

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 192 OF 2015

DISTRICT : MUMBAI

Shri Virendra Vithalrao Khuje,)
Occ : Retd A.C.P,)
R/at 102, Shivchaya CHS,)
Behind Shuvidhya High School,)
C.K.P Colony, Eksar Road,)
Borivali [W], Mumbai 400 092.)**...Applicant**

Versus

1. The State of Maharashtra)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Commissioner of Police,)
Crawford Market, Mumbai.)**.. Respondents**

Shri J.N Karnble, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 25.01.2016

ORDER

1. Heard Shri J.N Kamble, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant challenging the recovery of rent for the Government accommodation at Mumbai, which the Applicant was occupying from 7.8.2009 to 28.5.2013, while posted to Thane, by order dated 7.10.2013 and 15.3.2014.

3. Learned Counsel for the Applicant argued that the Applicant was transferred from Police Commissionerate, Mumbai to Police Commissionerate, Thane and was relieved from Mumbai on 6.8.2009. The Applicant was not allotted any official quarters in Thane, and he continued to occupy Room no. 1, Ground floor, 3 Police Officers' Quarters, Naigaon, Mumbai till 28.5.2013. The Applicant did not claim any House Rent Allowance and continue to deduct licence fee for the house he was occupying in Mumbai. Learned Counsel for the Applicant argued that as per Circular dated 5.11.1993,

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Government servant posted to Navi Mumbai or Thane are allowed to retain quarters allotted to them in Mumbai. Learned Counsel for the Applicant argued that only 12 quarters were available in Thane for Police Inspectors while the total number of Police Officer is 155 in Thane Police Commissionerate. The Respondents have not denied this contention. Learned Counsel for the Applicant argued that many senior officers posted to Navi Mumbai and Thane have been allowed to retain accommodation in Mumbai and no penal rent is charged from them. This is a clear case of discrimination.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the amount of recovery of rent, including penal rent is ordered from the Applicant as he was in unauthorized occupation of Government quarters in Mumbai, when he was transferred to Thane. He was relieved from the establishment of Mumbai Police on 6.8.2009. He was posted back to Mumbai and joined on 29.5.2013. He is, therefore, liable to pay rent of the Government quarters for the period 7.8.2009 to 28.5.2013. A total of Rs. 8,95,673/- was calculated by the Respondent no. 2 as amount payable by the Applicant. However, the same has been reduced to Rs. 5,60,684/- by the Respondent no. 1 by order dated 2.6.2015. Learned Presenting Officer contended that as per Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982, this amount is recoverable from



the pensionary dues of the Applicant. Learned Presenting Officer argued that the judgments cited by the Applicant are not applicable as they are regarding recovery of excess amount of pay etc., paid to a Government servant, which are sought to be recovered after his retirement. In the present case, the rent of the Government quarters occupied by the Applicant unauthorizedly, is sought to be recovered, which is not covered by any of the judgments cited by the Applicant. Learned Presenting Officer stated that the Circular dated 5.11.1993 relied upon by the Applicant, has lost validity, as by Circular dated 7.7.2008, the persons who were transferred to Navi Mumbai, Raigad and Thane from Mumbai could not retain Government quarters in Mumbai. Learned Presenting Officer contended that in a few cases, some officers might have been allowed to retain Government quarters allotted to them in Mumbai on transfer to Navi Mumbai or Thane. However, in the case of the Applicant, there was no valid reason for him to retain Government quarters in Mumbai when accommodation was available at Thane.

5. It is seen that the Applicant is challenging recovery of rent for the Government accommodation after his retirement. A Government servant is required to pay rent/licence fee for the Government accommodation allotted to him. If a Government servant does not vacate the same on transfer, he is liable to pay rent at enhanced

rates, depending upon the length of occupation. In the present case, the Applicant continued to occupy Government accommodation in Mumbai after he was transferred to Thane. However, he was never given permission to retain Government quarters in Mumbai, though he might have applied for such retention. It is, definitely not a case of recovery of dues from a Government servant, paid to him in excess of his entitlement. This Tribunal in O.A no 845/2011 by judgment dated 30.4.2012 had held that excess amount paid to the Applicants therein, due to wrong fixation of pay could not be recovered after retirement, as there was no fraud or misrepresentation by them. In the present case, facts are quite different and the case is clearly distinguishable. The facts in **SYED ABDUL QADIR Vs. STATE OF BIHAR**, reported in (2009) 3 SCC 475 decided by the Hon'ble Supreme Court are similar. The ratio of judgment of that case is not applicable to the facts of the present case.

6. In the present case, the Applicant is fully liable to pay rent at enhanced rate as per rules, for unauthorized occupation of Government quarters for the period from 7.8.2009 to 28.5.2013. One of the grounds on which the Applicant is challenging the recovery of this amount is discrimination. It is alleged that there are many Police Officers who have been exempted from payment of rent at enhanced rates for Government

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quarters in Mumbai, when they were transferred to Navi Mumbai and Thane. The Applicant has placed on record information furnished by the Respondent no. 2 to one Shri Vijay Nimbadas Sonawane by letter dated 28.5.2015 under the Right to Information Act. The following information is pertinent.

<p>५. उपरोक्त कालावधीत कोणत्या अधिका-यांना शासकीय निवासस्थान रिक्त न केल्याबद्दल, आकारण्यात आलेले दंडनिय शुल्क माफ करण्यात आले आहे काय? माफ करण्यात आले असल्यास त्याची कारणे यांची माहिती द्यावी.”</p>	<p>आहे- १) पो.आ.जी.डी.पो.क हे नवी मुंबई येथे कार्यरत असल्यामुळे. २) सह पो.आ. (प्रशासन) एस.वी. यादव हे नक्षत्रग्रस्त भागात भंडारा जिल्ह्यात विशेष कामगिरी केल्यामुळे. ३) डॉ. पंजाबराव डगळे हे नवी मुंबई येथे कार्यरत असल्यामुळे.</p>
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The period in the query is from 1.1.2008 to 31.1.2015. The Respondents are relying on G.R dated 7.7.2008 which provides that Officers posted to Navi Mumbai, Thane and Raigad districts were directed to vacate Government accommodation allotted to them with immediate effect. However, it appears that some officers, as mentioned above continued to get the facility of retaining Government accommodation at Mumbai, when they were transferred to Navi Mumbai or Thane. When this facility is extended to some Police Officers, there appears to be no reason why it should not be given to the Applicant. At the most, licence fee at the normal rate may

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be recovered from him and he may not be paid any House Rent Allowance at Thane.

7. Having regard to the aforesaid facts and circumstances of the case, the orders dated 7.10.2013 and 15.3.2014 impugned in this Original Application are quashed and set aside. The Respondents may recover licence fee for the Government quarters at Mumbai occupied by the Applicant, for the period he was posted to Thane at normal rate. He should also refund House Rent Allowance, if any paid to him during that period. Any amount in excess of these amounts may be refunded to the Applicant within a period of 3 months from the date of this order by the Respondents. This Original Application is allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 25.01.2016

Dictation taken by : A.K. Nair.