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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 219/92

~~Transfer Application No:~~

DATE OF DECISION 23.2.93

Shri Algoo Bachhu Painter ----- Petitioner

Shri G.K. Masand ----- Advocate for the Petitioners

Versus

Union of India and others ----- Respondent

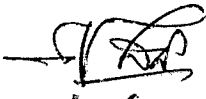
Shri A.L.Kasturey ----- Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri V.D. DESHMUKH, MEMBER (J)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(V.D. DESHMUKH)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 219/92

Shri Algoo Bachhu Painter.

... Applicant.

V/s.

The Union of India, through
the General Manager,
Western Railway, Churchgate,
Bombay.

The Chief Works Manager
Lower Parel Workshop
Western Railway,
Bombay.

... Respondents.

CORAMA: Hon'ble Shri V.D. Deshmukh, Member (J)

Appearance:

Shri G.K. Masand, counsel
for the applicant.

Shri A.L. Kasturey, counsel
for the respondents.

ORAL JUDGEMENT:

Dated: 23.2.93

¶ Per Shri V.D. Deshmukh, Member (J) ¶

The applicant was in the service of the Western Railway as Painter. He was allotted quarter No. 61/L-341 at Grant Road by the Western Railway authority in the year 1977. According to the applicant he surrendered the said quarter in March 1981, however the letter dated 23.6.90 (Axibit C) to the application shows that he vacated the quarter in April 1981. The applicant however contended that while he was in occupation of the quarters the rent of the quarter was deducted from his salary and he was not paid the HRA, but the respondents dis-continued to deduct the rent from the month of May 1981 and also resumed payment of HRA to the applicant since the same month.

The applicant retired on superannuation on 30.7.90. The respondents however with-held the payment of gratuity which according to both the sides is Rs. 21,285/- on the ground that the quarter in dispute was still in the name of the applicant and he had not vacated the quarter.

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The respondents filed their affidavit dated 2.9.92 in which they contended that they were justified in withholding the gratuity of the applicant in as much as he had not vacated the Railway quarter allotted to him and had not obtained the vacation certificate from the concerned I.O.W. which was required under the Rules. Further the contention of the respondents is that it was necessary for the respondents to obtain No ~~for objection~~ ^{claim} certificate as per the circular dated 24.7.82. This circular is attached to their affidavit dated 3.2.93(Annex. B). The circular however clearly shows that it was concerned with the unauthorised retention of Railway quarter by Railway officers and staff members after their retirement. It was rightly pointed out by the counsel for the applicant that this circular shall not be applicable in the case of the applicant, as the applicant had vacated the quarter before he retired on superannuation.

The main question in this application is whether the applicant vacated the quarter in April 1981 as alleged by him. The applicant relies upon a very relevant ^{and in} material circumstance that since the month of May '81 the respondents stopped to recover the rent from his salary and started paying him HRA and this continued till the date of superannuation. It is difficult to accept the contention of the respondents that this happened as a result of error on the part of the dealing clerk. If the applicant had not vacated the quarter as alleged by him in April 1981 it is impossible to presume or accept that the respondents would continue to pay the HRA to the applicant or would not have deducted the rent of the quarter for a long period of 8 years.

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The respondents rely upon the report made after the quarters were checked in August 1984 which is Annex. 2 to their affidavit dated 2.9.92. It was contended on the basis of this report that the applicant had sublet the quarter in dispute. The report however is not very convincing. Col. 7 is meant for the entries regarding the date of vacation of the quarter. Entry however reads that the quarter is "probably vacated". It is difficult to see as to how such entry was made in the checking report. The reliance has been placed on the entries in this report in Col. 8 under which the name of one Shri P.B. Dalvi is shown. However this column is meant to indicate the name and designation of the last occupant. The 3rd column which is meant for present occupant shows the name of the applicant. The entry in the column 8 therefore shows that the said Mr. Dalvi had occupied the quarter before the present occupant i.e. the applicant.

On 7.1.83 this Tribunal had directed the respondents to ascertain as to who is in actual occupation of the ~~accommodation~~^{accommodation on} in question. It was further stated that the Enquiry report should also show as to who put the present occupant in possession and since how long he is in occupation of the said quarter. The respondents have filed the affidavit dated 3.2.93 in pursuance of these Tribunal's directions. The affidavit however shows that one Raju Shetty and Swamy Shetty occupy^{the} the premises in dispute at present. There is absolutely nothing to show as to how these persons came to occupy the quarter in dispute. The affidavit does not show as to who put these person^S in the premises and since how long they are in occupation. The report attached to this affidavit (Annex. A) states that efforts were made to find out as to from whom Shri Raju Shetty and Shri Swamy Shetty got possession of the said quarter ,

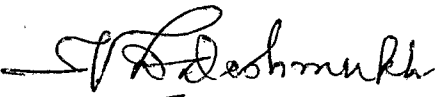
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but no information could be obtained. It is very pertinent that as per the report itself the said persons are not the Railway employees. Both the reports discussed above eloquently show the state of affairs in the management of quarters. The applicant relies upon a very material circumstance that since April 1981 no rent has been recovered from him and on the contrary he was paid the HRA till his date of retirement. In view of all these circumstances I find that the applicant is entitled to the relief claimed and I pass the following order:

The application is allowed. The respondents are directed to pay the applicant the sum of Rs. 21,285/- i.e. the amount withheld by the respondents with interest on the said sum at 6% per annum with effect from 1.8.90. The payment as per this order shall be made within 8 weeks from the date of receipt of ^{the copy of} this ~~order~~ order.

There shall be no order as to costs.


(V.D. DESHMUKH)
MEMBER (J)

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