

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 143 OF 2018

[Subject : Refund of recovered amount]

DISTRICT: - AURANGABAD.

Shri Sopan Kautika Shelke,
Age-59 years, Occu. : Pensioner
R/o. Bajrang Nagar, Chikalhana,
Aurangabad.

.. APPLICANT.

V E R S U S

- i) The State of Maharashtra**
Through its Secretary,
B & C Department,
Mantralaya, Mumbai.
- ii) The State of Maharashtra,**
Through Secretary Irrigation
Department, Mantralaya,
Mumbai.
- iii) The Superintendent Engineer
Irrigation Department**
Aurangabad.
- iv) The Superintendent Engineer
B & C Department,**
Aurangabad.
- v) The Executive Engineer
B & C Department,**
Aurangabad.
- vi) The Executive Engineer Nandur
Madhmeshwar Irrigation
Department,**
Vaijapur, District Aurangabad.
- vii) The Custodian B & C Department,**
Kotla Colony, Govt. Quarter Colony,
Aurangabad.

.. RESPONDENT.

APPEARANCE : Shri. D.V. Khillare, learned Advocate
for the applicant.

: Shri S.K. Shirse, learned Presenting
Officer for the resp. Nos. 1 to 5 & 7.

: Shri S.B. Patil, learned Advocate for
respondent No. 6.

CORAM : **SHRI B.P. PATIL, VICE CHAIRMAN**

RESERVED ON : **11TH JUNE, 2019**

PRONOUNCED ON : **17TH JUNE, 2019**

ORDER

By filing the present Original Application the applicant has prayed to direct the respondents to refund the amount of Rs. 91,000/- recovered from his pensionary benefits towards license fee and the amount of Rs. 3390/- deposited by him towards security amount at the time of taking over the possession of the Government quarter and also prayed to direct the respondents to pay the interest amount on the delayed payment of pension and pensionary benefits.

2. The applicant was appointed as a Tracer on 14.01.1983 in the office of the Irrigation Department at Talwada, Tq. Gevrai, Dist. Beed. Thereafter, he has been transferred to Hatgaon Dist. Nanded from Talwada, District Beed in the year

1989. He served there till February, 2007. Thereafter, he has been transferred in the Regional Office of Irrigation Department at Aukrangabad. Since February, 2007 he worked in the Regional Office of Irrigation Department at Aurangabad till 30.6.2007. He has been allotted B & C Government Quarter at Aurangabad vide letter No. ACM/743/2007 dated 01.02.2007, a copy of which is placed on record at Exhibit 'A-1', page-15. Quarter No. 14/83 in Kotla Colony, Anand Nagar, Aurangabad has been allotted to him. The said quarter is having 400 sq. ft area. He had occupied the said Government Quarter in the month of December, 2007. He was residing there till January, 2017. At the time of occupying quarter he has deposited an amount of Rs. 3390/- vide B & C office receipt No. 8077616 as security deposit in the office of B & C on 02.02.2007, a copy of which is placed on record at Exhibit 'A-2', page-18. When he was on the verge of retirement the office of Executive Engineer, Irrigation Department sent a pension proposal to the Accountant General and informed that No Dues are recoverable from him and accordingly, the office of Accountant General sanctioned the pension vide letter dated 3.6.2016, a copy of which is placed on record at Exhibit 'A-3', page-19. On 22.06.2016 the custodian of B & C informed to

the Executive Engineer Irrigation Department regarding recovery in respect of rent, water bill etc.

3. On attaining the age of superannuation, the applicant retired on 30.06.2016. At the time of retirement son of the applicant was under treatment and concerned Dr. advised him to undergo surgery. Therefore, the applicant had moved an application to the B & C authorities and requested to allow him to retain the quarter for next three months and also made request to issue "No Objection Certificate" for getting pension, but the B & C authorities had not taken any decision on his application. On 22.06.2016 the B & C authorities sent a letter to the Irrigation authorities and requested to submit information in respect of recovery of the amount of license fee from the applicant. The Executive Engineer, Irrigation vide letter dated 22.08.2017 informed the B & C Department that the applicant was not accepting his liability to pay the amount of Rs. 91,000/- towards license fee to the Government on account of accommodation occupied by him unauthorizedly. It is his contention that the said amount has been recovered thereafter from his pensionary benefits.

4. It is his further contention that the pensionary benefits have not been given to him after the period of 9 ½ months

since the date of his retirement and the same has been disbursed to him only after recovery of the said amount.

