CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 519/94

Transfer Application No.

Date of Decision 31-1-96

Srinivas B Kulkarni — Petitioner/s

Shri S.P.Saxena — Advocate for the Petitioners

Versus

Union of India & Ors. — Respondent/s

Shri P.M.Pradhan — Advocate for the Respondents

CORAM :

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

Hon'ble Shri.

(1) To be referred to the Reporter or not ? X

(2) Whether it needs to be circulated to other Benches of the Tribunal ? X

M R Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6,PRESCOT RD, 4th FLOOR,

Bombay - 400 001.

ORIGINAL APPLICATION NO.519/94

Pronounced the 31st day of Jan 1996.

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

Srinivas B Kulkarni ... Applicant
(Adv. by Shri S.P.Saxena)

V/s.

1. Union of India, through
The Secretary,
Ministry of Communication,
New Delhi - 110 011.

2. The Post Master General,
Poona Region,
Pune - 411 001.

3. The Senior Superintendant,
RMS 'B' Division,
Pune - 411 001.

4. The Sub-Post Master,
Salisbury Park Post Office,
Pune - 411 001. .... Respondents
(Adv. by Shri P.M.Pradhan)

ORIGINAL APPLICATION NO.689/94.

Pronounced the 31st day of Jan 1996.

R.G.Sagwekar ... Applicant
(Adv. by Shri S.P.Saxena)

V/s.

1. The Union of India, through
the Secretary,
Ministry of Communications,(P&T)
Government of India,
New Delhi - 110 011

2. The Senior Superintendent of
Post Offices,
Pune City, East Division,
Poona - 411 037

3. The Sub-Postmaster
Salisbury.P.O.,
Pune - 411 037.
(Advocate by Shri P.M.Pradhan) ... Respondents.

...2/-

X ORDER X

In these two OAs the issues raised for decision are identical with necessary change of details for example the applicant in OA-519/94 retired on 31/3/82 whereas the applicant in OA 689/94 retired on 28/2/82. As a result of protracted litigation, the applicant in OA 519/94 vacated the quarters on 16/8/91 whereas the applicant in OA-689/94 vacated the quarters on 12/7/91. The amounts recovered from Pension/Dearness Relief or otherwise are different. They however do not effect the issues involved. We have taken facts in OA-519/94 as illustrative.

2. The applicant was alloted quarter No.38, Building No.4, at P & T Colony (Old), Gultekdi, Pune and retired on Superannuation on 31/3/82. Under the rules, he could occupy the quarters for 4 more months and therefore, his occupation of quarters from 1/8/82 became unauthorised. However, the applicant had approached the High Court of judicature at Bombay and on 12/12/83, the department was restrained from charging higher rent than the petitioner was paying at the time of his retirement pending hearing and final disposal of the writ petition. It is seen from the records that the applicant was paying Rs.63.70 as the monthly rent at the time of retirement. The unauthorised occupation meant that he was required to pay the market rent i.e. to say 4 times the monthly rent namely Rs.243.70. Consequent on the said order of the High Court the department was required to restrict the recovery to the original

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monthly rent namely Rs.63.70.

3. The High Court dismissed the writ petition on 16/2/89. At that time, the High Court had given 8 weeks' time to the applicant to vacate the quarters. An SLP was filed against the judgement of the High Court and by the order dated 17/5/89, the Hon'ble Supreme Court apart from giving stay on eviction, stated that petitioners would be liable to pay the rent for the premises in question as per Government Housing Accommodation rules from the month of May, 1989. However, arrears of enhanced rent will not be recovered untill further orders.

4. The Hon'ble Supreme Court dismissed the SLP on 26/7/89 but while doing so directed that the employee may not be terminated till end of the year and they will be liable to pay rent in accordance with law. It appears that there was a stay order on eviction from the Head quarters but subsequently the same was lifted and the applicant actually vacated the quarters on 18/8/91.

5. It is the grievance of the applicant that he was made to pay Rs.12,847.40 as arrears of rent at the time of vacation of the quarters vide communication dated 14/8/91 at page-22. It is a further grievance of the applicant that the respondents have shown an additional recovery of Rs.27,581/- vide communication dated 24/4/92 at page-13. The applicant has also challenged the action of the respondents in trying to recover part of the arrears from the Dearness Relief on the pension payable to the applicant, which he

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resisted and as a protest he has stopped drawing pension altogether. The applicant has challenged both these communications. The relief claimed by the applicant is to quash and set aside the Impugned orders dated 14/8/91 and 24/4/92 and to direct the respondents not to make any recovery from the relief on pension being received by the applicant and to declare that the applicant is entitled to pay normal licence fee for the quarter kept by him till 20/7/91 being the date when stay granted by the Headquarters against the eviction was operative There appears to be some confusion however regarding this date because in OA-689/94, the relief claimed is for declaration that the applicant was not in unauthorised occupation in quarter till December,1989 as his occupation was authorised by the orders of High Court and Supreme Court and this may be taken to be the prayer.

