

CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH.

ORIGINAL APPLICATION NUMBER 1281 OF 1993

THURSDAY, THIS THE 8TH DAY JULY, 1999.

Shri Justice S.Venkataraman, .. Vice-Chairman.

Shri S.K.Ghosal, .. Member(A).

Ramanath Narasimha Naik,
residing at Dharbhange House,
E-15/9 Peddar Road,
Bombay-400 026 and having
permanent address at No.3,
Benham Hall, Cross Lane,
Girgaun, Bombay-400 004.

.. Applicant.

(By Advocate Shri G.K.Masand)

v.

1. Union of India
through the Secretary in the
Ministry of Finance
Department of Revenue, Government
of India, North Block, New Delhi-110 001.

2. Collector of Customs,
New Customs House, Ballad Estate,
Bombay-400 038.

.. Respondents.

(Shri V.G. Rege & Shri V.D. Vadhavkar, for
Shri M.I. Sethna, Sr.Standing Counsel).

ORDER

Justice S.Venkataraman, Vice-Chairman:-

The applicant was working as Appraiser in the Collectorate of Customs. After holding departmental inquiry, the Disciplinary Authority imposed a penalty of dismissal from service by order dated 23-3-1985 against the applicant. Ultimately that order was quashed by this Tribunal in O.A.No. 349 of 1986 on

the ground that the copy of the inquiry report had not been furnished to the applicant and he had not been afforded opportunity to make a representation against that report. In that order, the respondents were given liberty to continue the disciplinary proceedings for the purpose of Rule 9 of the Central Civil Services (Pension) Rules ('Pension' Rules for short). That order was passed on 5-7-1990. But, during the pendency of that application, the applicant retired on superannuation on 31-10-1989. Subsequently, by an order dated 7-11-1991 provisional pension was sanctioned from 1-11-1989 upto the date of termination of proceedings under Rule 9 of the Pension Rules. Another order was passed on 14-10-1991 holding that the applicant shall be paid 50 per cent of the pay and allowances from the date of his dismissal from service till 31-10-1989 and allowances admissible thereon. When the applicant filed Contempt Petition No.44/1991, the respondent took the objection that the applicant had to pay rent at normal rate and at damage rate amounting to Rs.1,08,359-25. That contempt petition was disposed of directing the respondents to pay all pensionary benefits including the gratuity within 2 months from the date of the order. That order is dated 16-7-1993. Subsequent to that order, the respondents served a copy of the inquiry report on the applicant by memo dated 3-8-1993 and asked him to give a representation. The applicant who had continued to occupy the Government quarters vacated the same on 30-11-1993. The applicant has filed this application challenging the order dated 14-10-1991 by which the respondents fixed the amount payable to him at 50 per cent of the pay and allowances from the date of dismissal from service

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till he attained the age of superannuation under FR-54A. He has also sought a direction to the respondents to pass an appropriate order under FR-54A after hearing the applicant. He has also sought a declaration that the respondents are not entitled to either deduct or set off the amount alleged to be payable by the applicant towards damage rent from the amounts payable to the applicant either under FR-54A or under the Pension Rules after the applicant attained the age of superannuation and also for a declaration that the respondents can enforce the payment of normal rent and damage rent only by taking recourse to the provisions of the Public Premises (Eviction ^{of Unauthorised Occupants} Act, 1971 ('Eviction Act' for short). He has also sought for a direction to the respondents to pay him all terminal benefits including provident fund, gratuity, commuted value of pension, leave salary and arrears of pension together with interest at 18 per cent.

2. During the pendency of this application, the respondents have issued a cheque for Rs.85,721/- towards GPF and another cheque for Rs.89,829/- towards provisional pension from 1-11-89 to 31-12-1994 calculated on 50 per cent of pay and allowances. The respondents have deducted Rs.21,653/- out of the amount payable towards pension from 1-11-1989 and it is stated that that amount represents dearness allowance for adjusting the same towards rent arrears.

3. The applicant in the application has contended that the respondents had no right to withhold the gratuity or other retirement benefits for the purpose of adjusting or deducting damage rent without the quantum of damage rent being determined

under the Eviction Act, that at any rate the damage rent for the period after the retirement cannot be deducted out of the gratuity, that though this Tribunal passed the order in July, 1990 giving them liberty to continue the proceedings under the Pension Rules, the respondents kept quiet till August, 1993 without taking any steps and that in the circumstances, they are liable to pay interest on the amount due to the applicant.

4. The respondents have contended that under the Pension Rules gratuity and commutation of pension are not payable if departmental proceedings are pending and that in this case as such proceedings were pending against the applicant the gratuity and commutation of pension are not released. They have further pleaded that leave encashment and pay and allowances are not released as huge amount is due from the applicant towards arrears of rent and damages from 27-3-1985 to 30-11-1993.

It is not disputed that during the pendency of this application the President passed an order on 28-3-1995 exonerating the applicant from the charges. In that order it is also observed that charged officer had already suffered a lot.

