

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.309 OF 2019

DISTRICT : PUNE

Dr. Salil Vasantrya Patil.)
Age : 58 Yrs., Occu.: Service as a)
District Maleria Officer in the Office of)
Joint Director of Health Services (Water)
Born and Vector Born), Arogya Bhavan,)
In front of Vishrantwadi Police Station,)
Pune 411 006 and residing at E-78/17,)
Queens Garden, Government Quarter,)
Pune – 411 001.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Public Health Department,)
Mantralaya, Mumbai – 400 032.)
2. Director of Public Health Department)
St. Georges' Hospital Compound,)
Near V.T, Mumbai – 400 001.)
3. The Joint Director of Public Health)
Service (Malaria & Fileria),)
Arogya Bhavan, In front of)
Vishrantwadi Police Station,)
Pune – 411 006.)
4. The Executive Engineer.)
Public Works Department,)
Administrative Building,)
Pune – 411 001.)...**Respondents**

Mr. V.P. Potbhare, Advocate for Applicant.

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

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 11.12.2020

JUDGMENT

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 13.11.2018 whereby recovery of Rs.18,35,527/- is sought from retiral benefits of the Applicant towards unauthorized occupation of service quarter.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was serving as District Malaria Officer, Pune. While he was serving at Pune, the service quarter No.17, Queens Garden, Pune was allotted to him by order dated 18.06.2005. He was at Pune till 30.06.2009. Thereafter, he was transferred to Raigad where he joined on 01.06.2009. However, he did not vacate the service quarter of Pune. He was at Raigad till the end of May, 2013. Thereafter, he was again transferred to Gondia where he joined on 21.06.2013. He was at Gondia till 01.01.2017. Then again, he was transferred back to Pune where he joined on 02.01.2017. Despite these transfers, he did not vacate the service quarter allotted to him in 2005. Ultimately, he stands retired from Pune on 31.08.2019. Thus, he was in unauthorized occupation of service quarter from 01.07.2009 to 02.01.2017 i.e. the period he was transferred to Raigad and Gondia.

3. Despite issuance of notices dated 07.08.2012 (Page No.177 of P.B.) and 31.08.2012 (Page No.178 of P.B.), he did not vacate the service quarter. By these notices, he was specifically informed that on his failure to vacate the service quarter after three months' permissible period, he will be liable to pay penal rent in terms of G.R. dated 15.06.2015. Thereafter, notices dated 23.06.2015 and 06.07.2015 (Page Nos.183 & 187 of P.B.) were also issued by competent authority

under Maharashtra Government Premises (Eviction) Act, 1956, but in vain.

4. It is on the above background, the Respondent No.3 – Joint Director of Public Health Services, Pune by notice dated 13.11.2018 asked the Applicant to pay Rs.18,35,527/- and failing which, the same will be recovered from his salary. This is under challenge in the present O.A.

5. During the pendency of O.A, the Applicant stands retired on 31.08.2019 and amended the O.A. seeking direction to the Respondents to release his all retiral benefits which were withheld by the Respondents towards recovery of Rs.18,35,527/-. [Total amount towards penalty of unauthorize occupation of service quarter was Rs.19,40,745/- and sum of Rs.1,05,218/- was deducted from his salary. Thus, Rs.18,35,527/- were due.]

6. It is on the above background, the Applicant has challenged the order dated 13.11.2018 contenting that after retirement, the penal charges towards unauthorize occupation of service quarter cannot be recovered or adjusted from gratuity or pension. The Applicant further contends that from Pune, he was transferred to Raigad and Karjat Taluka being tribal area, he is entitled to retain service quarter at Pune in terms of G.R. dated 06.08.2002 and further contends that since no HRA was paid to him during his tenure at Raigad and Gondia, he is not liable to pay penal charges.

7. Shri V.P. Potbhare, learned Advocate for the Applicant sought to assail the impugned action on the following grounds :-

(i) Since the Applicant was transferred as District Maleria Officer, Raigad, he is entitled to retain the service quarter at Pune in terms of G.R. dated 06.08.2002, as one of the taluka viz. Karjat is tribal area.

(ii) From Raigad, the Applicant was transferred to Gondia, which is naxalite affected area, and therefore, entitled to retain service quarter of Pune in terms of G.R. dated 06.08.2002.

(iii) The Applicant was not paid HRA during his service at Raigad and Gondia.

(iv) In view of decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**, no recovery is permissible after retirement.

(v) The recovery of penal charges from retiral benefits of the Applicant is impermissible and only mode of recovery would be invoking the provisions of Maharashtra Government Premises (Eviction) Act, 1956.

(vi) The Respondents have not issued fresh notice as contemplated under Section 134A of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity), and therefore, the impugned action of recovery from retiral benefits is unsustainable.

Shri Potbhare, learned Advocate for the Applicant, therefore, submits that for more than one year, the retiral benefits of the Applicant are withheld and sought direction to the Respondents to release the same immediately.

8. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submits that after transfer of the Applicant from Pune, he was not entitled to retain the quarter, but despite issuance of notices, failed to vacate the same. As regard claim of the Applicant for retention of Pune quarter in terms of G.R. dated 06.08.2002, she submits that only one taluka viz. Karjat is tribal area and not entire district. Since the Applicant was transferred and posted as District Maleria Officer at Raigad, he is not

entitled to benefit of G.R. dated 06.08.2002. However, she fairly concede that after retirement, no fresh notice was issued to the Applicant for recovery from retiral benefits, since the matter is subjudice in the Tribunal.

9. **As to Ground No. (i) and (ii) :-**

Indisputably, the period of unauthorise occupation from the quarter was from 01.06.2009 to 02.01.2017 i.e. the period in which the Applicant was transferred to Raigad and later from Raigad to Gondia. There is no denying that the notice dated 07.08.2012 was issued to the Applicant directing him to vacate service quarter of Pune, else he would be liable to pay penal charges at the rate of Rs.50/- per sq.ft. The Applicant neither replied to the notice nor vacated the quarter. It is seen that it is for the first time by letter dated 10.11.2017, he informed Executive Engineer, P.W.D, Pune (Page No.81 of P.B.) that after his transfer to Raigad since his daughter was learning at Pune, he retained the quarter and further raised ground that he is entitled to retain quarter of Pune in terms of G.R. dated 06.08.2002. In letter, he further states that from Raigad, he was transferred to Gondia, which is naxalite affected taluka, and therefore, he can retain the quarter in terms of G.R. dated 06.08.2002.

10. Now, the question is whether the Applicant was entitled to retain the quarter of Pune in view of his transfer to Alibaug and later to Gondia. Therefore, it would be apposite to see the relevant G.R. dated 06.08.2002 which is at Page No.57 of P.B. Clause No.2 of G.R. is material, which is as under :-

“२. राज्यातील आदिवासी/नक्षलग्रस्त भागात कार्यरत असलेल्या अधिकारी/कर्मचा-यांना सद्य:स्थितीत अनुज्ञेय असलेल्या विविध सवलती खालील विवरणातील स्तंभ २ प्रमाणे सुधारित करण्याचा निर्णय शासनाने घेतला आहे :-

प्रचलित सवलत	सुधारित सवलत
(अ) निवासस्थान : (१) शासन निर्णय, आदिवासी विकास विभाग, क. आस्था-१०९३/प्र.क. २४५/फा.३, दिनांक २९ डिसेंबर, १९९३ अन्वये संवेदनशील ठरविलेल्या ११ एकात्मिक आदिवासी	(१) काही बदल नाही.

