

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 11 NOV 1994

APPLICATION NO: 858 of 1994

APPLICANTS:- Sri. P. Govindarajah
V/S.

RESPONDENTS:- Dir. General (B.P) D/o Post, N. Delhi & 2 o/s.

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1. Shri. G. Shantappa,
Addl. L.G.S.C.
High Court Bldg.
Bangalore - 1.
2. Shri. P. A. Kulkarni,
Advocate, No. 47, 11th floor,
571K 'A' cross, 4th Block,
Rajaji Nagar
Bangalore - 560 010.

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

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 9th November, 1994

Issued on
11/11/94

of
1

Section Officer
Central Administrative Tribunal
Bangalore Bench
DEPUTY REGISTRAR

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

ORIGINAL AFFILIATION NO.858/94.

WEDNESDAY, THE NINETH DAY OF NOVEMBER, 1994.

Shri V.Ramakrishnan,

.....Member (A)

Shri A.N.Vujjanaradhy,

.....Member (J)

Sri P.Govindaiah,
aged about 57 years,
S/o Sri P.Subbaiah,
8-15, Karnataka Housing Board Colony,
Puttenahalli,
Bangalore-560 004.

...Applicant

Advocate by Shri P.A.Kulkarni.

Versus.

1. The Director General (B.P.),
Department of Posts,
Dak Bhavan, Parliament Street,
NEW DELHI.
2. The Estate Officer & Assistant
Postmaster General (Staff),
O/o the Chief Postmaster General,
Karnataka Circle,
Bangalore-560 001.
3. Union of India
represented by its
Secretary to Government of India,
Ministry of Communication,
Department of Posts,
New Delhi.

...Respondents

Advocate by Shri G.Shantappa, C.G.S.C.



O R D E R

Shri A.N.Vujjanaradhya, Member (J)

The applicant who was allotted quarters in Bangalore by order dated 6.1.89 vide Annexure A1 was deputed to MTNL, Bombay in January, 91, where he was allotted quarters. However, on the request of the applicant, he was permitted to retain the quarters at Bangalore upto 30.4.92 subject to payment of rent as per the rules as fixed by the competent authority, as can be seen from the letter dated 30.1.91 issued from the office of the Postmaster General (R2) produced at the time of arguments . The department effected recovery of normal, penal and damaged rent as below:

(a) Amount deposited by the applicant P.Govindaiah.	= Rs.4120.00
(b) Recovery made by MTNL, Bombay in the pay bill of the applicant for March, 93	= Rs.1500.00
(c) Recovery made in the office of the S.E. Postal South Zone, Bangalore from (1) April 93 to September 93 at Rs.1500/- per month	= Rs. = Rs.9000.00
(2) October 93 to May 94 at Rs.640/- per month	= Rs.5120.00
(d) For the month of June, 94	= Rs. 640.00
(e) From DCRG(applicant retired on superannuation on 1.7.94)	= Rs.8211.00
Total	= Rs.28591.00

On the representation of the applicant dated 24.9.93 (Annexure A8) to the Ministry of Communications, his request for treating the rent payable for the period from 1.1.91 to 18.12.91 as special licence fee under FR 45A (viii), the Ministry by letter dated 6.1.94 (Annexure A9) decided to levy the rent as per rules.. Annexure A4 and A6 indicates such levy as below:-

(a) Normal rent at Rs.110/- X 2	= Rs. 220.00
(b) Penal rent from 1.3.91 to 31.8.91 at Rs.220/- X 6	= Rs.1320.00
(c) Damages from 1.9.91 to 30.9.92 46.32 Sq.mtrs 40 X 13	= Rs.24086.40
(d) At the same rate for the months of November, 92	= Rs.2694.48
 Total	= Rs.28591.00

The applicant seeks to assail the communication of the Ministry dated 6.1.94 (Annexure A9) wherein the Ministry decided that the damage rent should be levied as per ^{but not} rules, and to treat his case as special licence fee as per FR 45A for the period from 1.1.91 to 18.12.92.

3. We have heard Shri P.A.Kulkarni for the applicant and Shri G.Shantappa for the respondents. The relevant file made available by the respondents was also perused.

The contentions advanced on behalf of the applicant are two fold: (1) The permission granted to the applicant under letter dated 30.12.91 upto 30.4.92 is to levy only penal rent and not damage rent; (2) No damage



rent can be treated as Govt. due. Besides the recovery towards damage rent from DCRG is not permissible.

5. Shri Shantappa representing the respondents controverted the above contentions and submitted that what is levied and recovered is in accordance with the rules and therefore, it is not open to the applicant to assail the same.

6. The facts are not in dispute. When the applicant was deputed to MTNL Bombay, he was allotted quarters but at his request, he was permitted to retain the quarters in Bangalore by letter dated 30.12.91 upto 30.4.92 and this is subject to liability of the applicant to pay the rent due as per the rules. However, the applicant even though he was informed in unequivocal terms in the same letter dated 30.12.91 that no further extension of time will be granted under any circumstances, the applicant was required to be evicted having recourse to the provisions of Public Premises Eviction Act and he was evicted only on 19.12.92. To consider the contentions of the learned counsel for the applicant that permission granted to him under letter dated 30.12.91 is to levy only penal rent and not damaged rent, it is necessary for us to quote the contents of the said letter. Contents reads thus:

"Your request for retaining the quarters at Bangalore upto 30.4.1992 has been under consideration. It has now been decided to permit you to retain the quarters upto 30.4.1992 in view of your children education till the end of the academic year, as requested by you, subject to the condition that the rent due, as per rules, as fixed by the competent authority should be paid by you. Please note that you should vacate the quarters on or before 30.4.1992 and no further extension of time will be granted under any circumstances."

