

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 89/2017 (S.B.)

Shri Sukhdeo S/o Sahadeo Shendare,
aged about 61 years, Occ. Retired,
R/o Tumsar, District Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through Secretary, Department of Revenue &
Forest, Mantralaya, Mumbai-32.
- 2) The Chief Conservator of Forest (Territorial),
Nagpur.
- 3) The Deputy Conservator of Forest,
Bhandara.
- 4) The Range Forest Officer, Pauni,
District Bhandara.
- 5) The Accountant General-II,
Nagpur.

Respondents.

S/Shri S.D. Chande, R.L. Kadu, Advocates for the applicant.

Shri S.A.Sainis, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 193/2017 (S.B.)

Shri Sukhdeo S/o Sahadeo Shendare,
aged about 61 years, Occ. Retired,
R/o Tumsar, District Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through Secretary, Department of Revenue &
Forest, Mantralaya, Mumbai-32.

- 2) The Chief Conservator of Forest (Territorial), Nagpur.
- 3) The Deputy Conservator of Forest, Bhandara.
- 4) The Range Forest Officer, Pauni, District Bhandara.

Respondents.

S/Shri S.D. Chande, R.L. Kadu, Advocates for the applicant.

Shri S.A.Sainis, P.O. for the respondents

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 13th November, 2019.

Date of Pronouncement of Judgment : 15th November, 2019.

COMMON JUDGMENT

(Delivered on this 15th day of November,2019)

Heard Ms. P.M. Mane, learned counsel holding for Shri S.D. Chande, learned counsel for the applicants and Shri S.A. Sainis, learned P.O. for the respondents.

2. The O.A. No.89 of 2017 is filed by the applicant for issuing direction to the respondents to release his pension together with interest @ 18% p.a. and for issuing direction to pay amount of medical reimbursement bill Rs.5,554/- together with interest.

3. The O.A.No.193 of 2017 is filed by the applicant for quashing the order dated 27/3/2017 passed by the respondents to

recover amount of house rent Rs.2,14,980/- from the applicant. The facts which give arise to both the applications are as under –

4. The applicant was appointed in service as Forest Guard in the year 1986 and he retired as Forest Guard on attaining age of superannuation on 31/3/2015. It is contention of the applicant that no dues were outstanding against him, no departmental inquiry was pending against him, but in spite of this his pension was not released by the respondents. The applicant contended that the provisional pension was issued for a period of six months and it was paid to the applicant till October,2015. It is contended by the applicant that as monthly pension was not paid to him, therefore, his financial condition was worst and he was forced to reside in Government Quarter even after expiry of six months from the date of his retirement. It is contended that the respondents wrote letter dated 18/7/2016 and claim the rent upto 18/7/2017 for the occupation of the Government accommodation, but according to the applicant this action was vindictive. The applicant wrote various letters to the respondents for releasing his pension and to pay him the medical reimbursement bill for Rs.5,554/-, but no heed was paid and therefore it is claimed that the respondents be directed to pay the pension together with interest @ 18% p.a. and the amount of medical reimbursement bill together with the interest @ 18% p.a.

5. In O.A.193/2017 the applicant has contended that due to inaction of the respondents in paying him the regular monthly pension, he had no alternative and due to his critical financial position, he was forced to stay in the Government accommodation. It is submitted that instead of paying the pension immediately, the respondents passed the order dated 27/3/2017 claiming penal house rent Rs.2,14,980/- from the applicant. According to the applicant, this action of the respondents is illegal.

6. It is submission of the applicant that the respondents had no authority in law to withhold the pension of the applicant and as action is illegal, therefore, both the applications be allowed.

7. In O.A.89 of 2017 the reply is filed by the respondent no.3 at Page no.27. The main contention of the respondents is that the applicant was absent from duty from 27/11/2012 till 25/8/2013 i.e. 372 days from the office and no explanation was given by the applicant for his absence or no leave application was filed and without regularising this period, it was not possible for the respondent no.3 to prepare the pension case, therefore, letter was written on 22/1/2015 to the applicant (i.e. before his retirement) and the applicant was called upon to submit leave application to justify his absence, but no action was taken by the applicant. According to the respondents, no action was taken by the applicant to explain his absence for 372 days

consequently the Dy. Conservator of Forest, Bhandara passed order on 26/10/2015 and passed the order to treat unauthorised absence of the applicant as extra ordinary leave without pay. Thereafter the applicant was informed on 21/11/2015 to submit the forms in prescribed proforma together with photograph of applicant and his wife and to open new Bank account and submit the same to the office. It is submitted that the applicant was himself negligent in complying the direction. The applicant after his retirement did not vacate the Government accommodation, consequently vide letter dated 8/11/2015 information was given to the applicant that he would be liable to pay the penal rent as per the law. It is submitted that in spite of this, no steps were taken by the applicant to vacate the Government quarter.

8. It is contention of the respondents that as provisional pension was paid to the applicant and the applicant was called to furnish the details for preparation of his pension case, this information was called well in advance before his retirement, but due to inaction of the applicant till his retirement order could not be passed for his unauthorised absence for 372 days and the applicant is responsible for this.

9. The main contention of the respondents is that the applicant illegally retained possession of the Government

accommodation and therefore as per the G.R. issued by the Government of Maharashtra dated 19/4/2011 decision was taken to recover the amount of Rs.2,14,980/- from the applicant for the illegal occupation. According to the respondents as the applicant was not ready to vacate the Government accommodation after period of six months after his retirement, therefore, no dues certificate could not be issued and this was the reason for not issuing pension to the applicant. It is submitted that the action of the respondents is according to law and there is no violation of any legal provisions, therefore, both the applications are liable to be dismissed.