6. It was brought to out notice by the Counsel for applicant that similar issues were raised in OA-523/93 (Shri Chandulal Hasham Bhai v/s. Union of India) decided by Division Bench of this Tribunal on 1/9/94 to which I was a party. It appears to me that there are two issues which call for decision. The first issue is whether the department has made the calculation of the arrears correctly and in particular the relief claimed by the applicant to treat their stay in the Government quarters as authorised till the decision of the Supreme Court.

7. From the calculation given by the department it appears that the department treated the Court

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orders as merely staying the recovery and as soon as the SLP was dismissed by Supreme Court, the department felt itself free to recover the amount at market rent. The contention of the applicant is that this action of the department is not correct. On this point, the case of Shri Bhandulal Hasham Bhai is not of much help because the Tribunal noted that some payments were made by applicant on his own volition and sbefar as the quantification of market rent is concerned apparently it is prepared in accordance with law and there is no grievance on that score. In this case, however, the applicant relies on the case of Dominic James v/s. Union of India, Station Commander (Military) Sub area Bombay and others reported at (1992) 21-ATC 735. In that case the Court held that the applicant was allowed to stay in the premises up to a particular day by the Court and in view of the fact that the applicant stayed under the orders of the Court till that date, the question of charging Damage Rent does not arise, and accordingly no damage rent should have been charged from the applicant in the manner in which it has been charged.

8. Now considering the chronology it appears to us that the occupation of the applicants was unauthorised w.e.f. 1/8/82 till the date of stay order passed by High Court namely 12/12/83, hence the department is entitled to charge and recover damage rent from the applicant for this period. So far as the period from 12/12/83 is concerned, on that day the High Court directed that he should be charged the rent which was being charged

at the time of his retirement and the orders of the High Court remained in operation till 16/2/89 when High Court dismissed the writ petition. The High Court had given a further stay of 8 weeks from eviction. Thus the order of the High Court was operative up to 18/4/89. But if we consider the order of Supreme Court dated 17/5/89 then the Supreme Court appears to have treated stay of High Court to have been operative till the end of April,89 and the Supreme Court has clearly stated that the petitioner will be liable to pay rent for the premises in question as per Government Housing Accommodation rules from the month of May,89. Thus the stay of the applicant from 12/12/83 till end of April,89 can be said to have been covered by the High Court and S.C. orders prima facie and this can be said to be the period to which the ratio of Dominic James would apply.

9. The applicant, however, would contend that the stay can be held to be operative till the Supreme Court dismissed the SLP namely 26/7/89 and also allowed the applicant protection against eviction till the end of December,89. Hence declaration has been asked ~~for~~ that the stay of the applicant should not be treated as unauthorised till the end of December,89.

10. The Counsel for respondents, however, points out that the Supreme Court orders at the stage of admission of SLP, are clear:

> "However arrears of enhanced rate will not be recovered untill further orders"

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which means that Supreme Court had in mind the damage rent/market rent required to be paid as per rules. This contention of the respondents appears to be correct on a plain reading of the orders of the Supreme Court.

11. On this basis, we find that applying the ratio of Dominic James, the stay of applicant from 12/12/83 till April,89 was authorised having been covered by Court's order and therefore the respondents cannot recover damage rent from the applicant for this period. The protection of the Supreme Court was available from May,89 till December,89 only for purposes of eviction and not for purposes of recovery of the enhanced rent. In our view any alleged stay from the Department is not relevant.

12. According to us the respondents can treat the occupation of the applicant in the quarter from ~~April~~ May,89 as unauthorised and assess the market rent accordingly and recover the same after January,90. It would appear that the respondents recovered an amount of Rs.12,847.40 in August, 1991 accordingly and made a demand for further recovery of Rs.27,581/- by their impugned letter dated 24/4/92.

13. According to the written statement filed by the respondents, the total demand from the applicant is Rs.46,682/- of which an amount of Rs.15,578/- and Rs.12,847/- has been recovered from the applicant, the former through deduction from Pension/Dearness Relief and the latter in Lumpsum and balance to be recovered as on the date of filing written statement is Rs.18,257/-.

