

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 182/98

29.9.99
Date of Decision:

P.A.Prabhakaram

.. Applicant

Applicant in person

.. Advocate for
Applicant

-versus-

The Chairman, CDT, N.Delhi & Ors... Respondent(s)

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

CORAM:

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO. 182.98

Dated this the 29th day of Sept. 1999.

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

P.A.Prabhakaran,
R/o.11, Ail Laxmi,
Dattamandir Cross Road,
Dahanukar Wadi,
Kandivli (West),
Mumbai-400 037.

... Applicant

V/S.

1.The Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

2.The Chief Commissioner of Income-Tax,
3rd floor, Aayakar Bhavan,
M.K.Road, Mumbai.

... Respondents

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

O R D E R

{Per : Shri D.S.Baweja, Member (A) }

This OA. has been filed by the applicant seeking the relief of directing the respondents not to charge penal rent for overstay of two months in the quarter after retirement and limit the rent to twice or thrice of the normal rent.



..2/-

2. The applicant at the time of retirement from the service on 30.11.1991 as Assistant Commissioner of Income Tax was occupying Government quarter in Income Tax Colony at Peddar Road, Mumbai. The applicant was granted permission to continue to occupy the said quarter upto 31.7.1992. The applicant had planned to settle down in the flat acquired by him when in service at Andheri. However, this house got embroiled in a suite and was not available to applicant for occupation after retirement. The applicant therefore contracted to purchase another house in his son's name. However, the possession of this house also did not materialise in May 1992 as agreed to by the owner due to litigation. In view of these developments, the applicant could not vacate the Government quarter before 31.7.1992. The applicant therefore made a request to Respondent No. 2, i.e. Chief Commissioner of Income Tax but this request was rejected on 27.8.1992 and advised the applicant that penal rent of Rs.7746/-p.m. shall be charged for the period beyond 31.7.1992. The applicant finally vacated the quarter on 30.9.1992. On vacation of the quarter, the Respondent No. 2 as per his letter dated 18.12.1992 directed the applicant to deposit Rs.15522/- being the penal rent for the period of overstaying in the quarter beyond the period allowed. The applicant made a representation against the same on 2.7.1993 which was followed by reminders. As per letter dated 17.7.1995, his request for not recovering the penal rent was rejected. However, the applicant made another representation on 10.6.1996 which has not been replied as yet. Feeling aggrieved by this action of the respondents, the present application has been filed on 18.2.1998.



3. The applicant's main contention is that the applicant could not vacate the Government quarter on account of complusion arising out of Court orders and Respondent No. 1 could relax the rules for adequate and justifiable grounds. The applicant has ^{also} been discriminated as a number of officers have been granted permission to stay in the quarter beyond the permissible period. The applicant also pleads that his case is covered by the judgement of the Hon'ble Supreme Court in the case of Vinod Krishna Kaul vs. Union of India, 1996 (1) SC SLJ 87.

4. Respondents have opposed the application through the written statement. The respondents submit that the market rent of Rs.15522/- has been charged for the period of overstay as unauthorised occupant as per the extant rules. In view of this, the applicant has no case and the OA. deserves to be dismissed.

5. The applicant has not submitted any rejoinder reply.


6. We have heard the arguments of the applicant who has appeared in person and Shri V.D.Vadhavkar for Shri M.I.Sethna for the respondents.

7. The facts involved in the controversy are not in dispute. The applicant occupied the quarter for a period from 1.8.1992 to 31.9.1992 beyond the permission granted. The respondents have charged damage rent of Rs.15522/- for the overstayed period.



..4/-

The main plea made by the applicant in challenging this recovery of the damage rent is that the competent authority could exercise relaxation of the rules in view of the circumstances under which the applicant had to continue to occupy the quarter beyond 31.7.1992. The applicant has not cited the relevant rules under which the competent authority could permit applicant to occupy the quarter beyond the permissible period at the normal rent or twice/thrice the normal rent. Therefore, I am unable to appreciate this contention of the applicant. Further, any relaxation of the rules is the sole discretion of the competent authority based on the merits of each case. No direction in the judicial review can be given to such an authority to relax the rules in a particular manner. At the best considering facts and circumstances of the case, competent authority may be directed to consider the relaxation. In the present case, I find that applicant had made representation to the competent authority explaining the circumstances under which he was compelled to continue to occupy the quarter beyond 31.7.1992 and now put forward in the present OA. The competent authority has, however, rejected the request of the applicant for extension of time beyond 31.7.1992. In view of this, I do not find any case for directing respondents to reconsider the relaxation rules again and not to charge the damage rent.



8. The applicant has cited the ground of discrimination stating that in case of number of officers, permission to stay beyond the permissible period has been allowed. Except making this bald statement, the applicant has not brought out any material on the record to support the plea of discrimination. No specific names have been disclosed. It is for the person who alleges discrimination to prove discrimination. Further, the doctrine of discrimination can be founded upon the existence of enforceable right. Relaxation if any allowed considering the merits of an individual case can not be ground of claiming the same benefit alleging discrimination. In view of these observations, the plea of discrimination has no substance.

9. Lastly, the applicant has argued that the case of the applicant is covered by the judgement of the Hon'ble Supreme Court in the case of Vinod Krishna Kaula vs. Union of India & Ors., 1996 (1) SC SLJ 87. I have carefully gone through this judgement and am of the opinion that on facts and circumstances, the ratio does not apply to the present OA. In this case, rules were changed where in those officers having their own accommodation at the station, then such officers will have to surrender the general pool quarter occupied by them. The appellant who was having his house, however, could not comply with the new rules as the house had been let out for a period of 3 years before the new rules came into force and therefore he could not get the same vacated. In these circumstances, Hon'ble

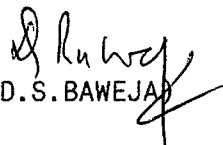


..6/-

/..6../

Supreme Court has held that order recovering higher/damage rent from the appellant held unjustified. In the present case, the applicant was aware of his date of superannuation. There was no change in rules. It was for the applicant to take appropriate action well in time to vacate the quarter on retirement.

10. In the result of the above, I have no hesitation to hold that the OA. lacks merit and is accordingly dismissed. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)

mrj