

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 288/95

Transfer Application No.

Date of Decision

19/1/96

Shri M.D.Paralkar

Petitioner/s

Shri M.S.Ramamurthy

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

Advocate for
the Respondents

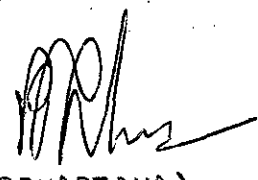
CORAM :

Hon'ble Shri.P.P.Srivastava, 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 ? ☐


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

QA.NO. 280/95

Shri M.D.Paralkar

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri M.S.Ramamurthy
Advocate
for the Applicant

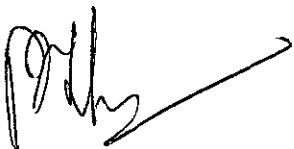
Shri V.S.Masurkar
Advocate
for the Respondents

JUDGEMENT

Dated: 19/1/96

(PER: P.P.Srivastava, Member (A))

The applicant was staying in Quarter No. RB-III/270/7 at Parel from 1963 and he was in occupation of quarter till his retirement on 31.1.1990. The applicant requested for retention of this quarter from 1.2.1990 which was granted by the respondents vide their letter dated 26.2.1990 for retaining the quarter from 1.2.1990 to 31.5.1990 on payment of normal rent. The applicant thereafter requested that the said quarter be transferred in the name of his son Abhay Kumar working in C & W Workshop, Matunga. The applicant also requested vide his letter dated 29.5.1990 requesting for further retention of quarter for two months on



personal grounds. The applicant's request for further retention of quarter was rejected by the respondents vide their letter dated 6.6.1990. The applicant further submits that his son was allotted an alternate accommodation Quarter No. RB-I/86/7/CLA on 5.10.1990 and the applicant was asked to vacate the quarter in his occupation with immediate effect.

2. The respondents have deducted the rent as brought out in their letter dated 16.9.1993 (Ex. 'A'). The occupation of the quarter has been treated by the respondents on normal rent from 1.2.1990 to 31.5.1990 and on double the normal rent from 1.6.1990 to 30.9.1990 and the applicant has been charged with damage rent from 1.10.1990 to 31.10.1990.

3. The applicant has further stated that the applicant's gratuity amounted to Rs.56,100/- but the actual gratuity which is paid is Rs.51,037.75. Thus, the applicant has been paid Rs.5,062.25 less in the gratuity. The contention of the counsel for the applicant is that as far as payment of gratuity is concerned, it cannot be linked with the deduction of rent and therefore the applicant is entitled to payment of interest along with the payment of gratuity which has been withheld on the date of his retirement till the date of payment.

4. The other plea made by the applicant is that the order for deducting rent other than normal rent which is placed at Exhibit 'A' to the OA. dated 16.9.1993 is illegal as the deduction cannot be made without adopting proceedings under Section 7 of the P.P.Act and since no action has been taken by the respondents under P.P.Act, any deduction of rent more than normal rent is illegal.

5. Counsel for the applicant has relied on a judgement rendered by this Tribunal in Urman Singh vs. Union of India & Ors., OA.NO. 439/95 decided on 25.7.1995 wherein it has been held that the deduction of penal rent can only be made in terms of Section 7 of P.P.Act.

6. Counsel for the respondents has brought out that the applicant never requested to regularise the quarter in the name of his son who was working as Khalasi in the Workshop before his retirement on 31.1.1990. The applicant only approached the respondents for regularisation of his quarter on 26.5.1990 just before the expiry of permissible period granted for retention of quarter upto 31.5.1990.

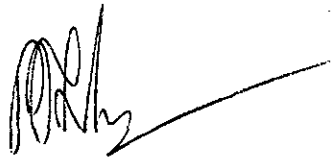
7. The counsel for the respondents has specifically drawn attention to the applicant's letter dated 18.11.1991 (Ex. 'G-1' to the OA.) wherein the applicant has accepted that the rent recovery should be normal rent for 4 months and double the normal rent for next 4 months and then



only the market rent. The counsel for the respondents has argued that in view of the acceptance by the applicant that after 4 months double the normal rent will be charged and then market rent will be charged, the question of taking action under P.P. Act for recovery of damage rent would not arise. The counsel for the respondents has specifically drawn the attention to Para 5 of the judgement in Urman Singh vs. Union of India which has been relied on by the counsel for the applicant, which reads as under :-

"The contention on behalf of the respondents was that though the order dated 1.9.1994 was directed against 48 persons, the others besides the applicants have paid the damage-rent as desired by the respondents and it is only the present 19 applicants who have approached the Tribunal for relief. It might be noted that under none of the provisions of the Act there is a bar to the payment of damage rent/interest if the employee is ready to pay that amount to the employer and in that case it is not necessary for the consenting parties to approach the estate officer or any other forum. If a dispute arises on the matters for which the Act provides, the question would be whether despite the dispute, one of the parties to the dispute, could unilaterally take action without approaching the proper forum."

8. After considering the arguments of both the counsels, I am of the view that the observations made by this Bench of the Tribunal in Urman Singh in Para as quoted above will govern the present case, and in view of the letter written by the applicant agreeing to pay double the normal rent after 4 months of normal rent and then recovery at the market rate it would be possible




for the respondents to recover the rent at double the normal rent for 4 months and then market rent without initiating action under P.P.Act.

9. As far as payment of interest on DCRG is concerned, the counsel for the applicant has relied on Full Bench judgement of the Tribunal in Wazir Chand vs. Union of India & ors. in OA.NO. 2573/89 decided on 25.10.1990. In view of the observations of the Full Bench in Para 14 & 15 that payment beyond 3 months entail interest at the rate of 10% per annum and that the payment should not be withheld for non-vacation of Railway quarter, the applicant is entitled to ~~or~~ according to rules whichever is beneficial payment of interest at the rate of 10% from the date 3 months after his retirement on the amount which was withheld by the respondents. The respondents have brought out in Para 11 of the reply that the Accounts Officer released a cheque for Rs.3028/- on 1.6.1995 in favour of the applicant but the same has not been received by the applicant and the letter sent to the applicant had been returned by the Postal Department with the remarks "Uncleared". Therefore, the applicant would be entitled to payment of interest [] on the withheld DCRG from the date 3 months after retirement upto 1.6.1995 @ 10% or according to rules on the subject, whichever is beneficial.

10. The respondents should pay the amount of DCRG after deducting the rent due within a period of 4 months from the date of receipt of a copy of this order with interest in terms of my above observations. The OA. is disposed of with the above directions.

mrj.


(P.P. SRIVASTAVA)
MEMBER (A)