

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 496/97

17-12-98
Date of Decision:

Dr. G. M. Yazdani

Applicant.

Shri G. K. Masand

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri M. I. Sethna along with Shri Vadhavkar for R-1, 2 & 5.

Advocate for
Respondent(s)

Shri V. S. Masurkar for R-4.

CORAM:

Hon'ble Shri. D. S. Bawej, 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?


(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO. 496/97

pronounced this the 17th day of December 1998

CORAM : Hon'ble Shri D.S.Bawaja, Member (A)

Dr. Gulam Mohd. Yazdani,
R/at 10-B, Golibar Maidan,
Opp. C.D.A.(O), Pune.

By Advocate Shri G.K.Masand

... Applicant

V/S.

1. Union of India through the Secretary in the Ministry of Environment and Forest, Paryavaran Bhavan, 6th Floor, B-Block, CGO Complex, Phase-II, Lodhi Road, New Delhi.
2. Director, Zoological Survey of India, 535, New Allipore, Calcutta.
3. Dr. M.S.Pradhan, Scientist SE, Officer Incharge of Western Regional Station, Zoological Survey of India, 1182/2, Fergusson College Road, Pune.
4. Executive Engineer, Central Public Works Department, Mukund Nagar, Pune.
5. Accounts Officer, Pay and Accounts Office (BSI ZSI) Nizam Palace, 17th Floor, 234/4 Achariya J.C.Road, Calcutta.

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar
for Respondents No. 1, 2 & 5.
Shri V.S.Masurkar for
Respondent No. 4.

... Respondents

O R D E R

(Per: Shri D.S.Bawaja, Member (A))

The applicant in 1988 was working as Regional Station Officer of Zoological Survey of India, Pune. He was the senior most officer at the station and was also the Allotment Officer of the quarters. Though the applicant was entitled for Type-V quarter but no quarter of this Type was available at the station. When a Type-II quarter No. II/50 fell vacant at Mukund Nagar, Pune, the applicant in his capacity as the allotment officer, allotted the said quarter to himself. The allotment of this quarter came up for consideration in OA.NO. 371/88 and OA.NO. 372/88 which were filed by two officers of Zoological Survey of India who had been transferred out of Pune. Though these two OAs. were filed challenging the transfer orders but the transfers were closely linked with the allotment of Type-II quarter by the applicant to himself. These OAs. were decided by the order dated 30.6.1989 upholding the transfer orders challenged through these OAs. but setting aside the allotment of the quarter done by the applicant to himself. It was further directed Respondent No.1, i.e. Director, Zoological Survey of India to nominate an officer superior in rank to the applicant to look into all the circumstances leading to the allotment of the quarter and take a decision for allotment of the quarter as per the relevant allotment rules. This was required to be complied with within a period of three months.

2. The applicant submits that in compliance of the order dated 30.6.1989, one Dr.R.S.Pillai, then working as Joint Director, Southern Regional Station, Zoological Survey of India, Chennai was asked to look into this matter and submit his report. The applicant submits that Dr.Pillai had submitted his report recommending allotment of quarter in the name of the applicant by relaxing rules as provided in Rule 19 of Allotment Rules for residential quarters at Mukund Nagar. The applicant contends that he had a belief that on the report of Dr.Pillai, the then Director of Zoological Survey of India had allotted the quarter in the name of the applicant in relaxation of the rules under his powers during the year 1989-90. The applicant continued to occupy the quarter under reference till his vacation of quarter on 9.9.1996 when he retired from service after taking voluntary retirement from 2.2.1996. The applicant submits that at no time he was asked to vacate the quarter and he was not paid any House Rent Allowance for the entire period. This led him to believe that the allotment of the quarter in the name of the applicant had been allowed in relaxation of the relevant rules.

3. On retirement, the applicant was paid the pension in the month of September, 1996. The payment of leave encashment and Group Insurance was done only in December, 1996. However, no payment of the DCRG was made to the applicant. To his utter surprise, he received a letter dated 16.5.1997 through which the applicant was advised that out of the DCRG due, an

amount of Rs.1,20,466/- is proposed to be deducted on account of the recovery of the damage rent for the entire period from 13.5.1988 to 9.9.1996. This recovery also includes a sum of Rs.5971/- towards the alleged recovery of cost of stores articles issued to the applicant but not having been returned. The applicant has filed the present OA. on 3.6.1997 challenging the impugned order dated 16.5.1997 as well as claiming the payment of interest on account of delay in payment of other settlement dues.

