

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1363 /195

Date of Decision: 31-07-96.

V. S. Shanbag Petitioner/s

Mrs. Neeta Masurkar Advocate for the
Petitioner/s

V/s.

Union of India & Anr. Respondent/s

Shri J. P. Deodhar Advocate for the
Respondent/s

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 ? X

abp.

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
'GULESTAN BLDG NO.6', PRESCOT RD., 4th FLOOR.,
MUMBAI BENCH

ORIGINAL APPLICATION NO.1363 of 1995.

DATED THE 31st DAY OF JULY, 1996.

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

V. S. Shanbag
Assistant Store ~~Officer~~,
Store Unit, Tarapur and at
present residing at
C/o. Shri S. Ramesh
6, Girivihar Co-operating Hsg. Soc.,
Jivdani road, Virar(E),
Thane.

... Applicant

By Advocate Mrs. Neeta Masurkar

v/s.

1. Union of India, through
Joint Secretary,
(I and M, Department of Atomic Energy),
Anushakti Bhavan,
Old Yatch Club,
C.S. Marg, Bombay - 400 039.

2. The Director
Directorate of Estate Management,
Vikram Sarabhai Bhavan,
IInd Floor, North Wing,
Anushaktinagar,
Bombay - 400 094.

... Respondents.

By Advocate Shri J.P. Deodhar

ORDER

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

The applicant was working as a Store Keeper with
Directorate of Purchase and Stores/^{AEC} Bombay and vide
order dated 24/6/94 was promoted as an Assistant Stores
Officer at Tarapur.

2. The applicant was in possession of Government
Quarters/accommodation in BARC Colony since 1/3/92.

By a representation dated 30/6/94, he made the request
is reproduced below.
to retain the departmental quarters beyond permissible
which
period (7) it is not disputed, is two months.

"1) Incidentally my spouse is working in Atomic
Energy Education Society in A.E.C. School No.2,
Anushaktinagar, as a Primary Teacher since, 1988
and the present accommodation will be of great
convenience to her in attending school services

in the said school.

2) My son is also studying in 2nd standard in the same school and he is very familiar with the route to the school.

3) My second child is only a year old and has to be kept in Baby-sitting in the same entrance of the Building. We will be very much benefitted by retaining the said Departmental Quarter."

3. This representation of the applicant remained under consideration. In the meanwhile by a communication dated 9/6/94, at Exhibit-VIII, page-29., the applicant was advised that the allotment of the flat in his name stands cancelled with effect from 1/9/94. On 2/2/95, the applicant was asked to furnish details about present accommodation in his occupation at Tarapur to examine his case and the applicant replied that he does not intend to occupy Government quarter in Tarapur and he ^{reiterated his} request ^{transfer of} to allow ^{departmental} quarters in the name of his wife on out of turn basis for the reasons which were clear in his representation dated 30/6/94. On 19/6/95, the applicant was informed that his request for retention of the departmental accommodation at Anushaktinagar on essential grounds was rejected. Earlier dated 17/5/95 a show cause notice under Section-4 of PP Act ^{PP Act} was issued to the Applicant. The applicant attended the proceedings on 25/5/95 and xxxxxxxxxxxx asked for time till 10/6/95. He was given the time but it was made clear to him that in case if he does not vacate the flat by the above date, eviction proceedings will be initiated against him under the Public Premises (Eviction of unauthorised and occupants) Act 1971. Licence fee at market rate will also be charged for the period beyond which he was permitted under the existing rule. The applicant actually vacated the quarters on 3/6/95. In November, 95, at page 21, the applicant was asked to make payment of Rs.18,922/- on the basis of normal rent for period from

1/8/94 to 31/8/94 @ Rs.1990/- (market rate) from 1.9.94 to 31.10.94 and @ Rs.2239 p.m. (i.e. revised market rate) from 1.11.94 to 4.6.95., (Deducting Rs.4,168/- paid by him from the due amount of Rs.23,090/- he was asked to pay Rs.18,922/-. There has been a stay on this recovery by/interim order of the Court since 27/11/95.

4. The relief prayed for by the applicant is to quash the order dated 9/11/95 recovering the damage rent from the applicant and direct the respondents to charge normal rate of rent for retention beyond concessional period.

5. The respondents have opposed the OA. According to them, the applicant had not asked for retention of quarter for a limited period as is permissible under rules and therefore his case was required to be referred to Head Office and hence time was taken in disposing of his representation. The department had already advised him that his stay beyond 2 months which is the authorised period in case of transfer was unauthorised and that for the period of over-stay beyond the concessional period, recovery of damages for the unauthorised occupation of the flat will be effected @ Rs.1990/-p.m. The relevant rule namely "Allotment of Govt. Residence", (Department of Atomic Energy), Bombay Rules 1982, Rule-XXI reads as follows:-

RULE XXI: OVERSTAYAL IN RESIDENCE AFTER CANCELLATION OF ALLOTMENT.

"Where, after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the officer to whom it was allotted or any person claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges, equal to the market licence fee as may be determined by Government from time to time, or twice the licence fee he was paying, whichever is higher.

