

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 116/93

~~Transfer Application No:~~

DATE OF DECISION 29.10.93

Shri C.M. Pereira Petitioner

Shri V.D. Suree. Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri V.S. Masurkar Advocate for the Respondent(s)

COURT:

The Hon'ble ~~Smt.~~ Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

NS/

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 116/93

Shri C.M. Pareira

... Applicant.

V/s.

Union of India through
the Assistant Estate Manager,
101 M.K. Road,
Bombay - 400 020.

The Administrative Officer
Research & Development
Organisation, Naval Chemical
and Mett. Lab, G.P.O. Post Bag
No. 10012, Bombay.

... Respondents.

CORAM: Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance:

Shri V.D. Surve, counsel
for the applicant.

Shri V.S. Masurkar, counsel
for the respondents.

ORAL JUDGEMENT

Dated 29.10.93

¶ Per Smt. Lakshmi Swaminathan, Member (J) !

Heard both counsels.

2. The applicant has filed this application under section 19 of the ~~Central~~ Administrative Tribunals Act, 1985 challenging the withholding of his gratuity amount of Rs. 30,225/- by respondent No.2 ~~and~~ charging of Rs. 3223/- P.M. as rent from June 1992 by the Estate Office, vide orders dated 24.11.92 and 2.12.92, copies annexed at pages 18 and 20 of the application.

3. The brief facts of the case are that the applicant had been allotted quarter No. 57/Type III, Wadala, while he was in the service of Respondent No.2. He took voluntary retirement on 5.2.92. As per the rules, the allotment of the quarter was cancelled vide order dated 4.6.92, after a period of four months from the date of his retirement. Till that period, there is no dispute

regarding the charge of licence fee for the said quarter.

4. On 27.5.92 ~~the~~ office of the Estate Manager, Bombay has issued a Memorandum to the applicant stating that the allotment of the quarter stands cancelled on the ground of total subletting and directing him to vacate within 60 days. The applicant was also informed that he would be charged full/ two times/three times/four times standard licence fee under FR 45 A and if he is aggrieved against the order he may represent to the Directorate of Estates, New Delhi. What further action was in fact taken pursuant to this order is not clear.

^{Subsequent to}
~~After~~ this, according to the respondents, after giving the applicant another ~~show~~ cause notice dated 15.6.93 under Section 4(1) of the Public Premises (Eviction of ~~Unauthorised~~ Occupants) Act, 1971 an order of eviction dated 14.7.93 was passed by the Estate Officer under sub-section (1) of Section 5 of the Act. In this order the reasons given for the eviction was that the applicant continued in occupation of the quarter which was terminated by the competent authority with effect from 4.6.92 on account of his voluntary retirement on 5.2.92.

5. Subsequent to the eviction order dated 14.7.93, the applicant had filed an appeal in the City Civil Court at Bombay, vide Appeal No. 96 of 1993. In these proceedings, the applicant had also given an undertaking that he would vacate the quarter by 1.11.93. The Court while dismissing the application on 3.8.93, has held that no further time will be granted to the applicant and the respondents will be at liberty to execute the order, if he fails to vacate by 1.11.93.

6. On these facts, therefore, I am satisfied that the allotment of the quarter to the applicant was cancelled with effect from 4.6.92 in terms of the order dated 14.7.93, for reasons mentioned therein and not on account of the order dated 27.5.92.

7. The learned counsel for the applicant has stated that the applicant is willing to pay the rent upto the order of cancellation of allotment on 4.6.92 as per the rules. In other words, in the statement showing the arrears of licence fee (copy placed at page 19 of the application) upto the entries starting from ' 6/92 to 11/92 ' there is no dispute on the amounts. However, the learned counsel for the applicant has vehemently opposed the charging the market/ damage rent for the periods of occupation starting from June 1992. Admittedly, the order passed by the respondent No.1 is not ~~been~~ in accordance with section 7 read with section 14 of the Public Premises (Eviction of un-authorised Occupants) Act 1971 and is, therefore, set aside.

8. The Supreme Court in the case of Union of India Vs. Wing Commander R.R. Hingorani, 1987(2) A.T.C. 939, has, while directing the Central Government to refund the amount deducted from the commuted pension paid to the respondent held that " the Government shall be at liberty to initiate proceedings under Section 7(2) read with Section 14 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for recovery of the amount due on account of damages for unauthorised use and occupation of the flat in question from the respondent as arrears of land revenue, or have recourse to its remedy by way of a suit for recovery of damages." Following this case, the respondents are at liberty to take such action as they deem fit to recover the due rent for the overstay, in accordance with the provisions of the Public Premises

(Eviction of Unauthorised Occupants) Act, 1971 and Rules.

9. The learned counsel for the applicant also relied on the judgement in U.V. Baindurkar Vs. Union of India and Ors. 1992 (3) CAT Bombay SLJ 107, where, following the Full Bench decision in Wazir Chand Vs Union of India, CAT Vol. II page 287, this Tribunal has held that gratuity cannot be withhold for non vacation of the Railway quarter. Accordingly the respondents were directed to release the gratuity of the applicant.

10. Having regard to the facts in the case and the aforesaid judgements,

- (1) The impugned orders dated 24.11.92 and 2.12.92 are hereby set aside.
- (2) The applicant is directed to deposit the undisputed amount of licence fee upto 4.6.92 for the quarter in question within two weeks from the date of receipt of this order.
- (3) The respondents shall release the withheld gratuity amount of Rs. 30,225/- to the applicant within two weeks from receipt of the above rent amount.
- (4) The respondents are also at liberty to take such action as they deem fit for recovery of the further licence fee after 4.6.92 in accordance with law.

11. The application is partly allowed and disposed of as directed above, with no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

(12)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Review Petition No.5/94
in
Original Application No.116/93.

Shri C.M. Pereira

.. Applicant.

vs.

Union of India, through
the Assistant Estate Manager,
101, M.K. Road,
BOMBAY - 400 020.

The Administrative Officer
Research & Development Organisation,
Naval Chemical & Mett. Lab.,
GPO, Post Bag No.10012, Bombay. .. Respondents.

Coram : Hon'ble Smt. Lakshmi Swaminathan, Member (Judl.)

Tribunal's Order in Review
Petition by Circulation.

Date : 25th Feb. 1994

This Review Petition No.5/94 in O.A.116/93 has been filed on 16.12.1993, in which the Respondents have prayed for stay of operation of Judgment/Order dated 29.10.1993 till this Petition is disposed of and for review of the order. The respondents have urged that on the facts as brought out in the Review Petition, the order is wrong and further that the applicant should be directed to furnish to the Court the details of his moveable and immoveable properties and other assets.

2. The facts and law urged in the Review Petition could have been raised at the time when the applicant was heard in support of the Original Application. As no error apparent on the face of the record has been pointed out, the Review Petition is dismissed.

Rec
28/2

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (JUDICIAL).