

6

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
-----

Original Application No: 361/94.

Transfer Application No:

DATE OF DECISION: 6/1/95.

M.N.DARVESH Petitioner

SHRI R.R.DALVI Advocats for the Petitioners

Versus  
-----

1. Commanding Officer, Nasik.

2. Estate Manager, Bombay.

~~3. Secretary to Government of India~~ Respondent

Shri R.K.Shetty-1 & 3.

Shri V.S.Masurkar-2.

Advocate for the Respondent(s)

CORAM :  
-----

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

The 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 ? X

abp.

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

(5)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

O.A.361/94

M.N.DARVESHI

... APPLICANT

V/s.

1. Commanding Officer, )  
No.25, Equipment )  
Department, Air Force, )  
Devlali - 422 501. )  
Dist. Nasik.
2. Estate Manager, )  
Government of India )  
Estates, 3rd Floor, )  
Pratishtha Bhavan, )  
101, Maharshi Karve Road )  
Bombay - 400 020.
3. Secretary to Government of India, )  
Ministry of Defence, )  
Mantralaya, )  
New Delhi - 110 001.

... RESPONDENTS.

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

APPEARANCES :

Shri R.R.Dalvi - Counsel for Applicant.

Shri R.K.Shetty - Counsel for Respondent  
(1 & 3).

Shri V.S.Masurkar - Counsel for  
Respondent-2 .

ORAL JUDGEMENT.

DATED : 6/1/95.

{ Per Shri M.R.Kolhatkar, Member (A) }

In this application under Section-19 of the Administrative Tribunals Act, the facts are that the applicant who is an employee of respondent-1 was transferred on 4/2/92. Thereafter, while he was on transfer, he retired on 30/4/93. He, however, continued in Occupation of Government Quarters. The proceedings under the Public Premises (eviction of unauthorised occupants) Act 1971 were taken against him and an order of eviction was passed against which he approached the City Civil Court, which, vide its order dated

...2/-

(8)

2nd February, 94 gave extension of time to vacate the premises till 30/4/94. The applicant actually vacated the premises on 18/6/94. He has been asked to make payment of Rs.67,827.00 being the balance of license fee assessed and realised. The Assessed amount is Rs.83,660.85 and the amount realised is Rs.15,833.20. The applicant has challenged the action of the respondents No.1 in withholding the amount of gratuity and commuted value of pension acting under instructions of respondent-2. The withheld amount of Gratuity is to the tune of Rs.32,475/- and Commuted value of pension is to the tune of Rs.6,722/- making a total of Rs.39,197/-. On going through the statement of arrears of licence fee due, we find that the normal rent of the quarters is Rs.84/-p.m. However, we note that for the period 5/4/92 to July, 93., i.e. to say after excluding two months' grace period after transfer till after retirement, an amount of Rs.42,856/- has been charged. For the period from August, 93 to 18/6/94 an amount of Rs.28,600/- has been charged. The rest of the amounts included in the outstanding amount of Rs.67,827.00 pertaining to water charges, etc and ~~do~~<sup>be</sup> not appear to <sup>be</sup> disputed.

2. So far as the arrear license fee of Rs.67,487/- is concerned (Rs.42,856/- + Rs.28,631/-), the applicant contends that it is not market rent as claimed by Respondent but it is damage rent. According to him, in the relevant Government Order the term 'Market rate' cited by the respondent has already been deleted by ~~the~~ Government and substituted by the term 'damages' vide sub clause (vii) of G.I., Ministry of Urban Development (Director of Estates) O.M.18011(12)/73 Pol. III dt. 27/8/87. The applicant's case is that the amount of DCRG/Commuation Pension cannot be withheld towards recovery of damage rent in respect of retired Government Employee. He relies on the full bench judgement in Wazir Chand according to which a Government Employee is bound to pay license fee

