

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 204 of 1998.

Dated, this Friday, the 17th day of September, 1999.

V. K. Poddar, _____ Applicant.

Shri P.A. Prabhakaran, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V. D. Vadhavkar for _____ Advocate for the
Shri M. I. Sethna, _____ Respondents.

CORAM: Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? *No*
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? *No*

B. N. Bahadur

(B. N. BAHADUR)
MEMBER (A)

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ORIGINAL APPLICATION NO.: 204 of 1998.

Dated this Friday, the 17th day of September, 1999.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Shri V. K. Poddar,
Residing at -
C.P.W.D. Bunglow No. 8/2,
Seminary Hills, Nagpur - 440 006.

Working at (As Addl. C.I.T.)
Saraf Chambers,
Mount Road,
Nagpur - 440 001.

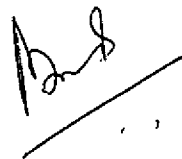
... Applicant.

(By Advocate Shri P. A. Prabhakaran)

VERSUS

1. Union of India through
The Secretary,
Department of Revenue,
M. O. Finance, North Block,
New Delhi - 110 001.
2. The Chairman,
Central Board of Direct Taxes,
M. O. Finance, Dept. of Revenue,
North Block, New Delhi - 110 001.
3. The Chief Commissioner of
Income Tax, Mumbai,
3rd Floor, Aaykar Bhavan,
M. K. Road, Mumbai - 400 020.
4. The Chief Commissioner of
Income-Tax, Aayakar Bhavan,
12, Sadhu Vasavani Marg,
Pune - 411 001 (Maharashtra). ... Respondents.

(By Advocate Shri V. D. Vadhavkar for
Shri M. I. Sethna).



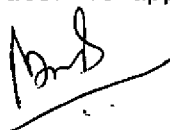
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O R D E R [ORAL]

This is an application made by Shri V. K. Poddar, Additional Commissioner of Income-Tax, seeking the relief as follows :

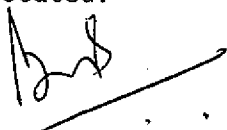
- (a) The Hon'ble Tribunal be pleased to quash and cancel the orders dated 28.04.1997 (No. 187/2/91-Ad.VIII) by the respondent no. 2, the C.B.D.T. and the consequential order of the respondent no. 3 dated 26.11.1997 demanding a sum of Rs. 44,228.00.
- (b) The respondents be directed by this Hon'ble Tribunal that the applicant be treated like others similarly placed and favoured as discussed in para 5 above and the quarters charged licence fee on the same lines or on rates prescribed by the Department of Telecommunications.
- (c) The Hon'ble Tribunal be pleased to pass orders granting such other reliefs as deemed just and proper on the facts and in the circumstances of the case.
- (d) The Hon'ble Tribunal be pleased to direct the respondents pay the cost of this application.

The facts of the case relevant to the present discussions are that Shri Poddar, who was working as an Additional Commissioner of Income-Tax at Mumbai had been allotted residential quarter no. B.13, I.T. Colony, Peddar Road, Mumbai 400 026 since July, 1990. He was transferred vide order dated 17.05.1996 and posted to Nagpur. His application for retention of this quarter, on the ground of difficulties arising out of his children's education, was not agreed to, and he proceeded to join at his place of posting at Akola. The date of his actual handing over of charge at Mumbai is not given but from the facts narrated later it appears to be around June, 1996.



2. The applicant goes on to state that he had from time to time applied for retention of the house and was granted permission by the competent authorities upto 20.02.1997. He also made an application for retention of the quarter beyond this period, which was forwarded to the Ministry of Finance. But this request has come to be rejected. By letter dated 28.04.1997 (exhibit-A) and also vide letter dated 26.11.1997 the applicant has been asked to pay market rent of Rs.44,228.00 for the period of over-stay from 21.02.1997 to 31.05.1997. It is in challenge to these two orders (Exhibit-A and AA) that the applicant is before this Tribunal seeking the relief as mentioned above.

3. The respondents in the case have filed detailed affidavits, and, as stated during argument by the Learned Counsel for the respondents, the last and detailed affidavit filed in August, 1999, from page 60 onwards, is being relied upon, apart from the other affidavit, filed earlier. The respondents have denied the allegations made, and state that the applicant's case for retention of quarters at Mumbai was considered but could not be agreed to. They also deny that they are aware of the Chairman's (C.B.D.T.) assurance in this regard, as alleged by the applicant. They state that the applicant has been informed of this through letter dated 23.09.1998. As regards the extension of residential accomodation, it is stated that the damage rent has been levied on the basis of O. M. No. 16(5)/95(EMB) and that the rates levied are as per the stipulations for the area in which the house is located.



4. The respondents go on to say that permission for a total period of eight months was granted by the Chief Commissioner of Income-Tax, Mumbai and that, in view of the rejection of his request, he is clearly an unauthorised occupant after 20.02.1997.

5. The respondents stated that the circular of the department of Telecommunication quoted by the applicant cannot form the basis of any relief sought, as Telecom Department is a separate Department.

6. It is noted that in an earlier affidavit dated 03.03.1999 filed by respondents, they had nevertheless stated that "the reason sought by the applicant is genuine and falls under the category of special case."

7. The papers in the case, including all annexures, affidavits, etc. have been carefully seen. The arguments made by the Learned Counsel on both sides have been heard and considered.

