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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY-1

R.P. No. 32/94
in
O.A. No. 63/93

Union of India & Ors.

..Review Applicants
(Original
respondents)

v/s.

Smt. S.S. Asnotkar

..Respondent
(Original
Applicant)

Coram: Hon. Shri N.K. Verma, Member(A)

TRIBUNALS ORDER: (By Circulation)
(Per: N.K. Verma, Member[A])

Dated: 29.4.94

This is a Review Petition filed by the Original respondents in the O.A. No. 63/1993 under which the applicant's prayer for interim order in terms of para 9(a) of the O.A. "that pending the hearing and final disposal of this application respondents be directed to pay to the applicant pension payable and admissible to her, D.C.R.G., cash equivalent of E.L. and G.P.F. standing to the credit of the applicant on the date of her superannuation and (b) that pending hearing and final disposal of this application respondents be restrained by order and injunction from making any recoveries from the applicant towards the alleged penal rent for the occupation by the applicant of the quarter upto March 1991. ".

N.K.Verma

2. While admitting the O.A. under Tribunal's order on 3.12.1993 an interim relief was granted by directing the respondents to pay all the terminal dues including DCRG with interest @ 12% within one month

of the passing of the order and it was also said therein that no deduction should be made from the DCRG for payment of liability of rents of Government occupation. The respondents were given the liberty of proceeding against the employee/applicant under the Public Premises Eviction of Unauthorised Occupants Act, 1971.

3. The Review Petition is filed by the present applicants (original respondents) after a delay of 48 days and has prayed for condonation of delay in filing the Review Petition and stay the operation of the interim order dated 3.12.93 till disposal of this Review Petition and O.A. Review the interim order dated 3.12.93 and quash the same and permit the review petitioner to recover the arrears of compensation and market rate of compensation for the quarter No. 2546, 3rd floor, sector 6, Koliwada, Bombay 400037 from the DCRG due from pension in suitable instalment, re-hear the entire matter including the original application and pass other order as this Hon'ble Tribunal deems appropriate having regard to the facts and circumstances of the case.

4. This review petition is against an interlocutory order for grant of stay of our order dated 3.12.1993 for payment of terminal benefits with the further direction not to make any deduction from the DCRG in regard to the rental from the original applicant of the government accommodation.

W.M.W.

5. The interim stay or ~~an~~ an order is a matter of judicial discretion against which no review petition by the same court is permissible under the law. The applicants in this review petition have not indicated as to the law under which the review petition has been made. The interim order was issued in the open Court after hearing the learned counsel for the applicant and the learned counsel for the respondents. The original Application is still to be heard and decided upon. The issue raised in the review petition can be brought to the notice of the Bench at the time of final hearing of the matter. As admitted by the applicants in this review petition the Director of Estates has not been made a party to the O.A. and hence the direction of not recovering the rental cannot be enforced because of this omission on the part of the original applicant. If that be so, it is all the more necessary for the present applicants and the original respondents not to make any recoveries of rent from the DCRG of the original applicant. The status of the original applicant vis-a-vis the Director of Estates is that of a ~~Land~~ ^{Licensee} ~~Lord~~ and ~~Tenant~~ ⁱⁿ ~~to~~ and under the existing rules of the Public Premises Eviction of Unauthorised Occupants Act 1971, the Government has been authorised to take appropriate action in regard to the recovery of ~~rent~~ ^{damages} etc., or even eviction. Since the Director of Estates is not a party in this O.A. and our directions have not been given to the Director of Estates, the respondents

N.H.W

(present review applicants) are clearly barred from making any recoveries from the DCRG of the original applicant till the matter about her unauthorised occupation etc., is adjudicated.

6. Instead of this Tribunal order^h the original applicant to implead the Director of Estates as a party respondent, it would be open to the Director of Estates to join in this litigation as an intervenor at this stage so that no undue prejudice or disadvantage is caused to that party.
7. The Review Petition is rejected with the above directions.

N.K. Verma
(N.K. Verma)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 63/93

Transfer Application No.

Date of Decision 31-8-95

Smt. S.S. Asnotkar

Petitioner/s

Shri. G.R. Menghani

Advocate for
the Petitioners

Versus

Union of India & 4 Ors.

Respondent/s

Shri.R.K.Shetty. Advocate for Respondents 1 to 4

Shri. V.S. Masurkar

Advocate for
the Respondents 5

CORAM :

Hon'ble Shri. M.R. Kolhatkar, Member (A)

Hon'ble Shri. //

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

J*

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 63/93

Smt. S.S. Asnotkar

.. Applicant

Vs.