5. Pursuant to the order of the President, the competent authority has since passed an order on 18-4-1996 holding that the suspension of the applicant was wholly unjustified for all purposes and that the period of suspension from 29-9-1993 to 22-3-1995 and the period of absence from 23-3-1985 to 31-10-1989 shall be treated as on duty for all purposes and full pay and allowances be paid to the applicant.

6. In view of these orders which had been passed after the filing of this application, there is no dispute about the facts that the applicant is entitled to the full pay and allowances for the period during which he was kept under suspension and upto the date of his retirement and that the applicant has

also become entitled to the payment of gratuity and other retiral benefits. The only questions which remain to be considered are as to whether the respondents can withhold the amounts due to the applicant on the ground that the applicant is liable to pay damage rent for the period during which he was in unauthorised occupation of departmental quarters and adjust the amounts so due by the applicant from the amount payable to the applicant and whether the applicant is entitled to interest in case it is held that the respondents are liable to pay the amounts due to the applicant.

7. The first controversy that requires to be considered is as to whether the respondents could have levied damage rent at a fixed rate as done by them and deduct the same from the amounts due to the applicant. It is no doubt true that there is a provision in the departmental instructions for getting the damage rent fixed in respect of general pool accommodation by the CPWD of the ^{Place} ~~case~~ concerned. It is also true that a particular rate has been fixed for general pool accommodation. The contention of the learned counsel for the applicant is that there is a specific provision in the Eviction Act for determination of the damage rent payable by an unauthorised occupant, that the Rules prescribe the factors to be taken into consideration while determining such damage/market rent, that the competent authority under the Act is required to issue a notice to the person concerned before determining the rate and that there is also a provision for an appeal against the decision of the competent authority and that without complying with those provisions, the respondents could not have levied the damage rent.

8. In O.M.No.18011(12)/73-Pol.III dated 27th August, 1987 which has been extracted in Swamy's Compilation of FRSR (Part-General Rules) Ewelfth Edition, 1994 the relevant clause reads as hereunder:-

" (vi) The rate of damages as above would be the rate to be charged from the unauthorised occupant and if he/she is not agreeable to pay it, the damages to be recovered from him/her will have to be pleaded before the Estate Officer in terms of Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971."

9. The above instructions clearly show that if the occupant is not agreeable to the rate fixed by CPWD, the matter will have to be referred to the Estate Officer for determination under the provisions of the Act and the Rules. In fact, the respondents have also not disputed the proposition that the damage rent will have to be determined by the Estate Officer. While dealing with this plea in the application, the respondents in the reply have stated that "the show cause notice to the applicant has already been issued as per the provisions of the Public Premises & Eviction Act". The applicant's counsel contended that no notice has been issued till now. The learned counsel for the respondents was not in a position to state as to when the proceedings under the Eviction Act were initiated or as to ^{at} ~~on~~ what stage the proceedings are pending. Be that as it may, the fact remains that as per departmental instructions the department cannot unilaterally, without the consent of the unauthorised occupant, levy damage rent at a particular rate and that they have to initiate proceedings under the Eviction Act for that purpose. It is not the case of the respondents

that the authority under the Eviction Act has fixed the damage rent payable by the applicant in respect of the premises in question. As such, the respondents could not have straight away deducted the amount which according to them is due towards damage rent from the amounts due to the applicant.

10. Another point to be considered is whether the damage rent or penal rent which is payable by an employee for his occupation of the Government accommodation for a period beyond the permissible period after his retirement from service can be deducted out of gratuity. While Rule 71 of the Pension Rules contains a provision for deducting all amounts that ^{are} ~~is~~ due from the Government servant on the date of his retirement, Rule - 72 contains provision for deducting the licence fee payable by the Government servant in respect of the Government accommodation occupied by him out of gratuity. A reading of Rule 72 would show that it is only the licence fee payable upto the date of retirement and for the permissible period after the retirement, can be deducted out of the gratuity. With regard to the amount that is payable by the Government servant for his occupation of the accommodation beyond the permissible period a specific provision is made in sub-rule (6) and it reads as hereunder:-

"(6) The recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of four months after the date of retirement of allottee shall be the responsibility of the Directorate of Estates. Any amount becoming due on account of licence fee for retention of Government accommodation beyond four months after retirement and remaining unpaid may be ordered to ^{be} recovered by the Directorate of Estates through the concerned Accounts

Officer from the dearness relief without the consent of the pensioner. In such cases no dearness relief shall be disbursed until full recovery of such dues have been made".