5. It is his contention that the amount of Rs. 91,000/- has been recovered from his pensionary benefits illegally. Therefore, he prayed to direct the respondents to refund the said amount. It is his further contention that the respondents have not repaid the amount of Rs. 3390/- deposited by him as security amount at the time of taking over the possession of the Government quarter. Therefore, he has also prayed to issue directions to the respondents to refund the said amount. It is his further contention that he received pensionary benefits belatedly after the period of 9 ½ months from the date of his retirement because of the acts of the respondents. Therefore, he is claiming interest on the said amount.

6. Respondent Nos. 4, 5 & 7 have filed their affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that the applicant was in possession of Government Quarter, Kotla Colony, Anand Nagar from 1.2.2007 till January, 2017. It is their contention that custodian of B & C vide letter dated 22.06.2016 informed to the Executive Engineer, Irrigation Department regarding

recovery in respect of the rent, water bill etc. It is their contention that as per Government Resolution dated 15.06.2015 the Executive Engineer is empowered to take decision regarding extension or regarding vacation of the Government Quarter occupied by the Government servant considering the waiting list for allotment of residential accommodation. It is their contention that at the time of retirement of the applicant 202 applications seeking allotment of Government Quarter were pending in the office of the respondents. The applicant had never applied for extension of time for vacating Government quarter and the Executive Engineer of B & C never permitted the applicant to occupy the said quarter after his retirement. It is their contention that the applicant has not vacated the Government quarter within 7 days from the date of his retirement and he has vacated Government quarter on 15.12.2016. He had retained the Government quarter unauthorizedly for the period from 1.7.2016 to 15.12.2016 and, therefore, he is liable to pay license fee of Rs. 14,000/- per month at penal rate (total area occupied by the applicant was 400 sq. ft. X Rs. 35/- = 14,000/- for one month) and, therefore, an amount of Rs. 91,000/- (6.5 months X 14,000/- = 91,000/- Rs.) has been

calculated towards license fee and the same has been recovered from the applicant accordingly.

7. It is their contention that the applicant has not paid service charges as well as license fees of the Government Quarter from 1.5.2011 to 30.06.2016 for 62 months as per the rate fixed as per the Government Resolution dated 19.04.2011. Therefore, the amount of Rs. 45,880/- (740 X 62 months = 45,880/-) was due from him. Therefore, the concerned department with which the applicant was serving was requested to recover the said amount. It is their contention that the recovery has been made in view of the provisions of the Government Resolution and, there is no illegality. Therefore, they supported the impugned order and action taken by him and prayed to reject the present Original Application.

8. Respondent Nos. 1 & 2 have not filed their affidavit in reply. Respondent Nos. 3 & 6 have adopted the affidavit in reply filed by the respondent Nos. 4,5 & 7.

9. I have heard arguments advanced by Shri. D.V. Khillare, learned Advocate for the applicant, Shri S.K. Shirse, learned Presenting Officer for the resp. Nos. 1 to 5 & 7 and

Shri S.B. Patil, learned Advocate for respondent No. 6. I have perused the application, affidavit, affidavit in reply filed by the respondents. I have also perused the documents placed on record by both the parties.

10. Admittedly, the applicant was appointed as a Tracer on 14.01.1983 in the office of the Irrigation Department at Talwada, Tq. Gevrai, Dist. Beed. Admittedly, the applicant has been transferred to Hatgaon Dist. Nanded from Talwada, District Beed in the year 1989. Admittedly, the applicant served there till February, 2007. Admittedly, thereafter, the applicant has been transferred in the Regional Office of Irrigation Department at Aurangabad in the month of February, 2007. He worked there from February, 2007 till his retirement on attaining the age of superannuation i.e. on 30.6.2007. Admittedly, the applicant has been allotted B & C Government Quarter bearing No. 14/83 in Kotla Colony, Anand Nagar, Aurangabad by letter / order dated 01.02.2007. The applicant occupied the said quarter accordingly. Admittedly, the carpet area of the said Government Quarter occupied by the applicant was 400 sq. ft. Admittedly, the amount of Rs. 3390/- has been deposited by the applicant as security amount in the office of B & C on

02.02.2007. Admittedly, the applicant retired from the Government service on attaining the age of superannuation i.e. on 30.6.2016, but he had not vacated the Government Quarter immediately. He vacated the said Government Quarter provided to him on 15.12.2016. Admittedly, the applicant was in occupation of the Government accommodation for the period of five & half months after his retirement. Admittedly, the amount of Rs. 91,000/- has been recovered from the pensionary benefits of the applicant towards license fees at the penal rate for the period from 1.7.2016 to 15.12.2016 for his unauthorized occupation of Government Quarter. The respondents charged license fee at the penal rate of Rs. 35/- per sq. ft. per month for the accommodation occupied by the applicant.