4. In the above background, the applicant has claimed the following reliefs :- (a) declaring the impugned order dated 16.5.1997, directing recovery of Rs.1,20,466/-, as illegal and ^{to} set aside the same. (b) direct respondents to pay the entire amount of Rs.1,49,870/- of DCRG with interest of 12% p.a. w.e.f. 1.2.1996. (c) direct respondents to pay interest at the rate of 12% p.a. on the delayed payment of Rs.59,083/- of leave encashment from 1.2.1996 to 12.12.1996 and on Rs.26,529/- for Group Insurance from 1.2.1996 to 17.12.1996. (d) to direct respondents to make either the payment of salary for 1.2.1996 or draw pension for the same date.

5. The respondents have strongly contested the reliefs claimed by the applicant. The respondents at the out set have opposed the OA. stating that the same is not maintainable as the applicant has not come with clean hands on two counts. The first is that the applicant being incharge of the Station should have vacated the quarter on his own when the allotment

of the same was set aside as per order dated 30.6.1989 in OA.Nos. 371/88 & 372/88. The applicant continued to occupy the quarter without any order from the higher authorities for regularisation in the name of the applicant. The second being that the Stores articles which were issued in the name of the applicant should have been returned while in service or atleast at the time of retirement. This shows that he had misappropriated the same and the payment of DCRG could not be done till 'No due certificate' was issued. As regards the merits, the respondents have contested the claim of the applicant on both the issues. As regards the recovery of the damage rent for non-vacation of quarter No. II/50, the respondents submit that the applicant neither made any request for regularisation of quarter in his name nor any order was issued for regularisation of the quarter. The applicant being controlling officer should have pursued the matter with the higher authorities in his own interest. He could not make any presumption of regularisation of quarter in his name in the absence of any specific order issued by the competent authority. The respondents plead that ^{with} this position, the applicant has been rightly treated as unauthorised occupant of the quarter and therefore the recovery of damage rent from 13.5.1988 to 9.9.1996 has been correctly done as per the extant rules. As regards the claim of payment of interest for delay in payment of settlement dues, the respondents submit that the applicant had submitted the pension

papers only on 5.1.1996, i.e. just 25 days before his date of retirement and these forms were also not properly filled up. The processing of payment of settlement dues was started only after the applicant actually retired. The delay, if any, in arranging payment has taken place due to administrative procedures and communication ^{between} the different offices who were involved in the payment of settlement dues. The respondents contend that the payments have been made as expeditiously as possible and the applicant is not entitled for any interest on the alleged delay of payment of settlement dues.

6. The applicant has filed rejoinder reply contesting the averments of the respondents and reiterating his contentions made in the original application. The applicant has brought out that immediately on receipt of the order of the Tribunal dated 30.6.1989, he made a reference to Director, Zoological Survey of India as per his letter dated 7/8.8.1989 with a request to consider regularisation of the quarter with retrospective effect in the name of the applicant in relaxation of the rules. The applicant has also further contended that the allotment of the quarter in the case of the applicant ^{only} was set aside by the Tribunal/on technical ground and it was no way directed that he has to vacate the quarter immediately. As per the direction of the Tribunal, a senior officer was required to be nominated to enquire into the matter and submit his report to

consider the allotment of the quarter. Since the no communication was received from higher authorities, the applicant continued to occupy the quarter under reference till his voluntary retirement from 2.2.1996. The applicant submits that if the respondents have failed to take action as per the direction of the Tribunal and not communicating anything to him, he cannot be made a scape-goat and made to pay damage rent for the occupation of the quarter for the entire period.

7. The respondents have filed further written statement in response to the rejoinder reply repeating the contentions made in the earlier written statement. The respondents have also brought out that in terms of letter dated 1.12.1988 issued by Ministry of Urban Development, no quarter falling vacant in Mukund Nagar area could be allotted further. The applicant was fully aware of these instructions even before passing of the Tribunal's order but ~~inspite~~ of this he failed to vacate the quarter.

8. The applicant in the OA. has brought out that he had the information that incompliance with the order of the Tribunal, a senior officer was nominated to enquire into the allotment of the quarter to the applicant and based on his report the competent authority had taken a decision to regularise the quarter in the name of the applicant. This was not specifically controverted by the respondents in the written statement. In view of this, the respondents were directed to check-up the position and submit additional statement bringing out the factual position along with the original record. In compliance of this

order, the respondents have filed further affidavit whereby the copies of the relevant correspondence have been brought on ^{the} record. The applicant has filed a rejoinder affidavit for the same. Thereafter, the respondents have again filed further affidavit in response to the rejoinder affidavit of the applicant.