The above provision clearly shows that what ever damage rent is payable for the unauthorised occupation beyond the permissible period after the retirement can only be recovered from the dearness relief granted to the pensioner. As such, there is no authority for the respondents to deduct the damage rent out of the gratuity or the pension. In fact, the respondents themselves have purported to adjust some amount which they claim to be due from the applicant out of the dearness relief and have paid the provisional pension from 1-11-1989 to 31-12-1994. In these circumstances we have no doubt that the damage rent which may be due from the applicant cannot be deducted out of gratuity. In the instant case, the respondents in their calculation sheet dated 11-3-1997 have stated that normal rent which is payable by the applicant for the period from 27-3-1985 to 16-7-1990 comes to Rs.6,124-50. Already the respondents have deducted Rs.21,653/- out of the dearness relief payable to the applicant from the date of his retirement. This amount would cover not only Rs.6,124-50 payable as normal rent upto 16-7-1990 but would also cover the normal rent payable upto the date the applicant vacated the premises. We are pointing out this only to show that in any event, the applicant will have to pay the licence fee at the normal rate till the date he vacated the premises and that that amount is already recovered and as such, there is no need for us to impose

a condition that till the damage rent is determined the normal rent payable by the applicant upto the date of his vacation may be deducted from his dues. We make it clear that the liability of the applicant to pay damage rent for the period beyond the permissible period upto the date he vacated the premises cannot be doubted. The quantum will have to be determined by the competent authority.

11. The point that next arises for consideration is whether the applicant is entitled to claim interest on the retiral benefits which have not been settled till now. It is no doubt true that though this Tribunal by ^{his} order dated 5-7-1990 while quashing the punishment order gave liberty to the respondents to continue the proceedings under the Pension Rules, the respondents did not choose to recommence the proceedings till 3-8-1993. It is only on that day, a memo was issued to the applicant to submit his representation to the inquiry report. No satisfactory explanation is given for this delay. However, when once the proceedings were recommenced, under the Rules the gratuity is not required to be paid till the completion of the proceedings. As such, the respondents may, at best, plead that because the proceedings had till not been terminated, the gratuity and other pensionary benefits were not paid to the applicant. But, it is seen that the President passed the order on 28-3-1995 exonerating the applicant. Even if we give three months time for the respondents to get the copy of the order and to take steps for making payment, there is absolutely no justification for not paying the pensionary benefits atleast on or before 1-7-1995. The plea of the respondents that because the amount due from the applicant was heavy and they had adjusted this amount is

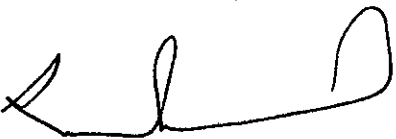
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found to be untenable as they had not even got the damage rent assessed by the competent authority even though $1\frac{1}{2}$ years had elapsed after the applicant vacated the premises. Even now, no such steps appear to have been taken. The applicant has been deprived of his salary from 1985 and after retirement it is only in 1995 as per the order of the Tribunal some amount was paid towards his GPF and pension. In these circumstances, we feel that it would be just and proper to award interest at 12% per annum on the gratuity, leave encashment amount and the commutation of pension.

12. The respondents are now due arrears of salary and allowances upto the date of his retirement. Though the damage rent payable by the applicant can be deducted out of those arrears, it is seen that till now the damage rent has not been quantified by the competent authority and no step also seems to have been taken in that regard. As such, the respondents cannot withhold that amount any longer. As the respondents have withheld that amount even though it became payable on the passing of the order by the President exonerating him and consequential order passed by the Commissioner treating the entire period as on duty for more than 3 years. However, as the applicant is also due amount which is still not quantified by way of damage rent, we do not think that at this stage we should award interest on the arrears of salary and allowances. However, if any interest is levied against the applicant on the amount of damage rent payable by him, then interest at 12% per cent, ^{or at the rate which is charged on damage rent, whichever is less} on the arrears of salary payable to the applicant from the date it became due may be worked out and adjusted towards the interest payable by the applicant.

13. The learned counsel for the respondents submitted that if the amount due to the applicant is paid, the respondents will have no means to recover the amount payable by the applicant. The respondents ought to have been diligent and got the damage rent fixed as per the instructions issued by the Government and they cannot withhold the amounts due to the applicant till they chose to take steps and get the damage rent determined. At any rate, the respondents ^{is} could be entitled to recover the amount due out of the dearness relief payable to the applicant. Consequent to revision of pension from 1-1-1996 arrears of pension and dearness relief may become payable and even the arrears of dearness relief would be available for adjustment provided they take steps to get the damage rent determined expeditiously.

14. For the above reasons, this application is allowed in part directing the respondents to fix the pension payable to the applicant, work out the gratuity, leave encashment benefit and commutation of pension and pay that amount to the applicant together with interest at 12 per cent per annum from 1-7-1995. The arrears of pension from the date of his retirement upto date as well as the arrears of salary and allowances due to him shall also be paid to the applicant. These directions shall be complied with within 4 months from the date of receipt of copy of this order. Parties to bear their own costs.


(S.K.GHOSAL)
MEMBER(A).


(S.VENKATARAMAN)
VICE-CHAIRMAN.

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