

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 546/98

Date of Decision: 11.6.1999

Shri Babu Rao Patil

Applicant.

Shri R.P.Saxena

Advocate for
Applicant.

Versus

Union of India and others

Respondent(s)

Shri R.R.Shetty for Shri R.K. Shetty

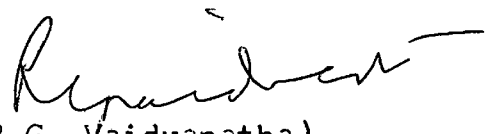
Shri S.S.Karkera for Shri P.M.Prachand
Advocate for
Respondent(s)

CORAM:

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

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

- (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)
Vice Chairman

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

Original Application No. 546/98

Friday the 11th day of June 1999.

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

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

Babu Rao Patil
Quarter No. 18,
Kripa Building,
C.S.D. Estate,
Golibar Road,
Ghatkopar (West),
Mumbai.

... Applicant.

By Advocate Shri R.P. Saxena.

V/s.

Union of India through
The General Manager
Canteen Stores Department
ADELPHI 119, M.K. Road,
Mumbai.

... Respondent.

By Advocate Shri R.R. Shetty for Shri R.K. Shetty.

The Station Director
All India Radio
Broadcasting House
Backway Reclamation
Mumbai.

... Respondent.

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

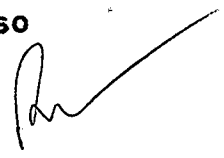
ORDER (ORAL)

¶ 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. Since the point involved is short, we are disposing the O.A. at the admission stage.

2. The applicant was working as Marker in Canteen Stores Department. It appears that some posts in that department came to be declared as surplus. Accordingly those persons were deployed in different departments. The applicant was also

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declared surplus and was allotted to All India Radio. The applicant was relieved from office of respondent No.1 on 9.2.1996 and he joined in the office of respondent No.2 on 12.2.1996. The applicant was allotted departmental quarter by respondent No.1 in 1976 and he continued in the same quarter. He applied to respondent No.2 for allotment of quarter. In the meanwhile respondent No.1 had issued an order demanding penal rent from the applicant at the rate of Rs. 2,024/- from 11.10.1996, till the date of vacation of the quarter as per impugned order dated 29.5.1998. Being aggrieved by that order the applicant has approached this Tribunal. The applicant prays for quashing of that order and for consequential reliefs.

3. Respondent No.1 has filed reply justifying the demand of penal rent from the applicant. According to respondent No.1, since it was a departmental quarter and not a General Pool quarter, the applicant is liable to vacate the quarter since he is transferred on being surplus to respondent No.2. Therefore respondent No.1 is justified in demanding penal rent.

4. The short point for consideration is whether demand of penal rent by respondent No.1 is justified or not?

We should see the facts and circumstances of the case. The applicant had put in 31 years of service in the office of respondent No.1. Because certain posts became surplus including that of the applicant, he came to be transferred to office



of respondent No.2. He is already in possession of the quarter for 31 years; therefore, he cannot vacate the quarter unless he is allotted another quarter by another department. If the transfer is outside Bombay, the matter will have to be dealt in a different manner. The transfer is within the city of Bombay.

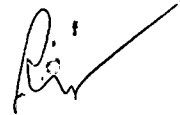
We need not consider this question on first principles since the matter is covered by two direct decisions which are placed before us by the learned counsel for the applicant.

5. In the case of Ganga Devi Mittal V/s Union of India and others, (1992)20 ATC 865, the Principal Bench has held that on declaration of an official being declared surplus, penal rent cannot be demanded from the official and he is liable to pay normal licence fee.

Then we have the decision of the Apex Court in the case of S.C.Bose V/s Comptroller and Auditor General of India and others reported in 1995 SCC(L&S) 1114 wherein the Apex Court has held that when an official is transferred from one department to another department and he is in occupation of the departmental quarter, he is not liable to pay penal rent till he is allotted General Pool quarter.

In the present case also the applicant is in occupation of departmental quarter of respondent No.1. He was not allotted quarter by respondent No.2 or allotted quarter in General Pool. In those circumstances demand of penal rent is not justifiable.

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6. It is brought to our notice that the applicant was allotted quarter in Antop Hill by the Estate Manager as per order dated 24.2.1999. It appears that the applicant made a representation to the Estate Manager through respondent No.2 for allotment of different quarter in Ghatkopar. It appears that the application is pending for consideration by the Estate Manager, and that is why the applicant could not occupy the quarter allotted in Antop Hill. The learned counsel for the respondents submitted that at least the applicant is liable to pay penal rent after he was allotted quarter by order dated 24.2.1999.

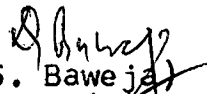
7. We find that the applicant is a Group 'D' official. He has made representation for allotment of alternative quarter. Now we are told that the matter is being considered by the Estate Manager. We therefore feel that in the facts and circumstances of the case it is not a fit case for demanding penal rent from the applicant. Since the applicant has been allotted a quarter, he must vacate the present quarter occupied by him. It is open to the applicant either to occupy the quarter allotted by order dated 24.2.1999 or any other quarter that may be allotted by the Estate Manager. In view of the same the applicant cannot continue in the departmental quarter of respondent No.1 indefinitely. Therefore we give time to the applicant to vacate the quarter in occupation. If he does not vacate the quarter by that time he will be liable to pay penal rent from that date and also liable to be evicted from the said quarter.


8. In the result the O.A. is allowed as follows:

1. The demand of respondent No.1 for penal rent as claimed in the orders dated 29.5.1998 and 26.6.1998 are hereby quashed.

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2. We give liberty to the applicant to vacate the quarter in his possession on or before 30.6.1999. It is open to the applicant either to occupy the quarter allotted as per the order dated 24.2.1999 or any other alternative quarter or he may make his own arrangement. He should vacate the quarter of respondent No.1 on or before 30.6.1999 failing which he is liable to pay penal rent from 1.7.1999 and also liable to be evicted from the quarter on or after 1.7.1999. The applicant is liable to pay normal rent till 30.6.1999.
3. In the circumstances of the case there will be no order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

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