1. Union of India, through)
the Secretary)
Ministry of Urban Devpmt.,)
C.P.W.D, New Delhi.)
2. The Executive Engineer,)
Bombay Central Dn. II)
CPWD, West Zone, Bombay.)
3. The Executive Engineer)
Goa Central Division)
C.P.W.D., Goa.)
4. Pay & Accounts Officer,)
Ministry of Urban Devpmt.,)
CPWD, West Zone, Bombay)
5. Estate Manager,)
Government of India,)
Bombay.) .. Respondents

CORAM : Hon'ble Shri.M.R.Kolhatkar, Member (A)

Appearances

1. Shri. G. R. Menghani
Advocate
for the applicant.
2. Shri.R.K.Shetty,
Advocate
for Respondents 1 to 4
3. Shri.V.S.Masurkar,
Advocate
for Respondent No. 5

JUDGMENT

DATED : 31-8-95

X Per. Shri. M.R. Kolhatkar, Member (A) X

This is the second round of litigation so far as the applicant is concerned. The issue raised in this O.A relates to the terminal benefits payable to the applicant, with special reference to D.C.R.G and encashment of leave. However, this is linked-up with the alleged unauthorised occupation by the applicant of the government quarters from 25.1.83 for a considerabl long period of time, namely 25.1.83

from pre-page

to 31.5.93 and, therefore, it would be desirable to refer to the facts and the decision in the earlier round of litigation, namely relating to T.A. 482/86 of this Bench, decided on 27.2.1991, which appears at Exhibit 'A2' to the application.

2. In that T.A., the applicant was transferred by an order dated 2.8.1978 from Bombay to Goa as U.D.C but she did not join and she also retained the quarters. The course of litigation is narrated in para 2 of the judgment as below :

"It appears that applicant was relieved on 27.10.1978, but she filed this Suit in the Bombay City Civil Court on 15.11.1978 stating that her transfer order is bad and illegal. The said suit was ultimately transferred to this Tribunal and is the transferred application now before us. The City Civil Court initially granted a stay as prayed for but the stay was vacated on 22.3.1979. Appeal against the vacation of stay was filed in the High Court and the High Court granted a stay on 8.5.1979. The appeal was dismissed by the learned Single Judge on 30.10.1979. On 12.11.1979 L.P.A was filed before a Division Bench who on 15.11.1979 granted a stay of the transfer order. On 27.9.1982 or thereabouts the High Court held that the LPA is not maintainable. The applicant then pursued the matter in the City Civil Court, Bombay by taking out a Notice of Motion. On 20.1.1983 the City Civil Court ordered that 'status-quo to continue till disposal of N/M'. Thereafter, on 10.3.1983 this order was amended as 'parties to maintain status quo till disposal of suit' "

3. Regarding the position of the applicant during this period, the Tribunal observed in para 5 of the judgment as below :

"The order of status quo, thus, would mean that neither could she be relieved nor could she join her post at Goa. There is no order of the departmental authorities taking over charge or handing over charge. Thus, in any view of the matter, she must be deemed to have been posted at Bombay during the intervening period. Having said this, it must also be said that she did not actually attend her office throughout this period viz. from 25.11.1982 onwards."

It was this Suit which was treated as T.A. 482/86. The Tribunal rejected the application and directed ~~that the~~

applicant should report herself for duty by 8.3.1991. It appears that consequent on the judgment of the C.A.T., the period of unauthorised absence of the applicant from duty with effect from 28.10.78 to 13.12.79 and from 25.11.82 to 6.3.91 was regularised as dies non (Exhibit 'R1' to the Written Statement)

4. The applicant reported for duty on 17.3.91 and superannuated on 30.4.92. In the O.A., it was stated that the respondents have claimed recovery of Rs.70,000 and have not settled any of her retiral dues. On the date of hearing, however, it was an admitted position that provisional pension has been sanctioned to the applicant and G.P.F dues of the applicant have also been settled. The question of commutation of pension has not arisen because the regular pension has not been sanctioned to the applicant and hence the matter has not been pressed but the leave encashment dues of the applicant have not been released and D.C.R.G amounting to Rs.21,840 remains to be paid. It is this amount of D.C.R.G alongwith that leave encashment dues, the applicant wants to be released, without linking-up with any outstanding dues from the Government. We may briefly mention here that by the Interim Order dated 3.12.93, the respondents were directed to pay all the terminal dues including the D.C.R.G with interest at 12% within one month from the passing of that order. The R.P against this Interim Relief, namely R.P. 32/94 in O.A. 63/93 was dismissed on 29.4.94. Subsequently, however, an M.P 888/94 was filed by Respondent No. 5 Director of Estates, stating that although the applicant has vacated the government premises in May 93 *Ma* she has not paid any amount towards rental charges

including normal dues. This M.P was allowed by order dated 31.8.94. Accordingly, Respondent No. 5, Director of Estates has also filed a reply to the O.A. C.P. 90/94 filed by the applicant alleging contempt of Court for violation of Interim Order dated 3.12.93 has not been pressed in view of M.P. 888/94 having been allowed.

