

CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NUMBER 1018 OF 1994

THURSDAY, THIS THE 8TH DAY OF JULY, 1999.

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

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

Abdul Razak Ali Solkar,
retired Master Draftsman from
Garrison Engineer Air Force,
Thane under the overall control of
Chief Engineer, Bombay Zone, Colaba, Bombay
resident of - At & Post: Someshwar: Taluk
& District: Ratnagiri, Maharashtra. .. Applicant.

(By Advocate Shri P.A. Prabhakaran)

v.

1. The Assistant Estate Manager,
Old C.G.O.Building, Annexe,
3rd Floor, Maharshi Karve Road,
Mumbai - 400 020.
2. Director of Estate,
Nirman Bhavan, New Delhi-110 011.
3. The Commander Engineer,
Head Quarter Commands Engineer
Branch, Pune - 411 001, Maharashtra.
4. Chief Controller of Defence
Account (P), Allahabad.
5. Garrison Engineer(P), Kolshet Road,
Thane-400 607. .. Respondents.

(By Standing Counsel Shri V.S.Masurkar)

O R D E R

Justice S.Venkataraman, Vice-Chairman:-

When the applicant was working at Santacruz under the Assistant

Garrison Engineer, Santacruz he was allotted a quarters. In June, 1981 a Garrison ^{Engineer} office was set up at Thane and also at Santacruz. According to the applicant he was adjusted for work at Thane and that he continued to occupy the quarters and through out, the normal rate of rent was deducted from his salary. On 26-9-1988 the Estate Officer issued an order cancelling the allotment made to the applicant retrospectively from 30-8-1981 and asked the applicant to vacate the premises. The applicant after taking some time vacated the premises on 28-10-1988. In February, 1989 the Estate Manager informed the applicant's employer that a sum of Rs.52,038/- was due from the applicant towards penal rent and that the same should be recovered from him. The applicant retired on 31-8-1993 and the above amount has been recovered by deducting the entire gratuity and part of commutation of pension. The applicant's grievance is that he was never transferred to Thane and as major part of his work was within Bombay limits, the Estate Officer could not have treated his occupation of the quarters as unauthorised. He has also contended that the Estate Officer could not have unilaterally ordered recovery of penal rent from his gratuity and retiral benefits.

2. Respondents 1 and 2 in their reply have contended that in September, 1988 the Estate Manager received intimation from the office of the Garrison Engineer about the applicant having been posted to Thane and that on receipt of that information the Estate Manager has issued a notice to the applicant and had taken steps under the Public Premises (Eviction of Unautho-

rised Occupants) Act, 1971 and it is only thereafter the applicant vacated the premises. They have contended that the applicant is liable to pay the penal rent as levied by them.

3. The Garrison Engineer in his letter dated 2-6-1993 addressed to the Director of Estates has, no doubt, stated that the applicant's services were adjusted against the new formation at Thane from 1st July, 1981 and that the area coming under the jurisdiction of that Garrison Engineer lies even in Bombay, that throughout normal rent alone was being collected from the applicant and that penal rent could not be levied against the applicant.

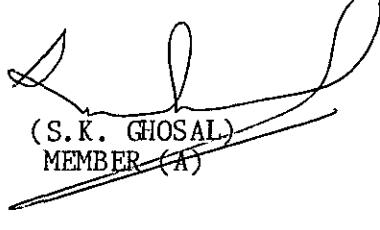
4. Though the learned counsel for the applicant strenuously contended that the applicant was not actually transferred to Thane, the applicant in his rejoinder has not denied the averment in the reply that the applicant had been posted to Thane. But, the fact remains that though a new office was set up at Thane which office also had areas in Bombay within its sphere of work, the applicant appears to have been sent to work at Thane. Whether actually the applicant was transferred out of Bombay is not very clear and we do not find any categorical statement in the reply that the applicant had actually been transferred out of Bombay though the applicant had asserted that it was only an adjustment. The applicant had continued in the quarters till 1988 and when the notice was issued to him, he has vacated the premises within the time given by the Estate Officer. The question is whether the applicant could have been made liable to pay by way of penal rent a total sum of Rs.52,038=05 starting from September, 1981.

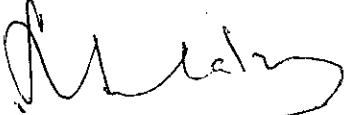
5. It is seen from the statement which is enclosed to the letter dated 26-7-1990 written by the Assistant Estate Manager that from September, 1981 market rent at Rs.620-70 has been levied. It is not clear as to on what basis this market rent is determined. The provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 stipulates that the penal rent will have to be determined by the Estate Officer after issuing show cause notice and by adopting the factors mentioned in Rule 8 of the Rules. There is nothing to show that the Estate Officer determined the market rent as prescribed under the Act. As such, the action of the 1st respondent in straight away writing to the employer of the applicant to deduct a sum of rupees fifty-three thousand and odd towards penal rent was uncalled for, even if the applicant was liable to pay any penal rent.

6. This is a case where the applicant has already retired from service. He has vacated the premises after the issue of show cause notice. Even if it could be said that the applicant must be deemed to have been posted to Thane resulting in his liability to give up the quarters, the applicant as well as his employer appear to have been under the bona fide impression that the applicant is entitled to retain the quarters as he had been adjusted in a newly created office and that office had work spots even in Bombay. Taking into consideration all these factors, we feel that instead of allowing respondents 1 and 2 to again initiate fresh proceedings to determine penal rent and thereafter to recover the same, it would be just and proper to direct recovery of only double the normal rate of

rent from September, 1981 upto the date he vacated the premises. We make it clear that this shall not be treated as a precedent. The gratuity and commutation of pension in excess of the amount which becomes payable by calculating the penal rent at double the normal rent, will have to be refunded to the applicant. The applicant is a poor class-IV employee and he had not the benefit of the above amounts till now. As such, we feel that reasonable interest will also ~~be~~ have to be allowed to him.

7. For the above reasons, this application is allowed in part directing the respondents to deduct only penal rent at double the normal rent from September, 1981 less Rs.6090/- which had already been recovered by way of normal rent as indicated in the statement to the Annexure to letter dated 26-7-1990. The balance amount out of the gratuity and part of commutation of pension which had been adjusted towards the penal rent claimed by respondents 1 and 2 shall be refunded to the applicant with interest at 6 per cent per annum from two months' after the date of his retirement. Parties to bear their own costs.


(S.K. GHOSAL)
MEMBER (A)


(S. VENKATARAMAN)
VICE-CHAIRMAN.

np/