

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.N. 578/95

Date of Decision 28/3/96

Dr. S. H. Patil Petitioner

Shri M. A. Mahalle Advocate for the Petitioner.

versus

Union of India Respondent

Shri Suresh Kumar for Advocate for the Respondents.

Shri M. I. Sethna

Coram:

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

The Hon'ble Mr.

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to other Benches of the Tribunal?

abp.

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

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, PRESCOT ROAD, 4TH FLOOR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO. 578/95.

DATED THE 28TH DAY OF MARCH, 1996.

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

Dr. S.H.Patil ... Applicant
(Advocate by Shri M.A.Mahalle)

v/s_e

I O R D E R I (ORAL)

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

Heard Shri Mahalle for Applicant and Shri Suresh Kumar for Respondents.

that
The facts in this case are/ the applicant was a
and
Senior Scientist in B.A.R.C., was earlier dismissed
on 2/11/88. Against this dismissal, the applicant filed
OA-879/88 [in] which the dismissal was set aside on
6/6/91 and in a fresh enquiry the applicant came to be
again
dismissed/ on 26/3/93. The OA [in] which this dismissal
has been challenged is still pending (OA. No. 324/93).
In [that] OA, the tribunal has passed two Interim Orders.
In the Interim Order dated 19/4/93 at page-16, the
department has been restrained from evicting the
applicant on the condition that the applicant [in] the
event of [dismissal] of his application, [] shall pay
the rent for the premises as per rules.

3. In the second Interim Order dated 23/8/93, the Tribunal observed that the matter was admitted on 19/4/93 and the applicant is due to retire on

superannuation in Nov.93., in any event and under the rules would be continued to be in occupation of the quarters four months thereafter., and hence ~~respondents~~ were directed to evict the applicant ~~for~~ four months after the date of superannuation subject to the payment of appropriate rent as per rules. The ^{first} short point for decision in this case is whether the department is justified in charging market rent from the applicant at Rs.3776/- p.m. from 8/5/93 till 14/6/94 on which date it is not disputed that the applicant vacated the quarters. The recapitulation of relevant dates is as below:-

26/3/93	-	Dismissal
30/11/93	-	Date of Superannuation
31/3/94	-	Date of period stipulated by Tribunal expired.
14/6/94	-	Applicant vacated the quarters.

4. It is not disputed by the Counsel for Applicant that the applicant is liable to pay Market Rent for the period from 1/4/94 to 14/6/94. But the dispute is regarding the action of the department in charging the Market Rent for the previous period viz. 26/3/93 to 31/3/93.

5. In my view, on a plain reading of interim orders, it is quite clear that the applicant was protected from eviction up to 31/3/94 and the Tribunal directed that rent be charged as per rules. I am therefore required to decide whether as per rules, the rate at which the rent is to be charged is Market rent or normal rent.

6. The Counsel for the Applicant relies on the case of Dominic James v/s. Station Commander (Military) Sub-Area, Bombay and Others, (1992) 21 ATC 735 which was a case relating to payment of damage rent for unauthorised occupation of Public Premises. In para - 3

superannuation in Nov, 93., in any event and under the rules would be continued to be in occupation of the quarters four months thereafter., and hence respondents were directed to evict the applicant ~~for~~ four months after the date of superannuation subject to the payment of appropriate rent as per rules. The ^{first} short point for decision in this case is whether the department is justified in charging market rent from the applicant at Rs. 3776/- p.m. from 8/5/93 till 14/6/94 on which date it is not disputed that the applicant vacated the quarters. The recapitulation of relevant dates is as below:-

26/3/93	-	Dismissal
30/11/93	-	Date of Superannuation
31/3/94	-	Date of period stipulated by Tribunal expired.
14/6/94	-	Applicant vacated the quarters.

4. It is not disputed by the Counsel for Applicant that the applicant is liable to pay Market Rent for the period from 1/4/94 to 14/6/94. But the dispute is regarding the action of the department in charging the Market Rent for the previous period viz. 26/3/93 to 31/3/93.

5. In my view, on a plain reading of interim orders, it is quite clear that the applicant was protected from eviction up to 31/3/94 and the Tribunal directed that rent be charged as per rules. I am therefore required to decide whether as per rules, the rate at which the rent is to be charged is Market rent or normal rent.

6. The Counsel for the Applicant relies on the case of Deminic James v/s. Station Commander (Military) Sub-Area, Bombay and Others, (1992) 21 ATC 735 which was a case relating to payment of damage rent for unauthorised occupation of Public Premises. In para - 3

of the judgement, the Tribunal has observed as below:-

"... So far as the damaged rent is concerned the procedure is prescribed and the damaged rent should have been determined. But the damaged rent was not determined. It could have been determined only after hearing the applicant. The applicant was allowed to stay in the premises upto 30th June, 1990 by the Court and in view of the fact that the applicant stayed under the orders of the Court till that date the question of charging damaged rent in the circumstances does not arise and accordingly no damaged rent could have been charged from the applicant in the manner it has been charged. As such this application deserves to be allowed and the order of recovery and of the damage and market rent amounting to Rs.18,764/- is quashed, and the amount which has been recovered may be refunded to him unless it is not permitted by any other law. However, we make no observation as to any fresh proceedings to be taken in this behalf. The application is disposed of accordingly."

From this it is quite clear that unless there is a finding as to the unauthorised occupation by the competent authority and determination of market rent payable by the Government employee, he is liable to pay rent only at the normal rent when his occupation is in terms of Court's order. The action of the department in recovering, from the applicant market rent for the quarter from 26/3/93 to 31/3/94 in the ~~fact~~ of the Interim Orders of the Tribunal is clearly illegal and is liable to be quashed.

7. The next question is whether the department is entitled to recover dues on account of damage rent from the Provident Fund. The total recovery from Provident Fund is Rs.51,891/-. It is clear that the provident fund of the employee especially the Government servant's own contribution cannot be drawn upon for the purpose of

recovery of market rent on a parity of reasoning with gratuity. The action of the department to recover any amount and in particular market rent from provident fund is clearly illegal.

8. OA therefore succeeds. The respondents are directed to refund the market rent for the period from 26/3/93 to 31/3/94 already recovered from the applicant. In the facts and circumstances of the case, the respondents are free to recover market rent for the period 1/4/94 to 14/6/94. After adjustment of the normal rent and other legitimate dues like water and electricity charges for the period upto 31/3/94 and ^{other dues} the market rent ^{for} ₁ for the period 1/4/94 to 14/6/94., the respondents are directed to pay the balance provident fund to the applicant within two months of the communication of this order. No orders as to costs.

abp.

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