<p>विकास प्रकल्प क्षेत्रात कार्यरत असलेल्या शासकीय व जिल्हापरिषदेच्या कर्मचा-यांना भाडेमाफ निवासस्थानाची सुविधा उपलब्ध राहिल. मात्र ही सुविधा बदलीपात्र कर्मचा-यांपुरतीच मर्यादित असेल.</p> <p>(२) आदिवासी क्षेत्रात नियुक्ती झालेल्या कर्मचा-यास आदिवासी क्षेत्रात नियुक्ती होण्यापूर्वीच्या ठिकाणचे निवासस्थान कुटुंबियांकरीता २ वर्षांपर्यंत स्वतःकडे ताब्यात ठेवता येईल. मात्र त्यासाठी नियमानुसार भाडे अदा करावे लागेल.</p>	<p>(२) आदिवासी क्षेत्रात नियुक्ती होण्यापूर्वीच्या ठिकाणचे शासकीय निवासस्थान कुटुंबियांकरीता २ वर्षांपर्यंत ताब्यात ठेवण्याची सध्याची सवलत तीन वर्षे किंवा कर्मचारी आदिवासी क्षेत्रात असेपर्यंतचा कालावधी यापैकी जो कमी असेल त्या कालावधीपर्यंत वाढविण्यात यावी.</p> <p>मात्र कर्मचा-याच्या मुळ नियुक्तीच्या ठिकाणच्या शासकीय निवासस्थानाकरीता नियमित भाडे आकारण्यात यावे आणि आदिवासी क्षेत्रातील शासकीय निवासस्थानाकरीता केवळ सेवाशुल्क वसूल करण्यात यावे. याप्रकारे कर्मचा-यास एकावेळी जास्तीतजास्त २ शासकीय निवासस्थान स्वतःकडे राखता येतील.</p>
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11. It may be noted that the Executive Engineer, P.W.D, Pune while assessing penal charges to the tune of Rs.19,40,745/- in his letter dated 03.08.2017 (Page Nos.69 to 72 of P.B.) has categorically mentioned that Alibaug does not come in tribal area, and therefore, the Applicant is not entitled to the benefit of G.R. dated 06.08.2002. He further mentions that though Gondia comes in Naxalite affected area, he cannot retain the quarter allotted to him at Pune, since he was transferred to Gondia from Alibaug. Accordingly, the penal rent at the rate of Rs.35/- p.m. in terms of G.R. dated 15.06.2015 was charged totaling to Rs.19,40,745/- and after recovery of Rs.1,05,218/- sum of Rs.18,35,527/- found due against the Applicant.

12. Admittedly, the Applicant was transferred as District Maleria Officer, Alibaug at Raigad and there is no denying that only one taluka of Karjat is included in tribal area. In this behalf, the Circular issued by Government of Maharashtra dated 11.07.2000 (Page No.55 of P.B.) reveals that only some part of Karjat taluka has been declared as tribal area. It is thus explicit that only one part from Karjat taluka was declared tribal area. Whereas, the Applicant was transferred to Alibaug as District Maleria Officer. He was to stay at Raigad, Alibaug and not at Karjat. This being the position, it cannot be said that he was entitled to take the benefit of G.R. dated 06.08.2002. There is nothing on record

that after transfer to Alibaug, he made any such application to the Department for retention of quarter in terms of G.R. dated 06.08.2002. Apart his posting being at Alibaug, he cannot be said entitled to the benefit of G.R. dated 06.08.2002.

13. Furthermore, the benefit of G.R. dated 06.08.2002 is not unconditional or unqualified. It is subject to fulfillment of certain conditions as per Clause 2 of G.R. dated 06.08.2002 which are reproduced above. As per this provision, if a Government servant is appointed in Tribal Area/Naxalite Area, he can retain service quarter allotted to him at his immediately previous station for three year or during his tenure in Tribal area whichever is less, subject to condition that such Government servant should pay regular rent (नियमित भाडे) of the quarter retained by him at previous station and he can also occupy the quarter in tribal area on payment of service charges. Suffice to say, even if a Government servant is transferred in tribal area, he has to pay regular rent of the quarter retained by him. Admittedly, the Applicant has not paid any such regular rent for continuation of quarter of Pune.

14. After completion of term at Raigad, the Applicant was transferred to Gondia. Admittedly, Gondia taluka is declared as naxalite affected area, as seen from G.R. dated 20.05.2005 (Page No.49 of P.B.). The benefit of G.R. dated 06.08.2002 is also applicable to the Government servant transferred in Naxalite affected area. As per this G.R, if a Government servant is transferred in Naxalite affected area or tribal area, then he can retain the quarter allotted to him at immediately previous station, subject to certain conditions discussed above. Admittedly, the Applicant was not allotted the quarter at Alibaug. It is only in case of allotment of quarter at Alibaug, he would have been entitled to take the benefit of G.R. dated 06.08.2002 for retention of quarter at Alibaug in view of his transfer at Gondia. However, it is not so. He had retained quarter of Pune from which he was transferred to Alibaug. Had he transferred from Pune to Gondia directly, then in that event only, he