8. Arguing the case on behalf of the applicant, the Learned Counsel took me through the chronology of the facts of the case, indicating that the need for accommodation was extremely genuine, as the Children of the applicant were studying at Mumbai and he was transferred to a small place at Akola, where proper education facilities did not exist. He also stated that licence fees was paid in time whenever the permission for retention was given and that application for extension was made in time. Counsel for the applicant strenuously tried to depend on the P & T circular dated 20.12.1989, exhibit A-7 at page 27 of the O.A.



9. The counsel for applicant drew my attention to para 5(d) and (e) where cases of two officers have been cited by him to say that permission to him was granted in both these cases for retention of accomodation at concessional rate beyond eight months. The first case refers to one Shri Girish Dave being granted permission by the Chief Commissioner of Income Tax, Jaipur. The second case refers to permission being granted by the C.B.D.T. to one Shri Upendra Singh, now working as C.I.T. in Mumbai.

10. The Learned Counsel for the applicant tried to take support of S.R. 317(b) 22 (Government of India orders) as also S.R. 317 (b) 25 and 26.

11. Arguing the case on behalf of the respondents, their Learned Counsel strenuously contended that the relief sought were not liable to be provided to ths applicant. He argued the case in detail. The gist of the points made by him are reproduced below :

(a) It was denied that any assurance was on record from the Chairman of the C.B.D.T. as alleged by the applicant in his O.A. and reiterated in the arguments made by the Learned Counsel for the applicant.

(b) It was stated by the counsel for respondents that while he was not aware of the facts of the two cases where

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discrimination was alleged at para 5(d) and 5(e), it was the duty of the applicant to have given full particulars of the case, since the applicant had sought to allege constitutional discrimination. The Learned Counsel cited the case of State of Haryana & Others V/s. Ram Kumar Mann reported in 1997 SCC (L&S) 801 to say that no right accrues to the applicant even if a wrongful order was passed in either or both of these cases. If a relief was granted wrongly, it cannot be the basis of further relief being claimed as a matter of right.

- (c) It was thus stated that non-denial of the allegations made in respect of these two cases of alleged discrimination could not be held against the respondents.
- (d) It was reiterated in argument that the respondents had already used their discretion in providing continuance of residential accomodation for eight months.

12. The facts of this case are simple. The applicant has been transferred out of Mumbai, and for various reasons explained had sought, first, to continue in Mumbai. This not having been possible, he has sought permission to continue his family in the residential accomodation allotted to him. Such permission was granted upto 20.02.1997, and the period of dispute here is between 21.02.1997 and 15.04.1997.



13. It is seen from the facts brought out, that the applicant seems to have very genuine reasons for seeking the continuance of his family at Mumbai. It cannot be said that he can claim this as a matter of right since his transfer has been made and he has been allowed the retention of the residential house for eight months, but there is no doubt that given the circumstances of his case, the imposing of penal rent of over Rs. 40,000/- has indeed come as a hardship to him. Similarly, no right could accrue to the applicant by quoting the circular of the department of telecommunication. It has been clarified and admitted by both sides that the accomodation in question belongs to the Income-Tax Department and is not an accomodation of General Pool of Government of India (common for all departments). If it were so, one set of common rules would have necessarily to be applied.

~~There~~ There is, also force in the contention of the counsel for applicant when he says that even if the two cases cited [paras 5(d) and (e) of O.As.) were factually correct, no legal right accrues to the applicant in seeking this relief from the Tribunal on this basis. The citation of the case of State of Haryana V/s. Ram Kumar Mann has relevance in this connection. However, even if no legal right accrues, this only means that the relief cannot

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be claimed by him on the basis of hostile discrimination. Nevertheless, it would not be wrong to ask the department to ask the Ministry of Finance to look at these cases and see if the case of the applicant can be reconsidered.

14. More important than the above point which has to be noted is that the Respondents themselves had agreed that the case of the applicant is genuine. Indeed, this has been stated fairly in the affidavit filed by them on 12.08.1999. There is no doubt that there is no refusal on the part of the applicant in either shifting from Mumbai on transfer or of retaining the residential house for an inordinately long period once the refusal for extension has come about. Not only the respondents have agreed that the case is genuine, but the facts and circumstances of the case surely show that there is some case for reconsideration of his request within the powers which are available with the Union of India, Ministry of Finance. Hence, while deciding that this Tribunal would not itself like to grant the relief sought by the applicant, it is nevertheless convinced that there is ground for asking Respondent No. 2 to re-consider the request of the applicant afresh and take a decision on merits, but nevertheless after taking into consideration the observations made above in this order. (Respondent No. 2 could take approval from Respondent No. 1 or any other competent authority in this regard, if required.)



15. In view of the above discussions, this application is disposed with the following directions :

- (a) The applicant may make a fresh application to the Respondent No. 2 for making request for the relief sought herein within a period of one month from the date of receipt of a copy of this order.
- (b) After the representation, as indicated above, is received, Respondent No. 2 shall consider this representation and take a decision thereon on merits and as per rules applicable to his case. Nevertheless, Respondent No. 2 should keep in mind the discussions made above in this order at para ~~14~~¹³, while deciding the representation as per rules.
- (c) Respondent No. 2 shall dispose of the representation within a period of three months from the date of receipt of the representation.
- (d) It is hereby ordered that the recovery of damage rent ordered against the applicant, by impugned order dated 26.11.1997 shall not be made till such decision is given by Respondent No. 2 and for a further period of two weeks thereafter.
- (e) No order as to costs.



(B. N. BAHADUR)

MEMBER (A).