This communication makes it abundantly clear that the applicant was required to vacate the quarters allotted to him at Bangalore on or before 30.4.92. But he did not so vacate and he was required to be evicted by due process of law. This communication also makes it clear that applicant is liable to pay rent due as per rules. The relevant rules applicable is FR 45A and the Govt. of India orders thereunder. Under FR 45A, in case of transfer, the permissible period of retention of residence is two months. In the instant case the applicant came to be transferred on deputation to MTNL Bombay and the rules had empowered the competent authority to grant permission to retain the quarters at Bangalore only for a period of two months. For the subsequent period, the provision, which is applicable is found under FR 45A (7) (3) at page 208 of Swamy's Compilation of FR SR Part-I, 1994 edition. This is contained in Govt. of India letter dated 31.8.92, which reads thus:-

"If the competent authority still feels that retention of quarters beyond the above said period is necessary for the Government servant or his family, such request of the official should be forwarded duly recommended personally by the Chief Postmasters-General/Postmasters-General at least 2 months before the date of expiry of the permission already granted. It should, however, be made clear to the applicant that licence fee at damage rates is recoverable even if the request is under consideration by the Department."

This provision specifically states that even if permission to retain the residential quarters were to be granted, the applicant was required to pay rent at damage rate of the licence fee at damage rates. In view of this provision, the action of the department in levying and recovering the licence fee at damage rates is well within their powers



and it cannot be faulted. The contention of the learned counsel for the applicant that because permission was granted for the applicant to retain the residential quarters by letter dated 30.12.91 upto 30.4.92, only penal rate of rent should have been levied and not damage rate, cannot be said to be tenable in as much as the said communication has made abundantly clear that the applicant would be liable to pay the rent as fixed by the competent authority and it no-where allowed the applicant or informed the applicant to retain the quarters at any specified rate of rent. Even the reference made by the learned counsel to sub-clause (c) of rule 8 of the Public Premises (Eviction of Unauthorised Occupation) Rule 1971 mention at page 199 of Swamy's Compilation of FR SR (supra) mentions "rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person" would indicate that damage rate of rent was payable by the applicant for the period of such occupation which has to be necessarily termed as unauthorised in as much as the authorisation to retain the quarters was only upto 30.4.92 and not subsequent thereto. Besides even such permission was subject to payment of licence fee as per rules to be fixed by the competent authority. The provisions referred to earlier has empowered the competent authority to levy the damage rate of rent and it was so levied.

7. The rate of damage rent and the period for which it is levied is not disputed. The recoveries have also been effected as narrated while stating the facts of the case and no more recovery remains to be made towards the

rent due by the applicant. In this background, the next contention of the learned counsel will have to be examined.

8. It is the contention of the learned counsel for the applicant that the damage rate of rent cannot be treated as Govt. due and any amount due towards such account cannot be recovered from the DCRG of the applicant, who has since retired. A sum of Rs.8211/- was deducted from the DCRG of the applicant and the same has been appropriated towards damage rent due by him. Seeking support from the decision in Ramachandra Kamati Vs. UOI reported in 1993 (25) ATC 268, the learned counsel contended that the competent authority should have resorted to the provisions of the Public Premises Eviction Act by approaching Civil Court for recovery of the amount due and the recovery effected is not in accordance with law. The facts on present case are entirely different from the facts in the case of Ramachandra Kamati Vs. UOI. The said Ramachandra Kamati happened to be an employee of Railways and in his case no recovery was effected before he had approached the Tribunal. Besides we have to mention that the said decision is rendered by the Bench of Single Member and we are unable to ~~decide by~~ ^{agree to} the view taken in that decision particularly for the reason that the facts and contentions of that case are not fully reported. The said decision does not state anything about the contentions of the learned counsel for the applicant herein that the rent due by the applicant cannot be treated as Govt. due and that the same cannot be deducted from that of DCRG. FR 45A 12 (viii) at page 198. on which the learned counsel for the applicant relied reads thus:-

"In cases where general pool accommodation is allowed or allowed to be retained on payment of existing market rate of licence fee, such as officers who have gone on deputation to Sports Authority of India and other public sector undertakings, autonomous bodies, etc., and permanent officials working in the Headquarters of CSIR, ICAR, etc., licence fee to be recovered will be categorised as "Special licence fee". The "Special licence fee" will be determined at the rate of double the standard licence fee under F.R.45-B or double the licence fee at flat rates under F.R.45A, whichever is higher plus single departmental charges plus double the additional licence fee for additions and alterations, if any, plus other charges (service charges, garden charges, charges for furniture, electrical appliances etc.), under F.R.45-B including departmental charges. It would be necessary for the Rent Section to review the licence fee being recovered in respect of such categories of employees and take action for revising the same according to these orders."

This provision on which the learned counsel relied is not applicable to the applicant in as much as he was not allowed to retain on payment of existing market rate of licence fee.

9. In view of what is discussed above, both the contentions of the learned counsel will have to be said as untenable. Consequently the applicant cannot succeed. Accordingly, the application is dismissed, but without any order as to cost.

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411
(A.N.VUJJANARADHYA)
MEMBER (J)



Sd-

(V.RAMAKRISHNAN)
MEMBER (A)

TRUE COPY

11/11/94
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore