.	19139.35
20.1.89 to 31.3.91	773.40	26 months & 12 days.	20407.80	773.40	26 months & 12 days.	20407.80
1.4.91 to 17.8.91	1237.45	4 months & 17 days.	5628.40	1237.45 @ Rs.32 per Sq. Mtr.	4 months & 17 days.	5628.40
<u>Total</u>			<u>44,451.35</u>			<u>45,565.55</u>

ABR
Total amount comes to Rs. 45,565.55 out of which an amount of Rs. 38,158.50 has been recovered from the applicant and the balance amount of Rs. 7407/- has to be recovered from the applicant. During the course of hearing, we had directed the respondents to furnish the copy of the statement showing the recovery of rent. On perusal of the Supreme Court's order, we find that there is no specific order that the respondents are

prevented from recovering the rent in accordance with law. Admittedly the applicant has over stayed in the premises for a period of 10 years and his contention is that the High Court has given stay of evicting them from the premises and Government can recover the rent only in accordance with the law. The legal position is that the interlocutory order passed earlier will have to be allowed only till the disposal of the main O.A. In this case though the High Court had stayed the eviction proceedings in the interim stage however the High Court did not finally give the relief to the petitioners and dismissed the writ petition on the ground of it being the policy decision and stating that it is not for the court to give any directions. On the other hand, the Supreme Court has also made very clear that the applicant is liable to pay the rent in accordance with law. Since the eviction of the premises was insisted on account of courts directions, the question of compliance with provisions of Public Premises (Eviction of Unauthorised occupants) Act does not arise in this case. Besides that the respondents have already issued notice to the applicant to vacate the premises and to make the payment of amount of rent, the applicant does not have any vested right to continue especially, as he was in occupation of the said quarter after the retirement merely on the pretext of the Court's interim order. Therefore he cannot contend at this stage that the said tenement should be transferred in his name which is similar to that of the Mukundnagar colony.

6. We have heard the rival contentions of the parties and perused the pleadings and respective Court orders. The applicant's first contention is that the tenement should be transferred in his name on the ground that the respondents (have) transferred the Mukundnagar colony to the occupants. The said contention is not tenable in view of the aforesaid reasons. The Tribunal in its order dated 16.7.92 has directed not to recover the market rent and the respondents are entitled to recover the rent as per rules. In fact the respondents have recovered the rent as payable by him while in service till the day of his retirement. Only after his superannuation they have directed him to make payment of rent in accordance with provisions of existing law, which is clear from the statement given above. Therefore, the contention that the respondent is not entitled to charge any extra rent or market rent does not have any force. As a matter of fact interlocutory order is valid till the disposal of the main O.A. It is not open to the applicant to claim any service benefit on account of stay except as stated earlier. The Supreme Court while dismissing the S.L.P. directed that the applicant is liable to pay rent in accordance with law. Therefore, that contention also fails.

7. As a matter of fact the applicant has paid a sum of Rs. 30,392.50 and deposited the same pursuant to the directions given by the respondents on his own volition. Only an amount of Rs. 7766/- have been adjusted out of his Dearness Relief. It is true that the Dearness Relief is a part of the pension payable to the applicant and cannot be separated. The total amount payable by the applicant is Rs. 45,565.55

out of which a sum of Rs. 7766/- has been recovered/adjusted from the Dearness Relief which is not in accordance with Rules. On the whole, a sum of Rs. 15,173.5 is due from the applicant. Pursuant to the decision of the Tribunal vide its order dated 15.3.93 which reads as follows:

" The applicant claims that the calculations of damage rent from the period from 1.9.87 to 20.1.89 has been made in excess and the damage rent for 1.4.91 to 17.8.91 will be at Rs. 32/- per sqm and not Rs. 40/- per sqm. Rs.40/- is chargeable in Delhi and CPWD's calculation for Pune is Rs. 32/-. The dispute is limited to these grounds. Mr. Kulkarni prays for time to get instructions. Time is allowed upto 19.4.93. In the meantime Shri Kulkarni will ensure that un-disputed rent is paid by the applicant.

Pursuant to this order, the respondents assumed that they were to charge Rs. 32/- per sqm. and the applicant is obliged to make payment accordingly. However on perusal of the records, we find that there is no demand for making the payment at Rs. 32/- per sqm. and the calculation made by the respondents has not been adhered to by the applicant. The applicant did not make any payment on the basis of calculation made by the respondents. Accordingly the respondents filed the C.P. No.122/93 stating that the applicant is not adhering to the directions given by the Tribunal.