11. Learned Advocate for the applicant has submitted that at the time of retirement son of the applicant was suffering from illness and the concerned Dr. had advised him to undergo surgery and, therefore, the applicant submitted an application dated 30.6.2016 to the Executive Engineer, B & C and sent the copy of it to the custodian of B & C requesting them to permit him to retain the residential Government Quarter for next three months. He has submitted that the

Executive Engineer had not passed any order on it. He has submitted that the applicant had occupied the said Government Quarter with the permission of B & C authority and, therefore, the respondents cannot charge license fees at penal rate. He has submitted that as per the Government Resolution dated 15.6.2015, Executive Engineer B & C is empowered to grant permission to the Government servant to occupy the residential Government Quarter for further six months, but the Executive Engineer had not decided the application of the applicant. Therefore, the license fees recovered from the applicant at the tune of Rs. 91,000/- for occupation of the Government Quarter from 1.7.2016 to 15.12.2016 is illegal and prayed to direct the respondents to refund the said amount, which has been recovered from his pensionary benefits.

12. Learned Advocate for the applicant has further submitted that as the Executive Engineer, Irrigation Department had not disbursed the pension amount to him in time and there was 9 & ½ months delay in disbursing the said amount. Therefore, the applicant is entitled to get interest on the said amount. He has submitted that the respondents have made recovery illegally and, therefore, he

prayed to issue directions to the respondents to refund the said amount deposited by him. He, therefore, prayed to quash and set aside the impugned order by allowing the present Original Application.

13. Learned Presenting Officer and learned Advocate for the respondents have submitted that the applicant was retired on 30.6.2016. As per the rules the applicant has to vacate the Government Quarter within 7 days from the date of his retirement. The applicant had vacated the Government Quarter on 15.12.2016. He had not applied for extension of time to vacate the Government Quarter, as per the Government Resolution dated 15.6.2015 and, therefore, the applicant is liable to pay the license fee @ Rs. 35 per sq. ft. per month. The area of the Government Quarter occupied by the applicant was 400 sq. ft. The applicant had retained Government Quarter unauthorizedly for a period of 6 & ½ months. Therefore, he is liable to pay license fee of Rs. 14,000/- per month at penal rate (400 sq. ft. X Rs. 35/- = 14,000/-). Therefore, he is liable to pay Rs. 91,000/- for the period of 6 & ½ months (Rs. 14,000/- X 6 & ½ months = Rs. 91,000/-). The amount of Rs. 91,000/- was due from the applicant towards license fee. They have submitted that the

respondents have charged license fee @ Rs. 14,000/- per month for the quarter and accordingly the said amount has been recovered from the applicant. Therefore, they justified the impugned order.

14. On perusal of the record, it reveals that the applicant has been retired on 30.6.2016. As per the provisions of the Government Resolution dated 15.12.2016 the applicant has to vacate the Government Quarter within a period of 7 days from the date of his retirement. As per the Government Resolution dated 15.12.2016 the Executive Engineer of B & C can grant extension of three months' time for vacating the Government Quarter on receiving the application from the concerned Government employee. As per the said G.R. the Executive Engineer of B & C can extend the period for further three months on receiving the application from the Government servant, considering the demand of the other Government employees for residential Government Quarter. The said G.R. provides that for the extended period the employee is liable to pay the license fee at the double rate of regular license fee. In the instant case the documents produced at page No. 21 (Exhibit 'A-5') shows that the applicant had filed an application with the Executive

Engineer of B & C, Aurangabad for retention of the Government Quarter and he requested him to permit him to retain the Government Quarter for further three months. The copy of the application was forwarded to the Custodian of B & C, Anandnagar, Kotla Colony, Aurangabad. The said fact is supported by the letter dated 8.9.2016 sent by the Executive Engineer, Nandur Madhameshwar Irrigation Department, Vaijapur to the Custodian of the Government Quarters, Public Works, Kotla Colony, Aurangabad, (Exhibit 'A-6', page-22). This document falsifies the contention of the respondents that the applicant never applied for retention of the Government Quarter. This document shows that the applicant had not vacated the Government Quarter immediately after his retirement, but he filed the application with the Executive Engineer of B & C for granting 3 months' time to vacate the quarter. But the Executive Engineer had not taken any appropriate decision either permitting him to occupy the quarter for further three months or rejecting his request. As no order has been passed by the Executive Engineer it can be deemed that he permitted the applicant to occupy the quarter for further three months. Therefore, the applicant is liable to pay the license fee for the residential accommodation for the period of three months commencing