would have been entitled to the benefit of G.R. dated 06.08.2002, subject to fulfillment of conditions mentioned in G.R. As the retention of quarter of Pune after transfer of the Applicant to Alibaug itself was unauthorized, he cannot take the benefit of G.R. dated 06.08.2002. The benefit of G.R. dated 06.08.2002 is applicable only for retention of quarter occupied by him immediately before his transfer to Naxalite area (Gondia). Therefore, in my opinion, the Applicant is not entitled to the benefit of G.R. dated 06.08.2002.

15. **As to Ground No. (iii) :-**

In so far as aspect of non-payment of HRA while Applicant was serving at Alibaug and Gondia is concerned, that *ipso-facto* does not entitle the Applicant to retain service quarter allotted to him of Pune. In terms of G.R. dated 15.06.2015, on transfer or retirement, the Government servant is bound to vacate the quarter after permissible limit of three months and thereafter, he is liable to pay penal charges. There is tendency to retain the quarter in big cities like Pune even after transfer to other place which deprived other Government servants from claiming quarters who are in queue and unable to get the quarter because of scarcity of Government quarters and retention of quarters by Government servant, even after transfer or retirement.

16. As such, the non-payment of HRA at Raigad and Gondia itself, does not legalize the continuation of service quarter of Pune. All that, he is entitled to HRA which was not paid to him, but he cannot avoid the liability to pay penal rent. The denial of HRA to the Applicant during the tenure of his service at Alibaug and Gondia would be harsh and iniquitous and it would be amounting to double penalty. He is definitely entitled to HRA as per the then prevailing rate.

16. **As to Ground No.(iv) :-**

As regard applicability of decision of Hon'ble Supreme Court in **Rafiq Masih's** case, in my considered opinion, the reliance placed on the said decision is totally misconceived and have not applicability to the present situation. The decision of Hon'ble Supreme Court in **Rafiq Masih's** case pertains to excess payment made to the Government employee due to mistake in pay fixation. The Hon'ble Supreme Court in Para No.12 of the Judgment held that such recovery is not permissible in following situations :-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law.

- (i) Recovery from employees belong to Class-III and Class-IV services (or Group 'C' and Group 'D' services).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”*

17. Whereas, in the present case, the recovery pertained to unauthorized occupation of service quarter during the period of service despite transfer to other places. This is not a case of payment of excess money paid to the employee due to *bona fide* mistake of the Department to take the benefit of this Judgment. Indeed, this is a case where despite notices to vacate the quarter, the Applicant retained the quarter. After transfer of the Applicant from Pune, he had absolutely no right to

retain the quarter. Therefore, he was charged with penal rates for unauthorized occupation of the quarter. Suffice to say, the decision in **Rafiq Masih's** case have not application and the submission advanced by the leaned Advocate for the Applicant in this behalf are totally misconceived.

18. **As to Ground No.(v) :-**

Shri Potbhare, learned Advocate for the Applicant sought to contend that the recovery of penal charges towards unauthorized occupation of service quarter cannot be adjusted or set off against retirement benefits, and therefore, the impugned action is unsustainable in law. In this behalf, he sought to place reliance on the decision rendered by this Tribunal in **O.A.739/2017 (Shivaji N. Pophale Vs. Commissioner of Police & 3 Ors.) decided on 04.06.2019** and the decision of Hon'ble Bombay High Court **2004(3) BOM CR 24 (N.C. Sharma Vs. Union of India & Ors.) O.A.739/2017** was pertaining to recovery of penal rent from retiral benefits wherein impugned order was quashed giving liberty to the Department to recover the amount due by due process of law. The perusal of Judgment in **O.A.No.739/2017** reveals that this Tribunal allowed the O.A. mainly relying on the decision of Hon'ble Bombay High Court in **N.C. Sharma's** case (cited above). In N.C. Sharma's case, the recovery of penal charges was sought from the Railway employee on account of retention of quarter despite transfer to other place. It is in that context, the Hon'ble Bombay High Court while deciding **N.C. Sharma's** case referred its decision **2003 (3) Mh.L.J. 168 (V.U. Warriar Vs. Secretary, Oil and Natural Gas Commission & Anr.)** and held that the Respondents therein ought to have taken recourse of the provisions of 'Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and ultimately held that it is not permissible for the authorities to fall back on the Pension Rules pertaining to grant of terminal benefits and to effect recovery therefrom. However, subsequent to it, there is change in legal situation, as the decision in **V.U. Warriar's** case was challenged before the Hon'ble Supreme Court and the decision

of Hon'ble Bombay High Court was set aside, as seen from **(2005) 5 SCC 245 (Secretary, ONGC Ltd. Vs. V.U. Warriar)**.

19. It would be apposite to refer the decision of Hon'ble Supreme Court in **Secretary, ONGC Ltd. & Anr. Vs. B.U. Warriar (2005) 5 SCC 245**. 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 Applicant (reported in **2003 (3) Mh.L.J.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 :

“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."

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."

20. Material to note that while deciding the matter, the Hon'ble Supreme Court also referred the decisions in **R. Kapur's** case, **Gorakhpur University's** case which were referred in the decision of Hon'ble Bombay High Court in **N.C. Sharma's** case and finally held that the action of ONGC deducting penal charges from the retiral benefits is legal in view of Rules and Regulations framed by the ONGC in this behalf. Regulation 5 deals with the recovery of dues of the Commission which *inter-alia* empowers the Commission to effect recovery of Commission's due from retiral benefits even without obtaining his consent.

21. As such, in view of decision of Hon'ble Supreme Court in **V.U. Warriar's** case, it is no more *res-integra* that the Government dues including penal charges for unauthorize occupation of service quarter can be recovered from the gratuity and other retiral benefits. This being the latest position of law, the decisions relied by the Applicant is of no assistance to him. While deciding **O.A.No.695/2012**, the decision of Hon'ble Supreme Court in **V.U. Warriar's** case was not brought to the notice. Be that as it may, now in view of decision of Hon'ble Supreme

Court in **U.V. Warriar's** case, the contention raised by the Applicant that recovery of penal charges from retiral benefits is not permissible will have to be rejected.

22. Suffice to say, the submission advanced by the learned Advocate for the Applicant that Respondents are required to invoke the remedy under 'Public Premises Act' and the dues towards penal charges cannot be set off or recovered from gratuity or other retiral benefits it totally erroneous and unsustainable in law.

23. **As to Ground No.(vi)** :-

Now turning to the non-issuance of notice under Section 134A of 'Rules of 1982', admittedly, after retirement, no such notice was given to the Applicant. Earlier, notices were given to the Applicant for recovery of penal charges from salary and subsequent to it, sum of Rs.1,05,218/- was deducted from the salary out of total amount due Rs.19,40,745/-.

24. Now turning to the facts of the present case, the position as of now is that after retirement of the Applicant, his entire retiral benefits including gratuity, pension, etc. are withheld. In fact, the Respondents ought to have granted provisional pension to the Applicant, but no such action was taken by the Department in view of pendency of O.A. Be that as it may, in this behalf, one needs to see Rule 132 and Rule 134A of 'Rules of 1982' which are material and 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.)”

25. As such, it is manifest that under Rule 132 of ‘Rules of 1982’, the Government dues which include dues pertaining to Government accommodation can be adjusted from the retirement gratuity of the Government servant. Whereas, where dues pertain to Government accommodation is sought to be recovered from pension, then in that event, Rule 134A attracts which *inter-alia* contemplates issuance of notice to the pensioner to show cause why the amount should not be recovered from pension and such reduced pension should not be below the maximum fixed by the Government. As such, there is clear distinction where recovery is sought or adjusted from gratuity and where recovery is sought against pension. In so far as recovery or adjustment from gratuity is concerned, Rule 132 of ‘Rules of 1982’ specifically

empowers the Government to effect such recovery and there is no requirement of issuance of prior notice. The notice is required to only where amount sought to be recovered from pension.

26. This being the position, the Respondents' action for adjustment of gratuity payable to the Applicant towards penal charges of Government accommodation cannot be questioned, as the same is in consonance with Rule 132 of 'Rules of 1982'.

