

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 948/97

3.9.97

Date of Decision:

Shri N.K.Verma

.. Applicant

Shri M.S.Ramamurthy

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar for R.1 to 3
and Shri Karkera for Shri P.M.

.. Advocate for
Respondent(s)

Pradhan for R.4.

COHAM:

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble

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

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

D.S.B
(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA. NO. 948/97

this the 3rd day of September, 1998

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

Shri N.K.Verma
Retired Chief Post Master
General, Maharashtra State,
Mumbai.

By Advocate Shri M.S.Ramamurthy ... Applicant
V/S.

1. Union of India
through the Secretary,
Ministry of Urban Affairs
and Employment, Department
of Urban Development,
Government of India,
New Delhi.
2. The Director of Estate,
Government of India,
Directorate of Estate,
Nirman Bhavan, New Delhi.
3. The Estate Manager,
Government of India,
20-A, M.K.Road,
Churchgate, Mumbai.
4. The Chief Post Master
General, Bombay Region,
Maharashtra Circle,
G.P.O., Mumbai.

By Advocates Shri V.S.Masurkar
for Respondents No. 1 to 3 and
Shri S.S.Karkaer for Shri P.M.
Pradhan for Respondent No. 4. ... Respondents

O R D E R

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

The applicant retired from service
on 31.12.1992 while working as Chief Post Master
General, Maharashtra Circle, Mumbai. At the time
of retirement, he was occupying a Type-VI quarter
at Mumbai. The applicant was allowed to retain the

quarter for the first four months on the payment of normal rent and further four months thereafter on the payment of double the normal rent upto 2.9.1993. In the meantime, the applicant was appointed as Member (Administrative) in the Central Administrative Tribunal, Patna Bench, Patna. The applicant ~~thereafter~~ was transferred to the Mumbai Bench and joined the Bench on 23.9.1993. Since the applicant was eligible for the quarter which he was occupying at Mumbai, the same was regularised in his name. However, the period from 3.9.1993 to 22.9.1993 has been taken as unauthorised occupation and the penal rent for this period has been imposed. The applicant made a representation ~~making a~~ request that for the short period he may be allowed ~~an~~ allotment on the payment of double the normal rent. However, this request was rejected by the Estate Manager. Thereafter, he represented to the Secretary, Ministry of Urban Affairs who also rejected his request as per letter dated 12.3.1996. Being aggrieved by the imposition of the penal rent, the present application has been filed on 28.8.1997 seeking the following reliefs :-(a) to direct the respondents to regularise the period of occupation from 3.9.1993 to 22.9.1993 on payment of double or three times the normal licence fee and declare the imposition of penal rent as illegal, (b) to set aside the demand for damage rent raised by letters dated 18.11.1994 and 9.2.1995.

2. The main contention of the applicant is that the case of the applicant has been rejected without proper application of mind and without consideration of special circumstances of the case. He has further

contended that the competent authority could consider the case of the applicant by relaxation of the rules as provided in S.R. 317-B-25.

3. The respondents No. 1 to 3 in the written reply have stated that the applicant was allowed the retention of house for a period of eight months as permissible as per the rules and for any period beyond the same, the applicant is liable to pay the rent at the damage rate as there is no provision in the rules to allow retention of the house beyond the permissible period.

4. Respondent No. 4, Chief Post Master General, Mumbai Region, Maharashtra Circle has filed a separate written reply stating that he is not concerned and involved in the present case as the recovery of the penal rent is to be effected by his department based on the advice received from the Respondents No. 1 to 3.

5. The applicant has controverted the statements made in the written reply of the Respondents No. 1 to 3 and 4 through a rejoinder reply. The grounds made in the original application have been reiterated.

6. I have heard the arguments of Shri M.S. Ramamurthy, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents.

7. One of the reliefs prayed for by the applicant is to quash the orders dated 18.11.1994 and 9.2.1995 at Exhibits 'A' & 'G' respectively. On going through these Exhibits, it is noted that both the letters are enclosed with the Annexure G which indicates the recovery for the rent due from the applicant. It is further

noted that the total recovery to be made not only includes the imposition of penal rent from 3.9.1993 to 22.9.1993 but also includes some payments which are due as claimed by the respondents towards revision of the rent etc. On going through the averments made in the original application, it is observed that no averments to the effect with regard to the recovery as claimed by the respondents other than the recoveries for the period under reference have been made. Only in the rejoinder reply, a passing reference to the recoveries of the rent on account of revision has been made. During the hearing on making a query on this issue, the learned counsel for the applicant made a statement that the main issue involved is the imposition of the penal rent for the period from 3.9.1993 to 22.9.1993 and he does not press for other recoveries on account of revision of the rent etc. In view of this, the consideration of the matter is confined only to imposition of penal rent.

8. From the facts of the case, it is noted that the retention of the house at Mumbai was allowed to the applicant upto 2.9.1993 after his retirement. The applicant in the meantime was appointed as a Member (Administrative) in the Central Administrative Tribunal, Patna Bench. He was expecting his transfer to Mumbai Bench against the vacancy which was to arise during the last week of September, 1993. The applicant was finally transferred to the Mumbai Bench and joined the same on 23.9.1993. The applicant was also eligible for the quarter he was retaining at Mumbai and therefore the same was immediately regularised in his name from 23.9.1993. Thus, the retention of the quarter is only for the part of the month beyond the period

which was allowed earlier. Since the applicant was expecting transfer back to Mumbai and he was also entitled for the house he was occupying at Mumbai, it is obvious he did not vacate the same after the allowed period of retention was over on 2.9.1993. Keeping these peculiar facts and circumstances, I am of the view that the competent authority could have considered the matter for allowing the retention of the ~~quarter~~ for this period for a part of the month on the same terms and conditions for which the second extension was allowed. It is also noted that as per the provisions of the S.R.317-B-25, the competent authority has the power to relax the rules in specific cases. Finding merit in the plea of the applicant, the matter could be remanded back to the competent authority to consider the relaxation of the rules for permitting the retention of the house under reference for the short period. However, considering the peculiar facts and circumstances of the case, I consider it appropriate to dispose of the present application with the direction to the respondents to allow the retention of the house for a period from 3.9.1993 to 22.9.1993 on the payment of double the normal rent.

9. In the result of the above discussion, the OA. is allowed with the direction that for the period from 3.9.1993 to 22.9.1993, the rent at double the normal rent shall be recovered. However, it is provided that this direction has been given in the peculiar facts and circumstances of the case and shall not be quoted as a precedent. ~~No order~~ as to cost.

D.S. Baweja
(D.S. BAWEJA)
MEMBER (A)

mrj.