from 1.7.2016 to 30.9.2016 @ double rate of the license fee i.e. @ Rs. 1350/- (Rs. 625 regular license fees X 2 = 1250), as per the Circulate dated 2.1.2017 issued by the Executive Engineer, Public Works Department, Aurangabad, (Exhibit 'A-8', page-25.) The applicant has not filed further application for granting extension to retain the Government Quarter after 30.9.2017. Therefore, his possession in the Government accommodation from 1.10.2016 till vacating the same i.e. till 15.12.2016 is unauthorized. The applicant was in occupation of the Government Quarter unauthorizedly for the period of 2 & ½ months. Therefore, he is liable to pay license fee @ penal rate Rs. 35/- per sq. ft. per month. He is liable to pay license fee @ Rs. 14,000/- per month (400 sq. ft. X Rs. 35/- = Rs. 14,000/-). He is liable to pay total amount of Rs. 35,000/- towards license fees for his unauthorized occupation of the Government Quarter for the period of 2 & ½ months commencing from 1.10.2016 to 15.12.2016. Thus, the applicant is liable to pay Rs. 3750/- towards license fees for the period of three months commencing from 1.7.2016 to 30.9.2016 and Rs. 35,000/- towards license fees at penal rate for his unauthorized occupation of Government Quarter w.e.f. 1.10.2016 to 15.12.2016. Hence, he was liable to pay total amount of Rs. 38,750/- to the respondents towards license

fees of the amount but the respondents have recovered the amount of Rs. 91,000/- towards license fees. The respondents have recovered excess amount of Rs. 42,250/- from the applicant illegally. Therefore, the applicant is entitled to recover it from the respondents.

15. The applicant deposited amount of Rs. 3,390/- with the B & C towards security amount in the year 2007 when he occupied the said accommodation. The said fact is evident from the receipt, a copy of which is placed on record at Exhibit 'A-2', page-18. The respondent Nos. 4, 5 & 7 had not refunded the said amount. Therefore, the applicant is entitled to recover the said amount from them.

16. The applicant has claimed the interest on account of delay in payment of pension and pensionary benefits. The record shows that the concerned office with whom the applicant was serving sent a proposal regarding pension of the applicant well in advance before his retirement.

17. The document filed at page No. 19 shows that the pension has been sanctioned by the Accountant General on 3.6.2016 much before his retirement. It shows that there was no delay on the part of the concerned authorities in

processing the pension papers of the applicant. The applicant had not deposited the amount of license fee of the residential accommodation after his retirement. Therefore, the amount of pensionary benefits has not been disbursed to him. Therefore, there was intentional delay on the part of the respondents in disbursing the pensionary benefits to the applicant. Because of the non-payment of the said amount by the applicant the delay has been occurred. Therefore, the respondents cannot be blamed for it. Therefore, the applicant is not entitled to claim any interest on the pensionary benefits on account of delay caused for disbursing pension amount. Therefore, the claim of the applicant in that regard is rejected.

18. In view of the discussion in foregoing paragraphs the applicant is entitled to get refund the amount of Rs. 42,250/- towards excess amount of license fees recovered from him and Rs. 3390/- towards the amount deposited by him as security amount. Therefore, he is entitled to get refund of the said amount. The respondents are liable to refund the said amount. Therefore, the present Original Application deserves to be allowed partly.

19. In view of the discussion in foregoing paragraphs, the present Original Application stands allowed partly.

20. The respondents are directed to refund the amount of Rs. 42,250/- to the applicant within a period of three months, failing which the amount shall carry interest @ 9% p.a from the date of this order till its realization.

21. The respondent Nos. 4, 5 & 7 are directed to refund the security amount of Rs. 3390/- to the applicant within a period of 3 months, failing which the amount shall carry interest @ 9% p.a. from the date of the order till its realization.

22. In the facts and circumstances of the present case, the parties are directed to bear their own costs.

VICE CHAIRMAN

PLACE : AURANGABAD.

DATE : 17TH JUNE, 2019

O.A.NO.143-2018(SB-refund of recovered amount)-HDD-2019