Provided that an officer, in special cases, may be allowed by the Director of Estate Management to retain the residence on payment of twice the licence fee he was paying whichever is more for a period not exceeding six months

beyond the period permitted under Rule IX(2)."

6. This rule refers to permitted period under Rule-IX(2) in the case of transfer to a place outside Bombay, permissible period of retention of the residence is two months.

7. The contention of the respondents therefore is that the action taken in ordering recovery of damage rent is fully covered by rules and there is no scope for interference.

8. The contention of the applicant is that since the respondents did not decide the representation dated 30/6/94 till 19/5/95, he was under the impression that the matter was still open and therefore he was completely taken by surprise when he received eviction notice and [redacted] the notice regarding payment of damage rent to the tune of Rs.18,922/-. According to the applicant he has voluntarily vacated the accommodation and since there is no determination of damage rent in terms of the provisions of PP Act. and since it is the only provision of law under which the department can recover damage rent, the order dated 9/11/95 asking the applicant to pay the damage rent of Rs.18,922/- is entirely illegal. Moreover, this order is also discriminatory because the department had granted similar permission to other employees to retain accommodation beyond the concessional period. In this connection, he has quoted the case of Shri R.V.Padval, Shri B.S.Shetty and Shri M.K.Mitra. In the case of Shri Padval, by order dated 1/9/94 at page-86, he was allowed to retain the quarters for two months at normal rate of licence fee and for a further period of six months by charging double the rate of normal licence fee.

9. According to the respondents, the case of Shri Padval stands on a different footing, as he has been transferred to a place where there is no Atomic Energy

working at a different place and therefore could not fulfill the conditions relating to stay of six months with the Father. Relief of regularisation was denied and the OA was dismissed. In my view ratio of Chacko's case is not applicable to the instant case., as the question in the instant case is regarding recovery of damage rent from an employee whose representation was pending consideration.

16. In this connection, I also refer to judgement of Single Bench of the Chandigarh Bench of Tribunal, Shri Bachittar Singh v/s. Union of India & Ors reported at 1996(1) ATJ 449. In that case, the applicant was allowed to retain the quarter for permissible period and informed that if he retains the accommodation beyond four months, he would be required to pay damage rent i.e. beyond 30/4/94 he will be charged the damage rent at the rate of Rs.2909.08 per month but when he actually vacated the quarter he was required to pay damage rent at the higher rate of 4213.62 per month. The Tribunal refers to the doctrine of legitimate expectations propounded by the Supreme Court in Union of India & Others v/s.

Hindustan Development Corporation & Others in 1993(3) SCC 499.
To quote

" The legitimate expectation is not the same as anticipation and is also different from a wish, a desire, or a hope nor it amounts to a claim on the ground of a right existing under the law. Even a pious hope leading to a moral obligation does not amount to legitimate expectation. It is further discernible from the genuine expectation as such expectation should be justifiably legitimate and protectable. However, such legitimate expectation does not fructify into a right which is by itself not recognised, and here the word 'right' is used in a conventional sense. This doctrine does not give scope to claim a relief straight away as a right may not have crystallised. However, such legitimate expectation being less than a right operates in the field of public and not private law and the Courts of Law to some extent protect such legitimate expectation though not guaranteed and in the aforesaid Judgement it has been observed that such protection ought to be provided. Such an expectation arises when a body by representation or by past practice has aroused this expectation which it would be within the powers of such body to fulfill. If the legitimate expectations shown to have arisen on the representation of the other party, its denial in a given case amounts to denial of a right which appeared to have come into existence if the action in denial

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of such right is shown as arbitrary or discriminatory or unfair or biased or in violation of principles of natural justice. In such a situation such denial can be questioned."

17. In my view the ratio of the said judgement applies to the instant case both in regard to the expectation of the applicant that his representation is under consideration and therefore he is not required to pay damage rent and also in regard to the rate of damage rent. It is not my intention to postulate that the legitimate expectations can be ~~others~~ the rules but legitimate expectations which can be accommodated within the frame work of rules cannot be denied and the applicant is entitled to the relief of concession in terms of rule-XXI as if he had applied for retention of residence for additional six months beyond the period permitted under rule-IX(2). The concessional period in relation to transfer covered the months of July and August, 94. The applicant is therefore entitled to be charged twice the standard licence fee for the next period of six months, namely September, 94 to February, 95. For the remaining period namely March, 95 up to 3/6/95, the applicant may be charged damage rent @ Rs.1990/-p.m. which was the damage rent mentioned in the letter of the department dated 9/8/94 at page-29.

18. In the light of the discussion, I dispose of this OA by passing the following order:-

O R D E R

OA is partly allowed. The respondents are directed to regularise the stay of the applicant beyond concessional period of two months as if he had applied for retention of the residence in terms of proviso to rule-XXI and charge him the appropriate rent accordingly. For the period ~~period~~ ^{beyond} this period of six months till the vacation of quarter, the applicant may be charged the damage rent of Rs.1990/-p.m. referred to above. Any payment already made by the applicant may be adjusted and the net recovery from

the applicant may be made in terms of this order. Action in terms of the order should be completed with two months from the communication of the order. There will be no orders as to costs.

abp.

M R Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)