

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 167 OF 2018
(Subject – Recovery of H.R.A./Fine of Govt. Quarter)**

DISTRICT : AURANGABAD

Shri Nishikant Nana Pawar,)
Age : 54 years, Occu. : Service as Police)
Inspector,)
R/o C/o B-company, State Reserve)
Force, Gut No. 14, Satara Parisar,)
Aurangabad.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through: The Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)
- 2) **The Director General of Police,**)
Maharashtra State, Mumbai.)
- 3) **The Additional Director General**)
Of Police,)
State Reserve Police Force, M.S.)
Mumbai.)
- 4) **The Special Inspector General**)
Of Police,)
State Reserve Police Force,)
Nagpur Parikshetra/Region,)
Nagpur.)
- 5) **The Commandant,**)
State Reserve Police Force Group)
No. 3, Jalna.)
- 6) **The Commandant,**)
State Reserve Police Force Group)
No. 14, (Bharab-1), Aurangabad.)

.. **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, Advocate for the Applicant.

: Smt. M.S. Patni, Presenting Officer for
Respondents.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 27.03.2019.

ORDER

1. The applicant has challenged the orders dated 01.08.2017, 16.01.2018, 23.01.2018 & 07.03.2018 issued by the respondents directing the recovery amounting to Rs. 10,64,468/- by monthly installments from his salary by filing the present Original Application.

2. The applicant was initially appointed as a Constable on 01.12.1986 and posted in the office of respondent No. 5. He was promoted to the post of Head Constable w.e.f. 01.01.1992. Thereafter, he was again promoted to the post of Police Sub Inspector on 01.06.2004 and posted at SRPF Group No. 4, Nagpur and thereafter, he was transferred at Jalna in the year 2005. On 01.06.2010, he was transferred at Group No. 12 Hingoli. On 06.06.2015, he was transferred at Group No. 7, Daund, Dist. Pune. On 01.06.2016, he was promoted to the post of Police Inspector and posted at Solapur. On 01.07.2016, he

came to be transferred at Aurangabad in the office of respondent No. 6 and since then, he is working there.

3. In the year 2005, the applicant working as P.S.I. and posted at Jalna on the establishment of respondent No. 5, the Government quarter was allotted to him. The said quarter is very old and it was not fit for residence. The Executive Engineer, P.W.D., Jalna issued letter dated 22.09.2005 to the respondent No. 5 and informed that the said Government Quarter was not fit for residence. It is contention of the applicant that in spite of the said letter, the respondent No. 5 allotted the Government quarter to the applicant in the year 2005. It is his contention that on 31.05.2011, he was transferred to Hingoli from the office of respondent No. 5. Accordingly, he was relieved from the office of respondent No. 5. In the year 2016, he was transferred at Daund and then in the year 2016, he was transferred to Solapur on promotion.

4. It is contention of the applicant that in the year 2016, his children were taking education at Jalna and his wife was suffering from heart decease and his old aged mother was residing with him. The applicant was constructing his own house at Jalna and he had obtained house loan for it. He was making

repayment of house loan by installments and therefore, he had not vacated the Government accommodation. On 22.11.2012, the respondents issued letter and directed to calculate the penalty amount of house rent on him. The applicant submitted an application dated 08.12.2012 to the respondent No. 1 and requested to cancel the penalty amount imposed on him. It is his contention that he had not occupied the Government quarter at transferred places and he had not received the H.R.A. since he has been transferred from Jalna till today. It is his contention that the quarter allotted to him at Jalna was not fit for residence and therefore, Executive Engineer, P.W.D., Jalna made inspection of it and submitted report to the respondent No. 5. It is his contention that his family members are residing at Jalna. His two daughters are of marriageable age and therefore, he had requested the respondent No. 2 to transfer him at Jalna. But his application was rejected on 01.07.2017. It is his contention that because of the family problems, it was difficult for him to vacate the Government accommodation allotted at Jalna. The respondents had wrongly imposed the penalty of Rs. 7,29,600/- and communicated the same to the applicant by letter dated 10.04.2017. The respondent No. 5 had issued another letter dated 01.08.2017 without considering his earlier letter dated

17.01.2017 and directing to recover the amount of Rs. 12,98,404/- from his monthly salary. The applicant requested the respondent No. 3 not to impose the penalty, but he was not allowed to submit his grievance and he was directed to approach the Government by letter dated 08.12.2017 by the respondent No. 3. The applicant further submitted application to the respondent No. 2 and requested to cancel the penalty imposed on him through respondent No. 6. But the respondent No. 6 on 23.01.2018, issued a letter and informed the applicant that his request has been rejected by the respondent No. 2. The respondent No. 6 then issued a letter dated 16.01.2018 and directed the applicant to deposit the rent of the Government quarter with penalty and to deliver vacant possession of the Government accommodation to the respondent No. 5. The applicant has submitted application dated 01.02.2018 to the respondent No. 1 with a request not to recover the penalty amount, as he is facing family problems and difficulties. It is his contention that he obtained loan for construction of house and therefore, an amount of Rs. 40,000/- per month used to be deducted from his salary. His two daughters have attained the age of marriage. He performed the marriage of elder daughter's in the year 2016. It is his contention that the marriage of his

second daughter is likely to be solemnized in near future and therefore, he is unable to pay the amount. Therefore, he approached this Tribunal and prayed to quash and set aside the said orders directing recovery of rent for the Government accommodation occupied by him at penal rate.

