

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 374/95

Date of Decision: 2<sup>nd</sup> Nov, 99

Mrs. S.M. Khole

Applicant.

S.P. Saxena

Advocate for  
Applicant.

Versus

Union of India & Others

Respondent(s)

Shri S.S. Karkera for  
Shri P.M. Pradhan

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. B.N. Bahadur, Member (A)

Hon'ble Shri. S.L. Jain, Member (J)

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

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

(3) Library Yes

*S.L. JAIN*  
( S.L. JAIN )  
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, 'GULESTAN' BUILDING No.6,  
PRESCOT ROAD, FORT, MUMBAI 400001.

O.A. No.374/95

Dated : 2<sup>nd</sup> Nov., 99

Coram : Hon'ble Shri B.N. Bahadur, Member (A)  
Hon'ble Shri S.L. Jain, Member (J)

Mrs. Shalini Mukund Khole,  
W/o Late Mr. Mukund B. Khole,  
R/o. C-502, Chandranil Appt.,  
Pune-Singhgad Road, Panmala,  
Pune - 411 051. .. Applicant.  
Applicant by Shri S.P. Saxena, Advocate

Vs.

1. Union of India,  
through the Secretary,  
Ministry of Communication,  
Government of India,  
New Delhi - 110 011.
2. The Chief Post Master General,  
Maharashtra Circle,  
Bombay - 400 001.
3. The Director of Postal Services,  
Pune Region,  
Pune - 411 001. .. Respondents.

Respondent by Shri S.S. Karkera,  
for Shri P.M. Pradhan, Counsel.

O R D E R

[ Per Shri S.L. Jain, Member (J) ]

This is an application under section 19 of the  
Administrative Tribunals Act 1985 for a declaration that  
no recoveries can be made from the basic family pension

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or the relief on family pension (Interim Relief) in respect of any outstanding arrears of rent/licence fee recoverable from the deceased employee with a direction to the respondents to refund the amounts already recovered from the applicants family pension or relief on the family pension.

2. There is no dispute between the parties in respect of the facts that Mukund Balwant Khole, LSG-Superintendent, R.M.S. 'B' Division, Pune retired on superannuation on 31.12.1985, was allotted Quarter No.39/4 old P&T Colony, Gul Tekdi, Pune remained in occupation of the said accommodation till his death i.e. 14.12.1987 and thereafter the applicant, who is the widow of the said Mukund Balwant Khole continued in possession of the said accommodation till mid of August'1992. Mukund Balwant Khole filed a writ petition before the Hon'ble High Court of Bombay, an interim order was passed in the said petition on 12.12.1983 to the effect that occupants of the said quarter should not be evicted pending final decision in the writ petition with a direction to the respondents that during the pendency of the writ petition, normal rate of rent as was being paid by him should be charged. The said writ petition was dismissed by the Hon'ble High Court of Bombay on 15.2.1989, special leave petition was filed before the Apex Court on 17.5.1989, stay was granted regarding

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eviction, which was dismissed in July, 1989 allowing the occupants to stay in the quarters till 31.12.1989. The rent which was paid by Mukund Balwant Khole till retirement was @Rs.64/- per month. An amount of Rs.9105.23 was credited by the member of the applicants family on 14.8.1991, thereafter <sup>out of</sup> interim relief on the <sup>rent</sup> amount of family pension is recovered by the respondents.

3. The applicant's case in brief is that as Mukund Balwant Khole died as pauper, no recovery can be made in respect of his Government dues, as the liability of the applicant is limited to the extent she inherits the property from her deceased husband Mukund Balwant Khole and nothing can be recovered from the family pension and interim relief paid thereon, as the family pension is different in comparison to pension which is not transferable and assignable. Hence this O.A. for the above said relief.

4. The respondents have resisted the claim and alleged that the claim of the applicant is barred by time, the applicant's husband applied for retention of the same quarter after retirement which was rejected on 5.3.1986, damage rent is recovered in accordance with instructions and rules, the applicant herself submitted an application seeking permission to pay half of house

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rent dues ~~and~~ rest of the amount be allowed to pay from her pension in monthly instalments vide R/7. Thus the respondents prayed for dismissal of O.A. alongwith costs.