9. I have heard the arguments of Shri G.K. Masand, learned counsel for the applicant and Shri M.I.Sethna along with Shri V.D.Vadhavkar, counsel for the Respondents No. 1,2 & 5 and Shri V.S.Masurkar, counsel for Respondent No. 4. Respondent No. 3 who has been made party has neither ^{was} filed any reply nor/represented by any counsel.

10. From the averments made by the applicant, it is noted that the reliefs cover three parts. As regards the recovery of Rs.5971/- towards the non-return of stores articles proposed from DCRG, the learned counsel for the applicant during arguments submitted that he does not press for this relief and he is ready to pay the cost of store articles issued to him and as proposed by the respondents. The other two parts of the reliefs referred to ^{the} recovery of/damage rent and payment of interest for delay in payment of settlement dues.

11. Coming to the first issue of recovery of damage rent, from the facts as narrated above, the short question which requires to be determined is whether the action of the respondents to treat the applicant as unauthorised occupant of quarter No. II/50 from 13.5.1988 to 9.9.1996 is sustainable.

12. It is noted that additional allotment of quarter done by the applicant to himself was set aside by the Tribunal in its order dated 30.6.1989 passed in OA.NO. 371/88 and 372/88. While setting aside the allotment order, it was further directed that Respondent No. 1, i.e. Director, Zoological Survey of India, Calcutta will nominate an officer who is senior to the applicant to look into all the circumstances concerning the allotment of the quarter and take a decision for allotment of the quarter in accordance with the rules. The applicant has made a submission that in compliance of this direction, a senior officer, Dr. Pillai was nominated by Director, Zoological Survey of India and he enquired into the matter and submitted his report. He has further stated that based on this report, the then Director, Zoological Survey of India, Shri M.S. Jairajpuri had taken a decision to regularise the quarter in the name of the applicant in relaxation of rules. Since the respondents have not specifically controverted the averment of the applicant, the respondents were directed to check up the record and produce the relevant correspondence if the contention of the applicant is established. The respondents through a supplementary written statement have brought on record the copies of the relevant correspondence which confirms the submission of the applicant. It is noted from the documents produced that Dr. Pillai had submitted report through his letters dated 6/7.9.1989 and 27.10.1989 with the recommendation that quarter should be regularised in the name of the applicant in relaxation of rules

keeping in view the facts and circumstances as detailed by him. There is a letter dated 18.1.1990 sent by the then Director, Zoological Survey of India Shri Jairajpuri addressed to Shri A.K.Narayanan, Director, Ministry of Environment & Forests. This letter shows that the Director had taken a decision to regularise the quarter in the name of the applicant and the Ministry had been informed accordingly in reference to their letter dated 6.11.1989. The respondents, however, tried to make out a case that no final decision had been taken as the Director had made a reference to the Ministry and the decision was to be taken at the Ministry's level as the Director was not the competent authority. In order to find out whether the contention of the respondents is tenable, the respondents were asked to produce the letter dated 6.11.1989. This letter was available with the respondents and on going through the same, it is noted that this letter had been addressed by Shri A.K.Narayanan, Director, Ministry of Environment & Forests to Director, Zoological Survey of India to find out the action taken to implement the order of the Tribunal dated 30.6.1989 and also the action taken with regard to the transfer of two officials who had filed the OA.NOs. 371/88 and 372/88. This letter does not give any impression that the matter was required to be referred to the Ministry for approval of the proposal. The Ministry only wanted the action report which had been conveyed through the letter dated 18.1.1990. Keeping this fact situation in view, the stand put forward by the respondents is not acceptable. It is clear that the decision had been taken by the Director, Zoological Survey of India to regularise the quarter in the name of the applicant in relaxation of the rules by him as he was the competent authority. The respondents have

not come out as to why this decision was not conveyed to the applicant. From the material on record, it is noted that nothing further proceeded on the case and the matter remained dormant till ^{the} applicant sought voluntary retirement from 2.2.1996. The respondents have now come out that the final decision has been taken in compliance of the Tribunal's order dated 30.6.1989 as per letter dated 29.11.1996 brought on record at Ex. 'R-25' and the competent authority had not agreed to regularise the quarter in the name of the applicant. On going through this order, it is noted that this does not indicate whether the decision had been taken at the competent authority's level, i.e. Director of Zoological Survey of India. Further no reference has been made to any investigation into the matter by a senior officer as ordered by the Tribunal in its order dated 30.6.1989. This order therefore does not reflect that the same has been passed in compliance with the direction issued by ^{seems to have} the Tribunal. This order / been passed only after the quarter was vacated by the applicant in September, 1996 after having retired voluntarily from 2.2.1996, without keeping in view the direction of order dtd.30.6.89.