5. The respondent Nos. 2 to 5 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant had occupied Government quarter in the year 2005 at Jalna and he is in occupation of the said quarter since then. They have not disputed the fact that the applicant has been transferred in the year 2011 i.e. on 31.05.2011, but he had not vacated the Government accommodation till today. It is their contention that as the applicant has not vacated the Government accommodation within stipulated time i.e. within three months after his transfer, the respondent No. 5 issued notice to the applicant and called upon him to vacate the Government quarter, failing which, he has to pay penal charges in addition to the license fee as per the G.Rs. issued by the Government from time to time from the month of December, 2011. They directed the applicant to pay rent of Government quarter of Rs. 19,008/- w.e.f. December 2011. It is their contention that as per the

guidelines received from the respondent No. 3 by the letter dated 22.11.2012 and G.R. dated 05.03.2008. The respondent No. 5 issued the notice to the applicant to vacate the Government quarter and to pay license fee and penalty of Rs. 62,250/- by sending letter dated 31.03.2012. In spite of the service of the notice, the applicant had not vacated the Government accommodation. Therefore, the respondent No. 5 issued another letter dated 16.07.2012 to the applicant and directed to vacate the Government quarter and to pay penalty in the tune of Rs. 1,19,274/-. In spite of repeated notices issued by the respondents, the applicant had not vacated the Government quarter. Therefore, the respondent No. 5 issued another notice to the applicant with a request to vacate the Government quarter and to pay penalty of Rs. 2,60,346/-.

6. It contention of the respondent Nos. 2 to 5 that the Government quarter at Jalna was allotted to the applicant on 28.05.2005. Thereafter, Executive Engineer, P.W.D. Jalna has given his opinion by the letters dated 22.09.2005 and 25.09.2014 that the said Government quarters are very old and technically will not be suitable for residential purpose and the repairing costs and expenses for old quarters are of west of money and

proposal for new construction of residential quarters should be prepared.

7. It is contention of the respondents that the applicant had not vacated the Government quarter and continued to stay there in spite of several notices issued to him. Therefore, the respondent No. 5 issued another notice on 16.12.2014 and called upon the applicant to vacate the Government quarter and to pay charges of Rs. 6,89,826/-. The applicant had received the notice, but he had not vacated the residential accommodation and therefore, respondent No. 5 issued another notice dated 16.08.2017 and requested the applicant to vacate the Government quarter and to pay the amount of Rs. 12,98,404/- and the said recovery has been started in view of the direction given by the Additional Director of Police, SRPF Mumbai by the communication dated 02.01.2018. It is their contention that the action taken against the applicant is legal one and there is no illegality in it. Therefore, they have prayed to reject the present Original Application.

8. The respondent No. 6 resisted the contentions of the applicant by filing his affidavit in reply. It is his contention that the applicant has not vacated the Government quarter, in spite of

several opportunities given to him. Therefore, the respondents were compelled to take action against the applicant. It is his contention that the applicant has not challenged the earlier orders. It is his contention that the present O.A. is barred by limitation. It is his contention that the letters have been issued to the applicant after following due procedure of law. It is his contention that the applicant and his family members are residing in Government quarter at Jalna since the date of allotment and they continued to stay therein, though the applicant has been transferred to Hingoli vide order dated 31.05.2011. It is his contention that the respondents have taken proper action against the applicant. It is his contention that the applicant has to vacate the Government quarter within a period of three months from the date of his retirement, transfer, death, termination, etc. The applicant has not followed the provisions of G.Rs. and therefore, action has been taken against him. There is no illegality in the impugned orders and therefore, he supported the same.

9. The applicant has filed rejoinder affidavit to the affidavit in reply filed by the respondents and raised similar contentions raised in the O.A. and prayed to allow the present Original Application.

10. I have heard Shri K.B. Jadhav, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

11. Admittedly, the applicant was initially appointed as a Constable on 01.12.1986 and posted in the office of respondent No. 5. Thereafter, he was promoted to the post of Head Constable w.e.f. 01.01.1992. Thereafter, he was again promoted to the post of Police Sub Inspector on 01.06.2004 and posted at SRPF Group No. 4, Nagpur. In the year 2005, he was transferred to Jalna and that time the Government quarter has been allotted to him and he occupied the said Government quarter w.e.f. 28.05.2005. Admittedly, on 01.06.2010, he was transferred at Group No. 12 Hingoli and then on 06.06.2015 he was transferred at Group No. 7, Daund, Dist. Pune. On 01.06.2016, he came to be promoted to the post of Police Inspector and posted at Solapur. On 01.07.2016 he came to be transferred at Aurangabad in the office of respondent No. 6 and since then, he is working there. Admittedly, after transfer of the applicant from Jalna, the applicant had not vacated the Government accommodation within stipulated time and continued to occupy the same till today. Admittedly, by the letter dated 22.11.2012, the applicant