5. Before we proceed to decide the matter in controversy between the parties it is necessary to mention that only interim relief payable on the family pension is being recovered or paid and not the family pension or part thereof. Hence, question whether 'Family pension' which does not include interim relief can be recovered or not, does not arise.

6. The learned counsel for the applicant relied on the order passed by the Full Bench in O.A. No.519/94 and 689/94 decided on 21.6.1997 in case of Shriniwas & R.G. Sanger which lays down the proposition that 'Dearness relief does not form part of pension and hence recovery of Government dues can be made from it.' In the present case, as the recoveries are not made from the pension or interim relief of the deceased employee, hence the said authority is not relevant one. We can not extend the application of the said authority for the proposition that no recovery can be made from family pension which does not include interim relief for the reaosn that CCS Pension Rules 1972 prescribes only for deduction from Pension and not family pension. The word 'Pension' and

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'Family Pension' both are defined in CCS Pension Rules 1972 in Section 3(1)(f) & 3(1)(o) respectively. As the word used in Rule 71 CCS Pension Rules 1972 is "Pension" only, hence it is not appropriate to extend the said meaning to 'Family Pension'.

7. The learned counsel for the applicant relied on 1996(1) All India Service Law Journal 183 Amiya Bhushan Bose vs. Union of India & others decided by the Central Administrative Tribunal, Calcutta for the proposition that Family pension is not inheritance but an exclusive property of the applicant and no recovery dues of husband can be made from it. We agree to the said proposition of law to the extent of 'Family Pension' excluding interim relief in view of the order of Full Bench in case of Shriniwas & P.G. Sanger referred above.

8. In the present case, after the death of the employee Mukund Balwant Khole on 14.12.1987, the applicant remained in occupation of the said quarter alongwith her family members, hence for the amount of rent/damage rent after 14.12.1987, she is liable to pay the same.

9. R/4 discloses that some Ravi Khole for S.M Khole has credited an amount of Rs.9105.25 in respect of

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the rent/damage rent on 14.8.1991 voluntarily. Hence, the question of recovery does not arise at all. If question of liability of payment of rent/damage rent is examined till 14.12.1987, it is less as it comes to Rs.5147/- only than the amount already credited.

10. What property is left by the deceased Mukund Balwant Khole is not a service matter particularly when nothing remains to be recovered as rent / damage rent till his death, as already paid as stated above in the last para.

R-7 specifically mentions as under:-

" I may kindly be allowed to pay half of the amount of house rent dues and the rest of the amount be allowed to pay from my pension in monthly instalments.

I may also be allowed to take away my belongings from the block No.4/39 after paying half of the house rent dues".

11. On perusal of the same we are of the firm opinion that the applicant offered herself for payment of half of the amount of house rent dues and requested for permission to pay the remaining from pension in monthly

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instalments. It also appears that there was a compelling circumstance, probably, the respondents restrained the applicant to take her belongings from the said accommodation. We are unable to agree with the learned conseil for the applicant that the applicant though agreed, she was not competent to contract against the provisions of Law, hence such an agreement is void. The reason is that there is no prohibition in the 'Family Pension Scheme' in this respect to contract.

12. 'Family pension' is provided for maintenance. It was a necessity to have an accommodation. If for fulfilling the necessity, some amount deserved to be paid and for which an agreement is made for the payment of the same, the said agreement cannot be said to be contracting out, particularly when there is no prohibition. Even a minor who is not competent to contract is supplied necessary of life, he is bound to pay the same.

12. On perusal of the calculation sheet alongwith R/6 and R/3, we do not find any irregularity in calculation of the amount of damage rent.

14. In the result, O.A. has no merit. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L.JAIN  
( S.L. JAIN )  
MEMBER (J)

H.

B.N. BAHADUR  
B.N. BAHADUR - )  
MEMBER (A).

02/11/99.