27. It is not clear as to how much amount is payable to the Applicant towards gratuity. However, there is no denying that the amount of gratuity payable to the Applicant could not be enough to set off Rs.18,35,527/- claimed by the Respondents towards penal charges of Government accommodation. Therefore, after adjustment and set off of gratuity towards penal charges, if further amount remains due, then in that event, the Respondents will have to take recourse of Section 134-A of 'Rules of 1982'. The directions to that effect needs to be given to the Respondents.

28. As stated above, Rule 132 and 134A of 'Rules of 1982' specifically empowers the Government to recover the Government dues and the arrears on account of unauthorized occupation of quarter comes within the term 'Government Dues'. The 'Rules of 1982' are framed under Article 309 of Constitution of India which have statutory force alike ONGC Commission Rules, and therefore, the action of recovery of penal charges from gratuity and other retiral benefits cannot be termed illegal by any stretch of imagination. Indeed, it is in consonance with service rules.

29. In similar situation, the Hon'ble Bombay High Court in **Prakash L. Damle's** case (Writ Petition No.752/2018) decided on 22nd October, 2019 upheld the legality of action taken by Municipal Corporation of Greater Mumbai to recover the penal charges from the retiral benefits of the

employee taking note of the decision of Hon'ble Supreme Court in **U.V. Warriar's** case.

30. There is one more decision of Hon'ble Supreme Court **(2001) 6 SCC 596 (Vazir Chand Vs. Union of India & Ors.)** wherein in similar situation, the Hon'ble Supreme Court upheld the action of Government to recover penal charges for retention of quarter after retirement. The Hon'ble Supreme Court held that the employee is liable to pay penal rent in accordance to Rules and it was rightly adjusted against the death cum retirement dues. The Hon'ble Supreme Court held as follows :-

“These appeals are directed against the orders of the Central Administrative Tribunal rejecting the claim of the appellant, who happens to be a retired Railway servant. Admittedly, the appellant even after superannuation, continued to occupy the Government quarter, though being placed under hard circumstances. For such continuance, the Government, in accordance with Rules, has charged penal rent from the retired Government servant, and after adjusting the dues of the Government, the balance amount of the gratuity, which was payable, has been offered to be paid, as noted in the impugned order of the Tribunal. The appellants' main contention is that in view of the Full Bench decision of the Tribunal against which the Union of India had approached this Court and the Special Leave Application was dismissed as withdrawn, it was bounden duty of the Union of India not to withhold any gratuity amount, and therefore, the appellant would be entitled to the said gratuity amount on the date of retirement, and that not having been paid, he is also entitled to interest thereon. We are unable to accept this prayer of the appellant in the facts and circumstances of the present case. The appellant having unauthorisedly occupied the Government quarter, was liable to pay the penal rent in accordance with Rules, and therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant. We, therefore, see no illegality in the impugned order which requires our interference. The appeals stand dismissed.”

31. The totality of aforesaid discussion leads me to conclude that the Applicant is not entitled to the benefit of G.R. dated 06.08.2002 and Respondents' action of adjustment of gratuity towards penal rent is legal. However, in so far as the recovery of some amount if found due after set off against gratuity, then in that event, for such recovery from pension, the Respondents will have to give prior notice and then to take necessary steps in accordance to Rule 134A of 'Rules of 1982'. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondents' action of adjustment of gratuity which was payable to the Applicant towards recovery of penal charges for unauthorize occupation of service quarter is held legal.
- (C) The Respondents are directed to finalize the retiral benefits of the Applicant and after set off against gratuity, if any amount remains due, then in that event, the Respondents are at liberty to take further action for recovery of same from pension in accordance to Rule 134A of 'Rules of 1982'.
- (D) The Applicant is entitled to HRA as per the then prescribed rates during his tenure at Alibaug and Gondia and the same shall be adjusted or set off against amount due towards unauthorize occupation of service quarter.
- (E) The Respondents are directed to complete the exercise as stated above, within two months and to release other retiral benefits of the Applicant in accordance to Rules.
- (F) No order ass to costs.

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

Mumbai
Date : 11.12.2020
Dictation taken by :
S.K. Wamanse.

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