was informed by the respondents to vacate the premises, failing which, he will be liable to pay license fee and penal charges. Admittedly, in the year 2017 i.e. on 01.07.2017, the applicant made a request to the respondents to transfer him at Jalna, but his request was rejected. Admittedly, notices dated 10.04.2017, 01.08.2017, 23.01.2018 and 16.01.2018 were issued to the applicant and he was directed to vacate the Government accommodation and to deposit the license fee and penal charges. Admittedly, the applicant had not challenged those orders previously but sometimes he made representations with the respondents for extension of time to vacate the Government quarter or for waving the penal charges. But his request has been rejected by the respondents.

12. Learned Advocate for the applicant has submitted that the applicant and his family members including daughters, wife and old aged mother are residing in the Government accommodation allotted to him at Jalna. After his transfer from Jalna, he had not shifted his family at transferred place and he occupied the Government accommodation and applied the respondents for giving time to vacate the Government accommodation, as his daughters were taking education and had attained the marriageable age. He has submitted that because of

his family problems, the applicant had not vacated the Government accommodation. Not only this, but he constructed his house by borrowing loan and he had to pay installments of loan and therefore, he was in financial crisis. He could not be able to vacate the Government accommodation because of the financial and family problems. He has submitted that the penal charges imposed on the applicant for unauthorized occupation of the Government accommodation is against the provisions of the G.Rs. issued by the Government from time to time and therefore, he prayed to waive the penal charges imposed on the applicant by allowing the present Original Application.

13. He has submitted that the applicant has borrowed loan for construction of new house and he is paying installments of house loan and therefore, hardship will be caused to the applicant, in case of starting recovery of license fee from his salary. He has submitted that the applicant has to take care of his daughters, wife and old aged mother and therefore, he prayed to allow the present Original Application and prayed to quash and set aside the impugned orders.

14. Learned Presenting Officer has submitted that the applicant has not vacated the Government accommodation since

the year 2011. The applicant has not vacated the premises within a stipulated time and therefore, license fee with penal charges has been imposed on the applicant and the applicant is liable to pay the said amount. She has submitted that the applicant has not challenged the earlier orders issued by the respondents directing him to deposit the arrears of penal charges and therefore, the present Original Application is not maintainable. She has submitted that since the applicant has occupied the Government residential quarter unauthorizely, he is liable to pay the penal charges in view of the G.Rs. issued by the Government from time to time. She has submitted that the impugned orders issued by the respondents directing recovery of license fee with penal charges from the salary of the applicant in installments are as per the provisions of G.Rs. and there is no illegality in it. Therefore, she has prayed to reject the present Original Application.

15. On perusal of the record, it reveals that the applicant has occupied the Government accommodation at Jalna since the date of allotment i.e. from 28.05.2005. The applicant has been transferred from Jalna in the year 2011, but he has not vacated the said premises within a stipulated time. The applicant never sought extension for retention of the Government quarter and no

extension to accommodate the same has been given by the respondents or the competent authority. Therefore, the applicant's occupation of Government accommodation is unauthorized. The applicant has occupied the Government accommodation unauthorizely and therefore, he is liable to pay license fee at penal rate in view of the G.Rs. issued by the Government from time to time. The applicant was called upon to vacate the premises and to pay license fee at penal rate by the respondents by the communications dated 06.09.2011, 22.11.2012, 31.03.2012, 16.07.2012, 09.03.2013, 16.12.2014, 20.01.2017, 16.08.2017 and 08.12.2017, but the applicant has not challenged those order within a stipulated time. The request of the applicant for waiving the penal charges has also been rejected by the respondents and the Government long back. But the applicant had not vacated the premises in spite of repeated directions given by the respondents. Not only this, but he has not deposited the license fee at penal rate since the year 2011. The applicant was aware about the fact to deposit the license fee at penal rate, but he has wilfully made default in payment of same. He has avoided to vacate the premises and therefore, in view of the G.Rs. issued by the Government from time to time he is liable to pay license fee at penal rate. The respondents have

calculated the penal charges according to the G.Rs. and directed to recover the said amount from the salary of the applicant by monthly installments. There is no illegality in the impugned orders. Because of the unauthorized occupation of the Government accommodation by the applicant, the other employees suffered hardship. They were deprived from getting residential Government quarters. Therefore, in view of this, in my view, there is no illegality in the impugned orders. The impugned orders have been issued by the respondents in view of the guidelines given by the Governments and the rates prescribed in G.Rs. Since the impugned orders are legal, in my opinion, there is need to interfere in it. There is no merit in the present Original Application. Consequently, the O.A. deserves to be dismissed.

16. In view of the discussions in the foregoing paragraphs, the Original Application is dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 27.03.2019.

(B.P. PATIL)
MEMBER (J)