13. One of the plea taken by the respondents is that the applicant should have vacated the quarter once the allotment of the same had been set aside by the Tribunal but the applicant even though being the incharge of the office did not take this action and continued to occupy the quarter in defiance of the order of the Tribunal and in the absence of any order for regularisation of the quarter in his name. The respondents have also contended that

as per the instructions issued by the Ministry of Urban Development dated 1.12.1988, no further allotment of the quarter if it falls vacant at Mukund Nagar, Pune was to be done. It is, therefore, contended by the respondents that the applicant was in unauthorised occupation of the quarter and the recovery of the penal rent is as per the extant rules. Keeping in view the deliberations above, I am not inclined to accept the contention of the respondents. It is agreed that the allotment of the quarter by the applicant to himself was set aside but at the same time the respondents were directed to enquire into the matter and take a final decision with regard to the allotment of the quarter as per the extant rules. Though the decision was taken by the competent authority to regularise the quarter in the name of the applicant as is revealed from the documents brought on record, but the respondents kept quiet and did not issue any letter regularising the allotment. The applicant has brought out that at no stage he was asked to vacate the quarter at any time for a long period of 8 years. The respondents have not controverted this. There is neither any averment nor any documentary evidence to show that the respondents were following up this matter and the applicant was asked to vacate the quarter. No eviction proceedings were taken against the applicant. As brought out earlier, the matter was being followed ^{up} by the Ministry with the Zoological Survey of India and with the issue of letter dated 18.1.1990 from the Director to the

Ministry, no further follow up was done by the Ministry with regard to the implementation of the order dated 30.6.1989 perhaps on the presumption that the issue had been settled. Allowing the applicant to continue in the quarter after the Tribunal's order dated 30.6.1989 till his voluntary retirement and not taking any action to implement the direction contained in the order dated 30.6.1989, the respondents after 7 to 8 years cannot take a decision after his retirement that the entire period of occupation in the quarter is unauthorised. As indicated earlier, the order dated 29.11.1996 said to have passed in compliance of the order dated 30.6.1989 is not based on the direction contained in the order of the Tribunal. Keeping these facts in view, I am of the opinion that the action taken by the respondents in charging the penal rent for the entire period of occupation as unauthorised without giving any opportunity to the applicant and not taking any action on the order dated 30.6.1989 for several years is arbitrary. The applicant deserves to be treated as authorised occupant of the quarter and no penal rent is recoverable from the applicant.

14. The second issue is with regard to the claim of payment of interest for delay in payment of settlement dues. The applicant has claimed the interest at the rate of 12% for the delay in payment of leave encashment of Rs.59,083/- from 1.2.1996 to 12.12.1996 and Group Insurance of Rs.26,529/- from

1.2.1996 till 17.12.1996. The respondents have defended their position stating that no interest is leviable as the pension papers were submitted late and the processing for payment of settlement dues was only started after the retirement of the applicant and has delay if any/taken place is due to processing time and inter-communication involved between various offices for arranging payment. It is admitted fact that the pension papers were submitted about a month before the retirement, and in case of voluntary retirement, the process will of settlement dues/start only after the actual still retirement. However, the time taken is excessive satisfactory the delay. and no/explanation has been given for/The explanation that the delay had been caused due to procedural delay and inter-communication between offices is not acceptable. The payment of settlement dues to the retired employee has to be made as early as possible as any delay causes hardship to the retired employee. In the present case, after allowing the period of three months from the date of retirement for processing of payment of settlement dues, in my opinion, the applicant deserves to be paid interest on the payment of settlement dues beyond the period of three months till the date of payment.

15. In the result of the above deliberations, the OA. is allowed with the following directions :-

- (a) The impugned order dated 16.5.1997 proposing recovery of penal rent is quashed. The applicant will be treated as authorised occupant of the quarter No. II/50 for the entire period till his date of voluntary

retirement. For the period beyond the voluntary retirement till the vacation of quarter, the applicant's occupation in the quarter shall be governed by the extant rules under which he was permitted to occupy the quarter. The applicant will be paid the DCRG due after deduction of the dues ~~based on the normal rent and other charges if any.~~ The applicant's claim for payment of interest on the DCRG is not allowed. The payment of DCRG shall be arranged within a period of three months from the date of receipt of the order. However, it is provided that in case the payment is delayed beyond the period allowed, the applicant shall be entitled to payment of interest at the rate of 12% p.a. for the delayed period.

- (b) The applicant shall be allowed interest at the rate of 12% p.a. on account of delay in the payment of leave encashment and Group Insurance beyond the period of three months from the date of retirement till the date of payment.
- (c) No order as to costs.

D.S. Bawali
(D.S. BAWALI)
MEMBER (A)