

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 211/98

Date of Decision: 8.1.1999

Shri N.H. Sakharkar Petitioner/s

Shri R.P. Saxena. Advocate for the
petitioner/s.

v/s.

Union of India and others Respondent/s

Shri V.S. Masurkar. Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri

(1) To be referred to the Reporter or not? *no*

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

R. G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 211/98

Friday the 8th day of January 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

N.H. Sakharkar
Block No.46, Quarter No.21
Naval Civilian Housing
Colony, Bhandup, Mumbai. ... Applicant.

By Advocate Shri R.P. Saxena,

V/s.

Union of India through
Admiral Superintendent and
Estate Officer,
Naval Dockyard,
Mumbai.

Manager Industrial Relation
and Welfare
Office of the Admiral
Superintendent,
Naval Dockyard
Mumbai.

... Respondents.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

¶ per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. I have heard the learned counsel for both sides.

2. The applicant is working as Group 'C' employee working as Highly Skilled Grade I in Naval Dockyard, Mumbai. Though he was not entitled to allotment of quarter, at that particular time, he made an application to the Administration for allotment of quarters due to his father's illness. The quarter came to be allotted to the applicant by order dated 15.3.1989. Though the original order of allotment was only for a period of six months, admittedly the time was extended from

time to time till 31.5.1994. There was no further extension from 1.6.1994. However the applicant continued in possession of the quarter. Then a notice of eviction was issued to the applicant under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The applicant went on making representation for extension of time due to his wife's illness. Then ultimately, the Administration issued the impugned order or impugned letter dated 26.5.1997 that the quarter has now been regularised in his name with effect from 1.1.1996. The applicant was directed to pay penal rent from 1.6.1994 to 31.12.1995. The Administration has also ~~waived~~ ^{waived} the recovery of market rent upto May 1994 and ordered that the said amount should be refunded. However the applicant's request for refund of penal rent or market rent for the period from 1.6.1994 to 31.12.1995 was rejected. Therefore the applicant has approached this Tribunal for a direction to the respondents to refund the sum of Rs. 12,393/- which has been recovered from him as market rent. The applicant has also alleged that he has been discriminated by the Administration, since at least four similarly placed employees have been given different treatment. Their quarters were regularised without charging any market rent.

3. The respondents in their reply have stated that the applicant failed to vacate the quarter and therefore he is liable to pay market rent from the date of expiry of the extended date till the date of regularisation. The applicant has given an undertaking that he is going to pay market rent in case he fails to vacate the quarter within the time. There are

number of employees who are waiting in the queue and therefore the administration could not show any leniency to the applicant. It is therefore stated that the applicant has not made out any case for refund of market rent.

4. The learned counsel for the respondents has placed before me the undertaking given by the applicant dated 4.6.1993. It appears that at the time of initial allotment and whenever allotment was renewed, fresh undertaking has been taken from the applicant and the undertaking is now shown to the applicant. The applicant was admitted that he is going to vacate the quarter by a particular date, failing which he is liable to pay market rent for penal rent. The respondents therefore submitted that in view of the undertaking the applicant is liable to pay penal rent and he cannot seek waiving of the same. Though legally the submission is justified, we have to see the facts and circumstances of the case to find out whether the undertaking can be enforced.

5. As already stated the first allotment order dated 15.3.1989 was for a period of six months. There also the condition was that the applicant must vacate the quarter after expiry of six months, failing which he is liable to pay penal rent. Admittedly the applicant did not vacate the quarter within six months, but made a request for extension of time; inspite of the undertaking, admittedly the Administration itself went on extending the time from time to time for nearly five years from 15.3.1989 to 31.5.1994. In the meanwhile for certain period the market rent or penal rent had already been recovered

from the applicant as could be seen by the impugned order dated 26.5.2007. We find that the Administration itself has mentioned that the market rent recovered upto May 1994 will be refunded. Therefore the Administration itself is magnanimous to refund the market rent recovered upto 3.5.1994 and had granted extension of time for nearly 5 years. The Administration in consultation with the Union has recommended the claim of the applicant and 15 others as one time measure and granted regularisation from 1.6.1996. Now the only point in dispute is whether the applicant is liable to pay market rent for the period from 1.6.1994 to 31.12.1995 and whether the applicant is entitled to get refund of the said amount.

6. It may be that legally the respondent's stand appears to be correct, but the respondents themselves were magnanimous to extend the period of six months by nearly 5 years and then waived the penal rent for certain period and even regularised the quarter in favour of the applicant from 1.6.1996 onwards. It is not disputed and cannot be disputed that the applicant's wife is suffering from terminal illness namely Cancer which can be seen from the Medical Certificate issued by the Tata Memorial Hospital at page 37 of the paper book. The Government Rules provide for medical treatment and medical expenses for the treatment of the official and dependant family members. Therefore the Government itself has framed Medical Attendant Rules which clearly provide for treatment of the dependant family members of the Government official. Here the wife is suffering from serious disease like Cancer.

The Administration itself was magnanimous to waive part of the penal rent. The Administration itself has agreed to refund part of the market rent which shows that the Administration has powers to waive or refund the market rent.

The learned counsel for the respondents submitted that there are number of such officials where members of family are suffering from illness, it is for the Administration to enforce the undertaking and follow the allotment rules. It may be so, but we cannot forget the facts and circumstances of the case. Therefore 50 % of the market rent should be ordered to be refunded to the applicant in the peculiar facts and circumstances of the case.

7. I am not impressed with the contention of the learned counsel for the applicant that the applicant has been discriminated between himself and some other employees. No doubt he has given the names of the four employees who according to him appear to have got better treatment at the hands of the Administration. The respondents have denied this. A mere allegation of discrimination is not sufficient. The applicant should have produced all necessary documents pertaining to those four employees. It is well settled that in case of allotment of quarter and regularisation or waiving of market rent, each case depends upon its own facts and circumstances. The applicant has not produced all the details and particulars regarding regularisation of quarters to those four employees. Therefore the ground of discrimination, I am constrained to say, is not made out. Even granting for a moment some order has been passed in favour of those persons and those persons are not entitled to out of turn allotment

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then the allotment will be contrary to the rules and the applicant cannot say that one more illegal order should be passed in his favour. In the facts and circumstances of the case I hold that no case of discrimination has been made out.

8. In the result the application is partly allowed. The respondents are directed to refund ~~half~~ half of penal rent recovered from the applicant for the period from 1.6.1994 to 31.12.1995. The respondents are granted one month's time to comply with the order from the date of receipt of this order. In the circumstances of the case there will be no order as to costs.


(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
* MUMBAI BENCH, MUMBAI.
CONTEMPT PETITION NO.16/99

IN
ORIGINAL APPLICATION NO.219/98:

Friday, this the 5th day of November, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A).

N.H.Sakharkar.

...Applicant.

Vs.

Naval Dockyard & Ors.
(By Advocate Mr.V.S.Masurkar)

...Respondents.

ORDER ON C.P. NO.16/99

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

Applicants have filed Contempt Petition No.16/99 alleging contempt by the respondents. To day, when the case is called out both the applicant and his counsel are absent. We have heard Mr.V.S.Masurkar, the learned counsel for the respondents.

The respondents have filed their written submission which is now taken on record. It shows that the respondents have refunded the amount to the applicant in July, 1999. A copy of the bill prepared for refund of Rs.6,197/- to the applicant is also annexed to the reply. In our view, the order of the Tribunal has been substantially complied with and hence no case for initiating any action for contempt. The C.P. is disposed of accordingly. No order as to costs.



(B.N.BAHADUR)
M(A)



(R.G.VAIDYANATHA)
V/C.

B.