...8/-

14. As observed by me the respondents appear to have charged market rent for the period for which the applicant was protected by the order of High Court. This is not in accordance with the ratio of Dominic James. I am therefore of the view that the applicant is entitled to the following relief in the first instance namely

> "Respondents to treat the occupation of the applicant from 12/12/83 till 30/4/89 as authorised and the occupation for the remaining period as unauthorised and on that basis re-calculate the amount due and taking account of the deductions/recovery already made from the applicant arrive at the net amount recoverable from the applicant."

14-A So far as the second issue is concerned namely whether the recovery of the arrears of the rent could be made from Dearness Relief, on this point, the applicant would contend that the matter stands concluded by the judgement of this Tribunal in Chandulal Hasham Bhai. Para-9 of the judgement reads as below:-

> 9. In this connection the learned counsel for the applicant has brought to our notice the judgements of the Principal Bench of the Tribunal in Beni Prasad v/s. Union of India (ATR 1987 (2) CAT 205) as well as the judgement of Jodhpur Bench in U.M.Goel v/s. Union of India 1992(2) A.I.S.L.J. 180 wherein the Tribunal has taken a stand that no recovery could be made from the Dearness Relief, in view of Rule 3(o) of the Pension Rule which includes that the Dearness Relief is a part of the pension.

15. Respondents, however, contend that the case of Chandulal Hasham Bhai proceeded on the basis of

...9/-

Beni Prasad v/s. Union of India and U.M.Goel v/s. Union of India. But both of these decisions failed to notice certain important provisions of the CCS Pension Rules. According to respondents CCS pension rules have been amended w.e.f. 9/2/91. Accordingly, ammended definition of Pension which appears at rule-3(o) reads as below:-

> "Pension includes gratuity except when the term pension is used in contradistinction to gratuity, but does not include Dearness Relief."

16. The respondents have further pointed out that rule 72(6) of the pension rules as amended w.e.f. 9/2/91 reads as below:-

> "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 untill full recovery of such dues have been made.)"

The respondents also referred to decision No.7 under rule 73 of the Pension rule which reads as follows:-

"(7) Only arrears of licence fee recoverable from pensioner's relief - The Heads of Offices should ensure that all Government dues recoverable from retiring Government servants should be assessed well before retirement and recovered from the salary/ retirement gratuity and that no Government dues other than arrears of Licence fee can be recovered from Dearness Relief."

17. In our view the decision No.7 under rule-73 is not of much help to the Respondents because it says nothing which is not said by Rule 72(6). But we are required to consider the impact of tule 3(o) namely the revised definition of Pension and the rule 72(6) which provides that unpaid licence fee 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.

18. We therefore consider the relevant judgements. So far as the case of Beni Prasad is concerned, a short note in respect of this case is to be seen at (1987) 2-ATJ-205. At that time, the Tribunal did note the definition of pension under rule 3(o) but it was not the amended definition of pension. The Tribunal however observed that

> the Dearness Allowance relief granted to pensioners is primarily intended to offset high rise in prices and cost of living. It is, in fact, the depreciated value of the rupee that is sought to be compensated by granting relief to a pensioner by way of R.I.P. It is thus, in fact, part of the pension. It is an amount paid for service

...11/-

already rendered. If a person is entitled to receive pension, he will also be entitled to receive R.I.P. Without pension there could not be any payment of R.I.P. Relief in pension in all respects, in our view is part of pension.

19. So far as U.M.Goel's case is concerned it was decided by Jodhpur Bench of Tribunal on 19/12/92. Unfortunately the revised definition of pension and provision of rule 72(6) of CCS pension rules were not brought to the notice of the Tribunal in U.M.Goel's case although the amendment had already taken effect at the time the judgement was delivered. The Tribunal did note the clarification given by the Railway Board on 20/9/85 to the effect that the relief payable on pension is not covered by pension act and there may be no objection to the recovery of Government dues being made from the pension relief without the consent of a pensioner. The Tribunal observed that the clarifications is not correct in view of judgement of Tribunal in Beni Prasad case.

20. U.M.Goel case may be correct in holding that the Railway Board clarification in the nature of executive instructions was not correct in view of Beni Prasad's case. This may not apply to the amended pension rules because they are not in the nature of executive instructions but they are statutory rules.

21. The question therefore arises whether the decisions of the Division Benches in Beni Prasad v/s. Union of India and U.M.Goel v/s. Union of India and

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and also Chandulal Hasham Bhai v/s. Union of India have to be reconsidered.