5. On perusal of pleadings and documents therefore, the position which emerges is that the applicant, though transferred to Goa, by order dated 2.8.1978 which transfer was implemented on 7.3.91, ~~has~~ remained in occupation of the quarters till 31.5.93, even beyond the date of superannuation, namely 30.4.1992. The respondent No. 5 Director of Estates has claimed that a total amount of Rs.1,06,107.40 is due from the applicant and the question before us is as to whether the respondent No. 1 to 4 are entitled to withhold the D.C.R.G and other retirement dues, especially the leave encashment dues, from the applicant till the applicant pays off the amount of dues of Director of Estates which includes an amount of Rs.3,874.95 as normal rent, the balance being market rent for the period from 25.1.83 to 31.5.93.

6. The main contention of the applicant is that there are no rules under which the respondents can withhold her D.C.R.G and other retirement dues on the ground that the applicant has not paid the market rent in respect of the quarter in her occupation which in any case she has since vacated. Reliance is placed on the well known judgment in Wazir Chand Vs. Union of India & Ors., reported at page 287 of Full Bench Judgments of CAT (1989-1991) Vol II of Bahri Brothers, published in 1991. That was a case relating to interpretation of Railway Establishment

Code and Circulars of Railway Board and the instructions issued by Northern Railway. In para 19 of the judgment, the hon'ble Full Bench held that withholding of entire amount of DCRG in the case of a retired railway servant till such period as he does not vacate the railway quarter is unwarranted. and ^{the} contrary view expressed in 'Baidyanath Hazra & in 'Kshirod Gopal Mukherjee v. Union of India and others' (OA 875 of 1987) decided on 26-4-88 or in any other case does not reflect the correct position in this behalf. The judgment proceeded on the basis that the right to gratuity is the right to property.

7. Another contention of the applicant is that in any case the claim of Respondent No. 5 to recover the amount of arrears of rent including market rent is barred by limitation. For this purpose, the applicant relies on the judgment of Supreme Court in NDMC V. Kalu Ram (AIR 1976 SC-1637). That was a case in which recovery of rent through procedure u/s.7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1958 was challenged and the Supreme Court had held that the section cannot be resorted to if the claim is barred by limitation. The applicant has also referred to the recent Supreme Court judgment in the case of R. Kapur vs. Union of India (1995 (SC) (I&S) 30) in which the Supreme Court not only held that action of the government in withholding DCRG for collateral considerations is bad but also increased the rate of interest payable on the DCRG from 12% to 18%.

8. Finally, the ^{counsel for the} applicant states that irrespective of the judgment of Supreme Court in NDMC V. Kalu Ram, the respondents' remedy for recovery of market rent from his ^{client} is under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and DCRG cannot be withheld by

means of administrative instructions. On a specific question asked, the learned counsel for the applicant, under instructions states that he has no objection to recover normal rent in respect of the quarter from out of DCRG but his objection is to the recovery of market rent from DCRG and other retiral benefits.

9. Lastly, reference was also made to the ratio of ^{of Bombay Bench} Division Bench judgment in O.A. 439/95 (Urman Singh V. Union of India & Ors.) decided on 25.7.1995 in which it is stated in para 8 that 'it is therefore clear that section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 creates a bar for recovery of anything in excess of the normal rent unless the remedy is sought under section 7 of the Act before the Estate Officer.'

10. The learned counsel for the respondents 1 to 4 states that the conduct of the applicant in not implementing the transfer order was most reprehensible and that the DCRG and other dues are withheld only at the instance of Respondent No. 5 and unless the recovery is effected as indicated by Respondent No. 5 it will not be possible for the department to release her remaining retiral benefits.

11. The learned counsel for the respondent No. 5 Director of Estates vehemently argued that the applicant has not approached the Tribunal with clean hands. The applicant was aware of the fact that she was in unauthorised occupation of government premises since she did not vacate the premises inspite of her transfer. The allotment of the premises was cancelled by the order of Asstt. Estates Manager dated 5.2.83 and eviction proceedings were initiated against her under Public Premises (Eviction of

Unauthorised occupants) Act, 1971 and show-cause notice was issued on 22.3.83. Further action could not be taken only because a Suit was pending in City Civil Court which eventually came to be transferred to C.A.T. Inspite of this background the applicant did not, deliberately, make the Director of Estates as a party respondent and she obtained an interim order from the Tribunal on 3.12.93 by concealing the facts from the Tribunal. Hence, the Respondent No. 5 was required to file an M.P to be joined as a party. On this ground alone, the O.A deserved to be dismissed. Regarding the question of limitation raised by the applicant, the counsel for the respondent contended that NDMC is a corporate body and not a government department and the limitation period in respect of the government is 30 years and therefore no bar of limitation operates against the Respondent No. 5, precluding them to make recovery from the applicant through all legal means including administrative means. The learned counsel for the respondent No. 5 also argues that the Tribunal must consider public interest involved in proper recovery of government dues and the applicant who has not come to the Tribunal with clean hands should not be allowed to collect her D.C.R.G amount and other retiral dues depriving the government of a very substantial amount of revenue running into over a lakh of rupees.

