

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 31 JAN 1994

APPLICATION NO(s) 914 of 1993.

APPLICANTS: U.Sundara v/s. RESPONDENTS: Director General(Postal),
New Delhi and Others.

TO.

1. Sri.A.R.Holla, Advocate,
No.3, Second Floor,
First Cross, Sujatha Complex,
Gandhinagar, Bangalore-9.
2. The Post Master General,
Southa Karnataka Region,
Karnataka Circle, Bangalore-1.
3. Sri.M.Vasudeva Rao, C.G.S.C.
High Court Bldg, Bangalore-W.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 17-01-1994.

*Issued on
2/2/94*

gm*

ok

for *31/1*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.914/93

MONDAY THIS THE 17TH OF JANUARY, 1994

SHRI JUSTICE P.K. SHYAMSUNDAR

VICE CHAIRMAN

U. Sundara
S/o late U. Thaniya
Aged 54 years,
Working as Senior Post Master,
Mangalore - 575 001

Applicant

(By Advocate Shri A.R. Holla)

vs.

1. Director General(Posts),
Dak Bhavan,
New Delhi - 110 001
2. Post Master General,
South Karnataka Region,
Karnataka Circle,
Bangalore - 560 001
3. Senior Superintendent of
Post Offices,
Mangalore Division,
Mangalore - 575 002

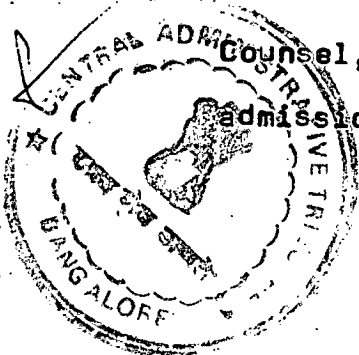
Respondents

(By Standing Counsel Shri M.V.RAO)

ORDER

Shri Justice P.K. Shyamsundar, Vice Chairman:

Having heard Shri A.R. Holla, learned counsel
for the applicant and Shri M.V. Rao, learned Standing
Counsel, this application which is posted for
admission today, I find little reason to pursue this



matter further after admitting more so the pleadings being complete. The applicant who had admittedly over stayed in a staff quarters at Bolar Mangalore from 1.6.91 to 4.9.91, a period during which he was not entitled to stay at the aforesaid quarters was therefore liable to pay the licence fee at the penal rate. Accordingly, he was levied licence fee at penal rate from 1.6.91 to 4.9.91 @ Rs.40/- per sq.m. which had been revised from the earlier dispensation at Rs.20/- per sq.m. w.e.f. 1.4.91 as could be seen from office memorandum produced at Annexure A-12 dated 9.5.91. Shri Holla put forward two arguments in support of his client's case. The first contention is that Government could not recover penal rent without determining the rates thereon through CPWD. It is pointed out that the levy of penal rent @ Rs.40/- per sq.m. had not been worked out and sanctified by the CPWD and consequently he says that the aforesaid levy is invalid in law and should be struck down. In support of this argument, reliance is placed on an office memorandum at Annexure A-11 dated 19.7.91. Reference is invited to clause (iii) of the office memorandum which reads:

"(iii) Similar damages rate may be worked out by the CPWD for other stations where general pool accommodation is available and the rates so assessed may be adopted for recovery of damages in such stations."

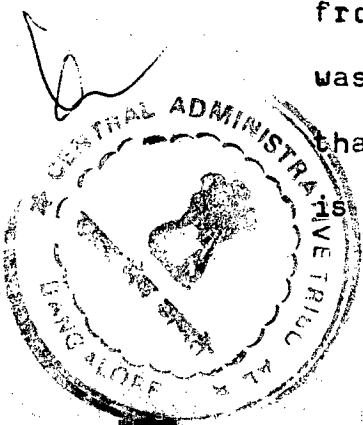
Probably, if the foregoing was all to be said may be I would be required to go along with the contention put forward on behalf of the applicant but then Shri Rao for the Department invited attention to clause (v) of the aforesaid

office memorandum which reads:

"In respect of other departmental pools of accommodation in Delhi/other stations the rates as indicated in sub-para (ii) above being prescribed for general pool accommodation is to be adopted by various other Ministries/Departments. In stations where there is no general pool accommodation, the Ministry/Department concerned may get suitable unit rates worked out by CPWD."

The above clause is clearly an exception to clause (iii) which caters to the situation where general pool is available in places outside Delhi. This would be the conclusion which I have arrived at after reading clause (iii) and (v) together. It is not denied that general pool accommodation is available at Mangalore and therefore in terms of clause (v), the licence fee to be levied in regard to unauthorised occupancy as enjoined under Rule 2 prescribed for Delhi will have to be levied and recovered. This is what exactly has been done and therefore the applicant cannot make any grievance thereof.

The other contention is that before levying the penal rent issuing of a show cause notice was called for and the principles of natural justice should have been obeyed etc. etc. Again it is a contention which lacks merit. It is not denied that stay in the official quarter from 1.6.91 to 4.9.91 was unauthorised. Applicant was perfectly aware of his unauthorised stay and that penal rent had therefore to be paid. There is no dispute the penal rent then was at the rate



as prescribed under the office memorandum. The same has been levied and since recovered from the applicant. Where rules or administrative instructions obtain, the Department is not liable to observe principles of natural justice as a further step in aid. However, it is pointed out that the rate of penal rent levied being at Rs.40/- per sq.m. the said rate having become effective from April, 1991 as could be seen from the office memorandum at Annexure 12 dated 9.5.91. Para 2 of that order says:

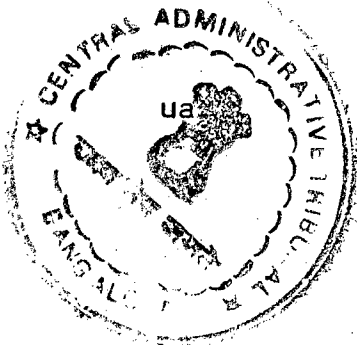
. "These orders will apply to all postal pool quarters with effect from 1st April 1991. The damages rates have been further revised from Rs.20/- per sq.m. to Rs.40/- per sq.mt. per month. All other conditions will remain unchanged."

From the above, it becomes clear that the penal rent have undergone a change from April, 1991, the increase being effective from 1.4.91 and prior to that the earlier rate of Rs.20/- per sq.m. was prevalent. Herein, the unauthorised occupancy stretched from 1.6.91 to 4.9.91. Between 1.6.91 to 17.6.91 on which date the order at Annexure A-11 had been admittedly served and communicated to the occupants of the quarters at Bolar, Mangalore, it is clear that between 1.6.91 to 17.6.91 the penal rate to be charged was only Rs.20/- per sq.m. and from 17.6.91 and till the date the quarter was vacated, the penal rate to be levied was at the rate of Rs.40/- per sq.m. in terms of the CM supra. The Department should therefore re-calculate the penal rent levied

and make necessary adjustments. If any excess amount has been recovered from the applicant between 1.6.91 to 17.6.91, the Department is directed to refund same. This is all the relief the applicant seeks and thus this application stands disposed off finally subject to the modifications stated with no order as to costs.

Sd-
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY



Sd- [Signature] 31/1
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE