IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.1016 OF 2018

DISTRICT : THANE
Sub.:- Recovery

Shri Chandrakant Sudam Atkar.)
Age : 58 Yrs, Sub-Divisional Engineer,)
Irrigation Project Construction,)
Sub-Division No.1, Bharne, Tal.: Khed,)
District : Ratnagiri.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Irrigation Department, Mantralaya,)
Mumbai – 400 032.)

2. The Superintending Engineer.)
Thane Irrigation Circle,)
Sinchan Bhavan, Kopari, Thane (E).)

3. The Executive Engineer.)
Thane Minor Irrigation Division,)
Kalwa, Thane (West).)

4. Superintending Engineer.)
North Konkan Irrigation Project)
Circle, Kalwa, Thane (West).)

5. Superintending Engineer.)
Ratnagiri Irrigation Circle,)
Ratnagiri.)

6. Executive Engineer.)
Irrigation Project Construction)
Division, Chiplun, Dist. : Ratnagiri.)

7. Chief Engineer.)
Konkan Pradesh Irrigation Dept.,)
4th Floor, Hong Kong Bank Building,)
Mumbai – 400 001.)**...Respondents**

Mr. S.G. Ranjane, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 15.03.2023

JUDGMENT

1. The Applicant has challenged the communications dated 23.04.2015, 20.11.2015, 22.04.2016, 08.09.2016, 27.09.2016 and 02.12.2017 whereby Respondents sought to recover penal charges for unauthorized retention of service quarter, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Following are the uncontroverted facts :-

(i) While Applicant was serving as Sub-Divisional Engineer at Thane, he was allotted Quarter No.10, Kopri, Thane.

(ii) By order dated 01.08.2014, the Applicant was transferred from Thane to Khed, District Ratnagiri and in pursuance of it, joined at Khed on 11.08.2014.

(iii) Despite transfer, Applicant retained service quarter and stands retired from service on 30.11.2018.

(iv) On request of Applicant for retention of quarter for education of children, the Respondent No.7 – Chief Engineer, Irrigation Department, Mumbai by letter dated 19.01.2016 granted retention of service quarter for two years from 11.08.2014, subject to payment of double licence fee in pursuance of G.R. dated 15.06.2015.

(v) Even after retirement, he continued the possession of Government Quarter and ultimately vacated it on 29.01.2020.

(vi) Since Applicant continued the possession over Government quarter after expiration of two years' period concession given to him, the Respondents issued notices imposing penal charges in terms of various Government Resolutions issued in this behalf from time to time.

(vii) Respondents charged total sum of Rs.18,81,655/- towards penal charges and recovered Rs.8,60,692/- during the service period from pay and allowances and after retirement, recovered Rs.1,74,283/- from gratuity. After this adjustment, sum of Rs.9,46,680/- is shown due against the Applicant and for the recovery of same from pension, proposal is forwarded by the Department to the Government for necessary orders.

3. It is on the above background, the Applicant has challenged the above communications dated 23.04.2015, 20.11.2015, 22.04.2016, 08.09.2016, 27.09.2016 and 02.12.2017 whereby Applicant was directed to pay penal charges for unauthorized retention of service quarter. O.A. has been filed on 26.11.2018. Whereas, Applicant stands retired on 30.11.2018. Even after retirement, he continued the possession over Government quarter, and therefore, during the pendency of this OA, again recovery is made from his gratuity. Thus, final position is that Respondents imposed penal charges of Rs.18,81,655/- and Rs.8,60,692/- are recovered from pay and allowances as well as sum of Rs.1,74,283/- is adjusted from gratuity. After these adjustments, sum of Rs.9,46,680/- is again shown due and outstanding against the Applicant. In view of these subsequent developments, the Applicant amended the O.A. and thereby challenged the recovery done by the Respondents and directions are sought to refund the amount already recovered from his pay and allowances as well as gratuity *inter-alia* contending that the action of Respondents is arbitrary and illegal.

4. The Respondents resisted the O.A. by filing Affidavit-in-reply *inter-alia* denying that the impugned action of recovery suffers from any illegality or arbitrariness. The Respondents contend that despite issuance of notices, the Applicant fails to vacate Government quarter, and therefore, he is liable to pay penal charges for unauthorized retention of Government quarter.

5. Shri S.G. Ranjane, learned Advocate for the Applicant sought to challenge the recovery on following grounds :-

(a) Applicant was not allotted Government quarter at Khed nor he was paid HRA after his transfer from Thane, and therefore, it amounts to implied permission to retain quarter at Thane.

(b) Applicant was granted permission to retain quarter for two years by order dated 19.01.2016, and therefore, impugned action of penal charges is illegal.

(c) Respondents did not give opportunity of hearing to the Applicant before imposing penal charges which render impugned action arbitrary and illegal.

(d) Rate of penal charges imposed by the Respondents are quite excessive and illegal being not in tune with G.R. dated 15.06.2015.

6. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned action and has pointed out that several notices were issued to the Applicant to vacate quarter, but he failed to comply and retained quarter after his transfer from Thane to Khed and again retained it even after his retirement. She, therefore, submits that Applicant was in unauthorized occupation of Government quarter for the period from 01.08.2014 to 29.01.2020 and cannot avoid liability to pay penal charges. She has further clarified that for two years, permission

was granted to retain quarter by order dated 19.01.2016 subject to payment of two times licence fee and accordingly, it has been charged for initial two years' period and thereafter, penal charges were imposed in terms of Government Resolutions issued from time to time. On this line of submission, she sought to justify the impugned action and prayed to dismiss the O.A.

7. **As to Ground No.(a)** :-

True, Applicant was not allotted Government quarter at Khed nor he was paid HRA on his transfer from Thane to Khed. Learned P.O. fairly concedes this position. Admittedly, Applicant was transferred by order dated 01.08.2014 from Thane to Khed and joined there on 11.08.2014, but he retained quarter. He stands retired on 30.11.2018 and even thereafter retained quarter and ultimately vacated it on 29.01.2020. True, initially, permission was granted to the Applicant to retain quarter for two years from 11.08.2014 subject to payment of two times licence fee in terms of G.R. dated 15.06.2015. However, he retained the quarter for further period till 29.01.2020. The submission advanced by the learned Advocate for the Applicant that non-payment of HRA or non-allotment of quarter to the Applicant at Khed has to be construed as implied permission to retain quarter is totally misconceived and fallacious. If such contention is accepted, it would result in disastrous effect and Government servant would continue quarter allotted at one place for his convenience forever during his service period despite transfer from one place to other place. Indeed, it is clarified by the Government from time to time by issuance of various G.Rs that on transfer, Government servant is liable to vacate service quarter, else would be liable to pay penal charges. Government servant can retain quarter for three years on payment of licence fee, subject to specific approval of the Department. On transfer, Government servant can ask for quarter at the place where he is transferred and can claim HRA, if quarter is not available. At any rate, non-payment of HRA or non-

allotment of quarter at the place where Government servant is transferred cannot be construed implied permission to retain the quarter given to him at earlier place of posting.

8. All that, in such situation, Applicant can claim HRA for the period subsequent to his transfer and if HRA is not paid, it can be adjusted towards penal charges.

9. **As to Ground No.(b)** :-

No doubt, as seen from the record, particularly letter dated 19.01.2016 issued by Respondent No.7, on request of Applicant, permission was granted to retain quarter for two years, subject to payment of double licence fee in pursuance of G.R. dated 15.06.2015 (Page No.59 of Paper Book). Initially, permission was rejected by Executive Engineer, as seen from his letter dated 02.12.2014 (Page No.33 of P.B.) as well as by letter dated 23.03.2015 issued by Superintending Engineer. But later, Chief Engineer by his order dated 19.01.2016 granted permission to retain quarter for two years, subject to payment of two times licence fee in terms of G.R. dated 15.06.2015. Thus, retention was for two years from 11.08.2014 as specifically mentioned in order dated 19.01.2016, but Applicant retained the quarter, and therefore, he cannot avoid liability to pay penal interest for subsequent period. Notably, perusal of statement of calculation of penal charges, which is at Page No.291, makes it clear that for initial two years, no penal charges were imposed and twice licence fee was only charged in terms of permission granted by Executive Engineer. Suffice to say, retention was only for two years and not beyond it. This being the factual position, the Applicant cannot avoid liability to pay penal charges for the subsequent period.

10. **As to Ground No.(c)** :-

I see no substance in the submission advanced by the learned Advocate for the Applicant about non-issuance of specific notice or

opportunity of hearing before impugned action of recovery of penal charges. In this behalf, record clearly spells issuance of notice to the Applicant for vacating the quarter. The Applicant was issued notice dated 23.04.2015 (Page No.42 of P.B.) and notice dated 29.10.2015 (Page No.47 of P.B.) whereby Applicant was directed to vacate the quarter else would be liable to pay penal charges. True, subsequently, Chief Engineer by order dated 29.01.2016 granted permission with retrospective effect for two years from 11.08.2014 which came to an end on 11.08.2016, but Applicant retained the quarter even after expiration of concession given to him. The Sub-Divisional Engineer by his letter dated 22.04.2016 (Page No.67 of P.B.) again informed the Applicant to vacate the quarter else he would be liable to pay penal charges at the rate of Rs.50/- per sq.ft. in terms by G.R. dated 29.07.2011, but he did not vacate the quarter.

11. Suffice to say, Applicant was aware that he was given permission/concession to retain quarter for two years' only, subject to payment of twice licence fee, but even thereafter, he retained the service quarter. This being the factual position, his grievance now raised that he was not given notice of imposing penal charges is devoid of merit. His possession after expiration of two years' concession was totally unauthorized. Indeed, Rule 132 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity) cast duty upon head of office to ascertain Government dues including dues pertaining to Government accommodation and to adjust the same from the dues payable to the Government servant. It is in exercise of powers under Rule 132, the Respondents have recovered sum of Rs.8,60,692/- from regular salary before retirement and sum of Rs.1,74,283/- is adjusted from gratuity. Out of total dues of Rs.19,81,655/-.

12. At this juncture, it would be apposite to reproduce Rule 132 and 134A of 'Pension Rules of 1982' which are as follows :-

"**132. Recovery and adjustment of Government dues.**

(1) It shall be the duty of the Head of Office to ascertain and assess Government dues, payable by a Government servant due for retirement.

(2) The Government dues as ascertained and assessed by the Head of office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the (retirement gratuity) becoming payable.

(3) The expression 'Government dues' includes-

(a) dues pertaining to Government accommodation including arrears of license fee, if any;

(b) dues other than those pertaining to Government accommodation, namely balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income-tax deduction at source under the Income Tax Act, 1961 (43 of 1961).

134A. Recovery and adjustment of excess amount paid.
(If in the case of a Government servant, who has retired or has been allowed to retire,-

(i) it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement, or

(ii) any amount is found to be payable by the pensioner during such period and which has not been paid by or recovered from him, or

(iii) it is found that the amount of licence fee and any other dues pertaining to Government accommodation is recoverable from him for the occupation of the Government accommodation after the retirement, then the excess amount so paid, the amount so found payable or recoverable shall be recovered from the amount of pension sanctioned to him):

Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him: Provided further that, the amount found due may be recovered from the pensioner in installments so that the amount of pension is not reduced below the minimum fixed by Government.)"

13. As such, it is crystal clear that under Rule 132 of 'Rules of 1982', the Government dues which include dues pertaining to Government accommodation can be recovered and adjusted from the retirement gratuity of the Government servant. Material to note that there is no such requirement of issuance of notice to the Government servant prior to adjustment of gratuity towards Government dues. But, where the recovery of Government dues on account of Government accommodation is sought from the pension, in that event only, as per proviso to Rule 134A, a prior notice to Government servant is mandatory. There is material distinction in between Rule 132 and Rule 134A of 'Rules of 1982'. In the present matter, admittedly, the amount of penal charges was adjusted from gratuity and not from pension. This being the position, it is squarely covered by Rule 132 of 'Rules of 1982'. Insofar as recovery of remaining dues of Rs.9,46,680/- is concerned, the Department had already forwarded the proposal to the Government for necessary action, as contemplated under Section 134-A of 'Pension Rules of 1982'. The proposal dated 13.09.2022 forwarded to the Government is at Page No.277 to 280 of P.B.

14. Indeed, the Government by G.R. dated 13.11.2001 made it clear that in terms of Rule 132 of 'Rules of 1982', the penal charges on account of retention of Government quarter can be recovered from gratuity and directions were accordingly issued to take appropriate action against concerned defaulters.

15. Indeed, the issue of permissibility of recovery of penal charges for unauthorized occupation from gratuity is no more *res-integra* in view of decision of Hon'ble Supreme Court in ***(2005) 5 SCC 245 [Secretary, ONGC Ltd. & Anr. Vs. B.U. Warrier]***. It was a case pertaining to retention of quarter by the employee of ONGC Ltd, even after retirement. Earlier, the Hon'ble Bombay High Court delivered the Judgment in favour of the employee (reported in ***2023 (3) Mh.L.J., Page 168***) wherein it was held that to recover damages from retired employees for

unauthorized occupation, the employer has to pursue appropriate remedy in law, but the said amount cannot be set off against pension and gratuity amount payable to retired employee. Being aggrieved by the decision, the ONGC carried the matter before the Hon'ble Supreme Court and while setting aside the decision of Hon'ble Bombay High Court, the Hon'ble Supreme Court upheld the action of ONGC to deduct the amount of penal charges for unauthorized occupation from the gratuity and turned down the contention raised by the employee that it cannot be deducted from retiral benefits. In this behalf, Para No.17 of decision is material, which is as follows :-

> "***17.*** *Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be allowed. It is no doubt true that pensionary benefits, such as gratuity, cannot be said to be `bounty'. Ordinarily, therefore, payment of benefit of gratuity cannot be withheld by an employer. In the instant case, however, it is the specific case of the Commission that the Commission is having a statutory status. In exercise of statutory powers under Section 32(1) of the Act, regulations known as the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 have been framed by the Commission. In Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi and Anr., [1975] 1 SCC 421 the Constitution Bench of this Court held that regulations framed by the Commission under Section 32 of the Oil and Natural Gas Commission Act 1959 are statutory in nature and they are enforceable in a court of law. They provide for eligibility of grant of gratuity, extent of gratuity, etc. Regulation 5 deals with recovery of dues of the Commission and reads thus :*
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> > *"5. Recovery of Dues.- The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of Commission's dues before the payment of the death-cum retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of the deceased officer, as the case may be."*
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> *The above regulation leaves no room of doubt that the Commission has right to effect recovery of its dues from any officer without his consent from gratuity. In the present case admittedly the respondent retired after office hours of February 28, 1990. According to the Commission, he could be allowed four months' time to occupy the quarter which was granted to him. His prayer for extension was considered and rejected stating that it would not be possible for the Commission to accept the prayer in view of several officers waiting for quarters. He was also informed that if he would not vacate the quarter, penal rent as per the policy of the Commission would be recovered from him. But the respondent did not vacate the quarter. It was only after eviction proceedings were initiated*

that he vacated the quarter on May 16, 1991. In the circumstances, in our opinion, it cannot be said that the action of the Commission was arbitrary, unlawful or unreasonable. It also cannot be said that the Commission had no right to withhold gratuity by deducting the amount which is found "due" to Commission and payable by the respondent towards penal charges for unauthorized occupation of the quarter for the period between 1-7-1990 and 15-5-1991."

16. Thus, the decision of Bombay High Court that Government ought to have taken recourse of the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and it is not permissible for the authorities to recover from gratuity was set aside. Suffice to say, the action of the Respondents in the present matter for recovery of Government dues cannot be faulted with.

17. **As to Ground No.(d)** :-

The learned Advocate for the Applicant strenuously contends that the quantum of penal charges applied by the Respondents are totally erroneous. According to him, in terms of G.R. dated 15.06.2015 issued by PWD, penal charges ought to have been charged at the rate of Rs.15/- per sq.ft. Whereas, Respondents have charged penal rent initially at the rate of 50/- per sq.ft. and then enhanced it at the rate of 100/- per sq.ft. as per G.R. dated 15.04.2017 and again enhanced it at the rate 150/- per sq.ft. as per G.R. dated 30.08.2018. He has pointed out that G.Rs dated 15.04.2017 and 30.08.2018 are issued by GAD meaning thereby applicable to the quarters allotted by GAD and furthermore, it is applicable only to quarters situated within the territorial jurisdiction of Greater Mumbai.

18. Per contra, learned Presenting Officer submits that in terms of G.R. dated 15.06.2015 issued by Public Works Department for cities falling in 'X' category, the penal rent applicable in terms of G.R. dated 29.07.2011 and as per revised penal charges from time to time are applicable, and therefore, enhanced rate at the rate of 100/- and 150/- per sq.ft. in terms of subsequent G.Rs dated 15.04.2017 and 30.08.2018

are applied. She has further pointed out that as per G.R. dated 11.12.1998 issued by Finance Department, Thane Municipal Corporation falls in Mumbai Nagari Samuh (मुंबई नागरी समूह) and by subsequent G.R. dated 24.08.2009 issued by Finance Department, Mumbai Nagari Samuh, which was categorized as 'A-1' category was re-categorized as 'X' category.

19. At this juncture, it needs to be clarified that G.R. dated 19.12.1998 as well as 24.08.2009 pertain to classification of cities for the purposes of enhanced House Rent Allowance to Government servant. It does not pertain to applicability of penal charges.

20. What transpires from the perusal of all these G.Rs that G.R. dated 11.12.1998 was issued for the purpose of classification of cities for the purpose of determination of HRA payable to Government servants and as per this G.R, Mumbai Nagari Samuh includes Thane Municipal Corporation, Ambarnath Municipal Council and some other Municipal Corporations. Thereafter, Government through Finance Department by G.R. dated 24.08.2009 re-categorized classification and Mumbai Nagari Samuh is re-categorized as 'X' category and accordingly, HRA has been increased in terms of classification of cities as 'X', 'Y' and 'Z'. At the same time, in G.R. dated 15.06.2015 issued by PWD, Government of Maharashtra, it is stated that penal rent for Government quarters falling in cities categorized as 'X' category could be applicable as per G.R. dated 29.07.2011 issued by GAD and it will be subject to enhancement of penal rent from time to time. As per G.R. dated 29.07.2011 issued by GAD, the Government has prescribed penal rent at the rate of 50/- per sq.ft.