22. I am of the view that these judgements need reconsideration for more than one reason, The first reason is ofcourse, the obvious reason that these judgements did not notice the amended rules nor were they pointed out to them by the Counsel. But there are also certain other considerations which I set out below:-

The second consideration is the conceptual difference between Pension and Dearness Relief. As is well known, the Pension is calculated with reference to emoluments and average emoluments vide chapter-4 of the Pension rules. Rule-33 defines emoluments as below:-

> "The Expression emoluments means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death; and will also include non-practising allowance granted to medical officer in lieu of private practice.
>
> EXPLANATION-Stagnation increment shall be treated as emoluments for calculation of retirement benefits."

Rule-34 states that average emoluments shall be determined with reference to the emoluments drawn during the last ten months of his service. The definition of emoluments cross-references to FR 9(21)(a)(i) while reads as below:-

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> "the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre."

It is clear that Dearness Relief is a supplement to the Pension as Dearness Allowance is supplement to the Basic Pay and to the extent Dearness Allowance is not part of the Basic Pay it will be difficult to hold that Dearness Relief is part of Pension.

23. There is a third consideration which is relevant. The sanctity which attaches to Pension derives from Section-11 of the Pensions Act 1871. This deals with exemption of pension from attachment and reads as below:-

> "No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance,
>
> and no money due or to become due on account of any such pension or allowance,
>
> shall be liable to seizure, attachment or sequestration by process of any Court, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

24. The Supreme Court had occasion to notice the provisions of the Pensions Act in the Union of India v/s. Wing Commander R.R.Hingorani 1987(2)ATC 939 in the context of the issue as to whether the prohibition of attachment which is available in the case of Pension is also available to commuted Pension

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especially in the context of the fact that the commutted pension is a lumpsum payment. The Supreme Court reviewed a series of decisions including English cases but ultimately held relying on Jyoti Chitfund case that the pension which is commuted does not lose its character as a Pension. However, the question still remained as to whether DCRG is pension for this purpose. On this point, the Supreme Court in its latest judgement in State of U.P. v/s. U.P.University Colleges Pensioners' Association 1994 SCC (L&S) 747 had occasion to notice its decisions in earlier cases namely D.V.Kapoor v/s. Union of India (1990) SCC-314 and Jarnail Singh (1993) 1 SCC 47 and in para-15 of this judgement the Supreme Court summarised the position which emerges as below:-

> "15. We, therefore, state that either because of what was stated in Jarnail Singh case or the way pension has been defined in the Constitution, it cannot be held that pension and gratuity are conceptually same, as stated in paragraph 9 of Jarnail Singh case to which our attention is invited by Shri Jain. According to us, this Court took the view in question in Jarnail Singh because of the definition of the word "pension" in the concerned rule; otherwise, what was held in D.V.Kapoor and F.R.Jesutharam cases seem to be correct legal position."

25. It would thus be seen that the latest trend is to consider the conceptual difference and the position in the rules. It appears that the Pension and Dearness Relief are conceptually not the same and the rules also have specifically provided that Dearness Relief is not to be treated as Pension for purpose of deduction of arrears of licence fee.

26. In my view therefore the question whether Pension includes Dearness Relief and whether the arrears of rent can be recovered from Dearness Relief as provided in Rules 72(6) is required to be decided by a larger bench taking account of what is stated above.

27. Normally a Single Bench may not recommend reference of matter to a Full Bench but since, as observed by me above, the decisions of the Division Bench were rendered without noticing the relevant statutory definition of pension and the provisions of Rule 72(6) of the CCS Pension rules, I consider it expedient to make a recommendation to the Chairman to refer the matter directly to Full Bench. I therefore dispose of the OA by passing the following order:-

1. Respondents to treat the occupation of the applicant from 12/12/83 till 30/4/89 as authorised and the occupation for the remaining period as unauthorised and on that basis re-calculate the amount due and taking account of the deductions/ recovery already made from the applicant arrive at the net amount recoverable from the applicant and take further necessary action.

2. Whether the decisions in Beni Prasad case and U.M.Goel case need reconsideration in the context of revised definition of Pension contained in rule 3(o) and new rule

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72(6) both of which came into effect on 9/2/91 and in the light of case law cited by me and whether in view of above arrears of rent could be deducted from the Dearness Relief as distinguished from pension needs to be decided.

3. So far as issue No.2 is concerned Registry is directed to refer the matter to Chairman to consider the advisability of constituting a Full Bench consisting of 3 members for considering the issue. There is no order as to costs.

M R Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

abp.