...3/-

for residential accommodation at the normal rate. But any damage rate over and above this can be recovered by the Government only through normal legal procedure and not through the withholding of the DCRG. The applicant also referred to the Supreme Court judgement in F.R.Jesuratnam Vs. Union of India & Ors(1991 ) 16 ATC 540 in which the Hon'ble Supreme Court has observed that the Gratuity<sup>is</sup> no longer a bounty and can no longer be regarded as a provision in the discretion of the President as provided in the Pension Regulations. Authorities have no power to forfeit the gratuity payable to an employee. The Learned Counsel for the respondent No.1 contended that Wazirchand has been over-ruled by Supreme Court judgment in Union of India V/s. Shiv Charan vide (1992) 19 ATC 129. We have perused the judgement in which the Supreme Court has given directions on the facts and circumstances of the case. The Appellants Viz. Government, were directed that the entire amount due and owing to the Government employee minus the rent for the period of over-stayed<sup>is</sup> may be handed over to the Government employee at the time of re-possession of quarter. It was noted that the Government were entitled to make claim in accordance to law to which they are entitled, for any excess or penal rent. We observe that the Supreme Court directed recovery only of normal rent from the amount due to the employee and as far as penal interest and excess rate were concerned, the Government was asked to recover the same in accordance with law. Therefore, there is no over-ruling of Wazir-chand as alleged by Respondent No.1's Counsel. Learned Counsel for respondent-2 then invited our attention to the judgement of Calcutta Bench in O.A. 463 of 1994 Suda Iswar Rao V/s. Union of India and Ors. reported at 1994(2) A.T.J.539, Our attention was

particularly invited to head notes C & D of the head notes of the judgement. The head note C states that the Government Employee was liable to pay damage rent in accordance with appropriate Railway Board Circular for the period of unauthorised occupation. Head note D states that the Railway administration has the authority to recover the penal rate or damage rent from the salary of the Railway employee. Procedure under PP Act is only an alternative remedy. This case has been decided by following the decision in Shankar V/s. Union of India decided by the same bench. In our view, this case does not help the Respondents so far as it relates to the withholding of gratuity and pension commut<sup>ag</sup>ing<sup>ar</sup> arrears by the Government. We have carefully perused the judgment. It lays down that penal or damage rent can be charged as per Railway Board Circular in respect of Railway employees who remain in unauthorised occupation of Government accommodation. The case has no application to the instant case where facts as well as issues are different.

3. We note that it was open to the applicant when he was transferred while still in Government service to make representation to waive the recovery for valid reasons and it is in the discretion of the Government to waive the recovery or not. However, no representation has been made. This is so far as the period 4/4/92 to 30/4/93 is concerned. So far as the period 1/5/93 to 18/6/94 is concerned it stands on a different footing. Eviction notice was challenged before the City Civil Court and the court extended the time for vacating the premises. The applicant was given time upto 30/4/94 to vacate the premises. He actually vacated the same on 18/6/94. The applicant

relies on the judgment of the Bombay Bench vide OA 116 of 1993 decided on 7/4/92 <sup>in</sup> ~~vide~~ Dominic James V/s.

Union of India. The tribunal held that the department is not entitled to recover damage rent for the period eviction was stayed under order of the Court. In the facts and circumstances of the case, therefore we consider that the applicant is certainly liable to pay damage rent for the period from 4/4/92 to 30/4/93 and the Department can take legal action short of recovery from gratuity and commuted pension. It is, of course, open to the applicant to make a representation to the department to waive the damage rent for this period but this is a matter between the parties. So far as the damage rent for the period 1/5/93 to 18/6/94 is concerned it is in two periods. So far as the period from 1/5/93 to 30/4/94 is concerned, it is covered by the orders of the Court and the department is precluded <sup>from</sup> ~~by~~ recovering the same in view of the ratio of Dominic James. So far as the period from 1/5/94 to 18/6/94 is concerned, the Applicant states that he had applied for extension and there are precedents. We are however not impressed by this argument. We consider that the applicant was duty bound to vacate the quarters as soon as the period of Stay granted by the City Civil Court was over and therefore the damage rent for the period from 1/5/94 to 18/6/94 has to be considered as rent which the department is entitled to recover from the dues payable including gratuity.

4. We therefore, consider that so far as the Gratuity and commutation of pension is concerned, it is open to the respondent-1 to recover the following amounts from Gratuity.

1. Normal rent for the period for which the applicant stayed in the quarters upto 30/4/94.

2. All incidental charges like water charges, electricity charges, etc. for the full period upto 18/6/94.
3. Damage rent for the period 1/5/94 to 18/6/94.
5. After deducting the above amounts, the balance amount of Gratuity and the Commutation value of the pension should be released to the Applicant. He is also entitled to interest <sup>as per rules</sup>. We direct accordingly ~~to~~ ~~be~~ ~~rules~~. We therefore dispose of this OA by passing the following order.

ORDER

OA is partly allowed in terms of the above directions. Respondents are directed to make payment of balance gratuity and commutation value of pension to the applicant within 8 weeks of the receipt of the order. The applicant will also be entitled to interest <sup>as per rules vide ~~as per rules~~ <sup>as per rules</sup> of CCS(Pension) Rules viz. 7% and 10% respectively till the date of payment.</sup>

abp.

*M.R. Kolhatkar*  
\_\_\_\_\_  
(M.R.KOLHATKAR)  
MEMBER (A)