21. In the present case, Respondents have charged penal rent initially at the rate of Rs.50/- per sq.ft. from August, 2016 to April, 2017 and thereafter, charged penal rent at the rate of Rs.100/- per sq.ft. from May, 2017 to August, 2018 and then again enhanced it at the rate of Rs.150/-

penal rent from September, 2018 to January, 2020. These enhanced penal rates are applied in terms of subsequent G.Rs dated 15.04.2017 and 30.08.2018. However, material to note the perusal of these G.Rs makes it quite clear that those are pertaining to premises situated in Brihan Mumbai. These G.Rs are issued by GAD. There is no mention in these G.Rs that these enhanced rent would be applicable to the quarters situated at other places i.e. outside Brihan Mumbai. The quarter allotted to the Applicant was of PWD and not by GAD. The learned P.O. could not point out any other G.R. making these enhanced rates applicable to the cities other than Brihan Mumbai. In absence of any such G.R, penal charges imposed at enhanced rate of Rs.100/- per sq.ft. and Rs.150/- per sq.ft. are totally unsustainable. G.R. dated 15.06.2015 issued by PWD specifically provides that it is applicable to entire Maharashtra excluding Brihan Mumbai. In the said G.R, it is stated that for 'X' category city, the penal rent would be as per G.R. dated 29.07.2011 which provides penal rent at the rate of RS.50/- per sq.ft. This being the position, in absence of any other G.R. of enhanced rent applicable to cities other than Brihan Mumbai, the penal charges at the rate of Rs.50/- per sq.ft. as mentioned in G.R. dated 29.07.2011 ought to have been applied. I have, therefore, no hesitation to sum-up that the penal charges applied at the rate of Rs.100/- and Rs.150/- per sq.ft. is totally erroneous and unsustainable.

22. The submission advanced by the learned Advocate for the Applicant that the penal charges ought to have been applied equal to HRA or license fee is totally fallacious and incorrect. The Applicant was granted permission given by the Chief Engineer to retain the quarter for two years on payment of twice license fee. The period of two years expired on 11.08.2016. However, thereafter also, he continued the possession till the end of January, 2020. As such, he cannot avoid the liability to pay penal charges for his unauthorized occupation at the rate of Rs.50/- per sq.ft. after expiration of two years' concession given to him.

23. As regard grievance of non-payment of HRA, the learned PO fairly concedes that after the Applicant was transferred from Thane to Khed, he was not paid HRA nor he was allotted quarter at Khed. The Respondents are, therefore, required to calculate HRA payable to him during the said period and it needs to be adjusted against the penal charges which are now required to be calculated afresh at the rate of Rs.50/- per sq.ft.

24. The totality of aforesaid discussion leads me to sum-up that the quantum of penal charges at the rate of Rs.100/- and Rs.150/- per sq.ft. is totally erroneous and unsustainable in law. The Respondents are required to re-calculate penal charges afresh at the rate of Rs.50/- per sq.ft. and to adjust the quantum of HRA which was payable to the Applicant after his transfer from Thane. Hence, the following order.

O R D E R

(A) Original Application is allowed partly.

(B) The impugned action of charging penal rent at the rate of Rs.100/- and Rs.150/- per sq.ft. is declared illegal.

(C) Respondents are directed to calculate the penal charges afresh.

(D) For initial two years from 11.08.2014, the license fee should be imposed twice and after expiration of two years' period, the penal charges be imposed at the rate of Rs.50/- till January, 2020.

(E) After ascertaining total penal charges, as directed above, the amount payable to the Applicant towards HRA shall be adjusted against the penal charges.

(F) Since sum of Rs.10,34,975/- is already recovered from the Applicant from regular pay and gratuity, it be adjusted towards penal charges to be calculated afresh, as directed

above. If any amount found recovered in excess from the Applicant, it be refunded to him.

(G) In case, some amount is again found recoverable from the Applicant after above exercise, in that event, Respondents are at liberty to take further steps in accordance to law.

(H) All above exercise shall be done within two months from today and Applicant be informed accordingly.

(I) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 15.03.2023
Dictation taken by :
S.K. Wamanse.
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