10. It appears from the facts and circumstances of the case that the applicant retired on 31/3/2015 and before his retirement letter dated 22/1/2015 was written by the respondents to the applicant. The applicant was called upon to submit leave application about his absence from 27/11/2012 to 25/8/2013. It is pertinent to note that the applicant did not take any step to comply the direction, therefore, it is apparent that there was no co-operation given by the applicant to the office for preparation of the pension case. Had applicant shown promptness to comply the direction in the letter dated 22/1/2015 it was possible for the respondents to prepare the pension case before retirement of the applicant. Thus it seems that due to contributory

negligence of the applicant there was a delay in preparation of the pension case.

11. The applicant was aware that he was residing in the Government accommodation and it was his duty to vacate it after his retirement or after expiry of the permissive period. The applicant did not vacate the Government accommodation alleging that as pension case was not sanctioned, therefore, it was not possible for him to vacate the Government accommodation. I do not see any merit in this contention for the reason that the applicant was responsible for this complication. Had the applicant submitted the information in time to justify his absence of 372 days before his retirement, then, the department could have prepared the pension case before retirement of the applicant. It seems that the applicant is taking advantage of his own wrong.

12. The legal position is settled that even if the Government servant fails to vacate the Government accommodation this cannot be a ground to withhold pension or the amount of gratuity. The Hon'ble Bombay High Court in case of **N.C. Sharma Vs. Union of India & Ors., 2004 (3) Bom CR,24 -2004 (3) Mh.L.J.,478** examined the similar situation. In the case before the Hon'ble High Court the employee of the Railway was transferred from Mumbai to Jhansi, but he did not vacate the quarter even after expiry of the permissive

period. Later on the employee was again transferred to Mumbai, but as per the rules he was not entitled to retain the same quarter, but it was necessary for him to apply for another quarter, without doing this the employee continued in the same quarter, consequently the department passed order to recovery amount of Rs. 54,609/- from the DCRG and terminal benefits. After examining the Clause 15 of the Railway Service Pension Rules, 1993, the Hon'ble Bombay High Court disapproved action of the Railway to recover the amount Rs. 54,609/- from the Railway employee, observing that as the employee did not vacate the Government accommodation even after expiry of the permissive period, it was open to the department to follow the procedure under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act.

13. In the present case it is necessary to consider the procedure laid down under Rule 133 of the Maharashtra Civil Services (Pension) Rules, 1982.

14. The Rule, 133 of the MCS (Pension) Rules, 1982 is about adjustment and recovery of dues pertaining to the Government accommodation. In this rule authority is conferred on the Executive Engineer to examine the case and to issue no demand certificate if entire license fee is recovered from the Government servant. As per the rules, it was duty of the Head Office to ensure that the licensee

upto the date of retirement was recovered from pay and allowances of the Government servant and it was for the Head of the Department to inform the Executive Engineer to follow the procedure under Rule 133 (6) of the Rules. In the present case, it seems that as the applicant did not vacate the quarter even after expiry of the permissive period, no steps were taken as provided under Rule 133 (6) of the MCS (Pension) Rules, 1982, but only provisional pension was issued for six months and thereafter nothing was paid to the applicant.

15. In this case it seems that this action of the respondents withholding pension alleging that the department has to recover the occupation charges at the penal rate is itself in violation of law. The respondents could have followed the procedure prescribed in Rule 133 (6) of the MCS (Pension) Rules, 1982 or followed the procedure under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, but it was not done. It appears that without hearing the applicant straightway, the order was passed by the department to recover the amount of Rs.2,14,980/- from the applicant, in my opinion this order cannot be justified.

16. In this background, I would like to point out that as the action of the applicant retaining the Government accommodation after his retirement and after expiry of the permissive period is illegal, it cannot be justified. The Government accommodation is a public

property and for its unlawful occupation the applicant is bound to pay. If the applicant is permitted to enjoy the Government accommodation without paying occupation charges, then it will encourage the unjust enrichment.

17. In view of the above discussion, I hold that the action of the respondents to recover the amount of Rs.2,14,980/- is illegal, but it is made clear that the respondents are at liberty to follow the procedure laid down in law to recover the occupation charges as per the rules from the applicant. I further hold that the action of the respondents in withholding the pension is illegal, but I make it clear that the applicant himself is responsible for not giving co-operation to the department to prepare his pension case in time and he illegally retained the Government accommodation, therefore, the applicant is not entitled for the interest. In the result, I pass the following order –

ORDER

- (i) Both the O.As. are partly allowed.
- (ii) The respondents are directed to release the pension of the applicant and to pay the bill of medical reimbursement Rs.5,554/- (if not already paid).
- (iii) The order passed by the respondents dated 27/03/2017 to recover arrears of house rent Rs.2,14,980/- is hereby quashed. The

respondents are authorised to initiate action as per the law to recover occupation charges from the applicant, after giving him opportunity of hearing. The respondents do comply this order within a period of three months.

(iv) No order as to costs.

Dated :- 15/11/2019.

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(A.D. Karanjkar)
Member (J).

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 15/11/2019.
and pronounced on

Uploaded on : 15/11/2019.