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We are of the view, that there is no intentional dis-obedience by the applicant ~~of~~ the Tribunals order and the Tribunal has passed the order on the submission made by the respondents and on scrutiny that it is found to be incorrect. He has also tendered un-conditional apology. In the circumstances, I am of the view that

there is no contempt on the part of the applicant by way of dis-obedience of Court's order and accordingly the C.P. 122/93 does not survive and the same is discharged.

8. In the light of the above, the respondents are directed not to recover or adjust the Dearness Relief payable to the pensioner. They are at liberty to recover the same in accordance with law. So far as the quantification of market rent is concerned apparently it is prepared in accordance with law and there is no grievance on that score.

9. In this connection the learned counsel for the applicant has brought to our notice the judgements of the Principal Bench of the Tribunal in Beni Prasad Vs. Union of India (ATR 1987 (2) CAT 205) as well as the judgement of Jodhpur Bench in U.M. Goel Vs. Union of India 1992(2) A.I.S.L.J.180 wherein the Tribunal has taken a stand that no recovery could be made from the Dearness Relief, in view of Rule 3(2) of the Pension Rule which includes that the Dearness Relief is a part of the pension.

10. Accordingly, we hereby direct the respondents not to recover the arrears of rent from the Dearness Relief payable to the applicant hereafter and if at all they have recovered any amount from the Dearness Relief, the same be reimbursed to him within a period of two months from the date of receipt of this order.

(28)

11. In the circumstances, it is open to the respondents to initiate appropriate legal proceedings for recovery of balance amount from the applicant, if they so desire. In the light of the above the O.A. is partly allowed to the extent of recovery of Dearness Relief and the same as directed be reimbursed to the applicant, but otherwise there is no merit in the O.A. and the same is therefore dismissed, but with no costs.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

Hegde

(B.S.Hegde)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. 45 of 1998.
MISCELLANEOUS PETITION NO.466/ 1998.
IN

ORIGINAL APPLICATION NO.523/1991.

Monday, this the 12 th day of October, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Union of India & Ors.
(By Advocate Shri S.S.Karkera)
V/s.

... Petitioners
(Original Respondents)

Chandulal Hasham Bhai.
(By Advocate Shri R.S.Kulkarni)

... Respondent.
(Original Applicant)

O R D E R

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

The Respondents have filed Review Petition No.45/1998 to review the order passed by this Tribunal in this O.A. on 4.9.1997. M.P. 466/98 filed for condoning the delay in filing the R.P. The learned counsel for the applicant opposed both the R.P. and the M.P. We have heard both the counsel regarding admission of R.P. and M.P.

2. This Tribunal by a considered order dt. 4.9.1994 held that the damage rent cannot be recovered from the Dearness Relief of the pension. The applicants (Original Respondents) did not challenge the Judgment of this Tribunal before the High Court or Supreme Court. It appears that, there is a subsequent full bench decision taking a different view. Now, therefore, the applicants have approached this Tribunal by filing this Review Petition supported by the M.P. for condonation of delay.

3. So far as condonation of delay is concerned, it is not disputed that the R.P. should be filed within one month from the date of the original order. But, here the R.P. is filed in July, 1998 to review the order passed about more than

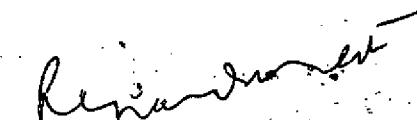
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four years i.e. in September, 1994. On the face of it, the R.P. is hopelessly barred by time. The only explanation given for condonation of delay is that the Department was processing the papers for filing an appeal and in the meanwhile in 1997 the Full Bench decision had come taking a different view on the matter and therefore the department has come out with the present R.P. In our view, ~~for~~ a decision rendered by this Tribunal on 1.9.1994, subsequent decision of the Full Bench given in 1997 cannot give any cause of action for condoning delay of three years in filing R.P. Hence, in our view, no cause, much less, sufficient cause, is made out for condoning the inordinate delay of four years. Hence, the ~~M.P.~~ is liable to be rejected. Consequently, the R.P. is rejected on the ground of limitation.

4. Incidentally, we may observe that the previous Judgment of a Competent Tribunal cannot be set aside by a Review Petition only on the ground that there is a subsequent decision by a Larger Bench. That may be a ground for the Department to challenge the order of this Tribunal before the competent forum, but certainly it is not a ground for moving the same Tribunal for review of the decision. The scope of review under order 47 Rule 1 of C.P.C. is very limited. Hence, even on merits we are not inclined to admit the R.P.

5. In the result, both the R.P. and M.P. are rejected at the admission stage. No costs.


(D.S. BAWEJA
MEMBER(A))


(R.G. VAIDYANATHA
VICE - CHAIRMAN)

B.