12. The learned counsel for the respondent relies on the judgment in Sushil Chander Bhatnagar V. Union of India & Ors. (1995) 30-ATC-332. This is a Single Bench of the Principal Bench judgment delivered on 26-7-1995. The Tribunal considered the plea that penal rent cannot be recovered except after following the provisions of Section 7 of PP (EOU) Act, 1971. The Tribunal rejected the contention relying on Harbhajan Singh V. Union of India (1973 lab IC 1659).

It is held that the rules are enforceable independently of the PP (EUO) Act in as much as they were statutory rules and cannot be said to be discriminatory or depriving the petitioner of the benefits of the PP (EUO) Act. The Tribunal also relied on the Division Bench judgment of Calcutta Bench of C.A.T in Shanker v. Union of India (1994) 26 ATC 278.

13. We have perused the case cited namely Sushil Chander Bhatnagar v. Union of India & Anr. However, we are *also* required to take into account the contrary view taken in Urman Singh V. Union of India & Ors referred to above, ^{is} decided on 25.7.95. This a Division Bench judgment and although delivered one day prior to the date of judgment in Sushil Chander Bhatnagar, it is required to be given weight because it has gone into great detail to consider the law on the question of applicability of the procedure under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in relation to recovery of penal rent from the government servant, whether retired or serving. In particular, this judgment has held ^{decision} the Calcutta Bench in Shanker v. Union of India to be per incuriam because it was rendered without considering the provisions of section 15 of PP (EUO) Act.

14. The learned counsel for the respondent No. 5 concedes that Urman Singh case does not help him but he would urge that considering the conflict of views between various co-ordinate Benches of the Tribunal, we may refer the matter to a Full Bench. We are not inclined to accept this suggestion because in our view Urman Singh case covers all the issues raised in this O.A so far as the facts of the case are concerned. We

however would like to consider the question of recovery of normal rent from the applicant and whether the same can be linked-up with payment of DCRG and other outstanding retiral dues. We are aware of the observations in Wazirchand's case^{that} direction to pay normal rent by retired railway servant only because DCRG has not been paid to him would have^{no} legal backing. However, apart from the concession made by the applicant that she is prepared to adjust the normal rent for the premises from DCRG, we are required to consider the implications of the status quo order passed by the City Civil Court. The status-quo prevented the department from proceeding against the applicant pending disposal of the Suit, it ~~also made it~~ a bounden duty of the applicant to pay normal rent to the department. In fact, a proper interim order invariably requires to stipulate payment of the regular rent by the applicant during the pendency of the legal proceedings. We are therefore of the view that during the pendency of the T.A. 482/86 and the preceding legal proceedings, the applicant was bound to pay the normal rent to Respondent No. 5^{as in the past} and she was bound to pay it whether or not she received her salary during the period because recovery from the salary is only a modality of payment and the payment is not conditional on receipt of salary but it is conditional on occupation of premises.

15. We, therefore, next come to the question of interest payable by either party. The applicant has claimed payment of interest at the rate of 24% which is the commercial rate of interest. On the other hand, counsel for the Respondent No. 5 has urged that the corresponding rate of interest should also be payable by the applicant on the rent if any, directed to be paid by the Tribunal. In our view, the balance of

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convenience would lie in not directing payment of interest by either side.

16. Keeping in view the pleadings and documents on record, the arguments of counsel and especially the ratio in O.A. 439/95 (Urman Singh v. UoI & Ors.) and the discussions above, we dispose of the O.A

by passing the following order :

O R D E R

Original Application is partly allowed.

Respondents are directed to pay the balance amount of gratuity and any other outstanding dues to the applicant, after adjusting the normal rent payable by the applicant during the period she remained in occupation of the quarters. While making payment, respondents should attach a statement of accounts indicating as to how they have arrived at the balance amount payable to the applicant. The respondents are at liberty to recover the market rent and any other government dues payable by the applicant by resorting to provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or any other legal remedy available to them, as they may be advised. No interest would be payable by either side. Respondents should comply with the directions within three months of the communication of this order. There will be no orders as to costs.

M.R.Kotharkar
(M.R.KOTHARKAR)
MEMBER (A).