

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.33 OF 2021

DISTRICT: PUNE

Shri Jagtap Anil Sarjerao,)
Age 60 years, Occupation Retired,)
R/O. Swapnaagan, Survey No27/3A,)
Munjaba Vasti, Dhanori, Pune 411015.)...**Applicant**

Versus

- 1) The Principal Secretary,)
Home, (Prision), Mantralaya, Mumbai-32.)
- 2) Additional Director General of Police,)
And Inspector General of Police, Maharashtra)
Central Building, Pune-411001.)
- 3) Deputy Inspector General of Police,)
West Region, Yerawada, Pune 411006.)
- 4) Superintendent,)
Open District Prison, Yerawada, Pune 411006.)
- 5) Superintendent,)
Central Prison, Yerawada, Pune 411006.)
- 6) Accountant General,)
Maharashtra-I (Accountant & Entitlement))
Pratishta Bhavan, Old CGO Building, 101,)
Mumbai – 400020.)...**Respondents**

Shri S. B. Gaikwad, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 24.12.2021.

J U D G M E N T

The Applicant who stands retired on 31.10.2018 from the post of Superintendent, Open District Prison Yerwada, Pune has filed this O.A. challenging order dated 17.08.2020 issued by Respondent No.2 – Additional Director General of Police & Inspector General of Police, Maharashtra seeking recovery of Rs.3, 82,361/- from his gratuity.

2. Shortly stated facts giving rise to Original Application are as under:-

While the Applicant was serving as Superintendent at Morshi he was transferred to Pune by order dated 02.08.2016. Accordingly, he joined at Yerwada Open Central Jail, Pune on 18.08.2016 and submitted joining report. In joining report, he has categorically stated that he owns residential house at Dhanori which is 3 km away from Jail and sought permission to reside in his own house. However, nothing was communicated to the Applicant in that behalf. He, therefore, continued to stay in his own house. Later, by order dated 05.05.2017, the Superintendent, Open District, Yerwada allotted Quarter No.5 from government accommodation to him. However, immediately on 08.05.2017, the Applicant made representation to Respondent No.2 stating that when he was transferred to Pune, no quarter was available to him and he continued to stay in his own house, Dhanori. He further stated that since only one year is left for his retirement, he is not in need of quarter no.5, Press Road, Yerwada, Pune. Even on that application also nothing was communicated to the Applicant.

3. It is on the above background, the Applicant continued to stay in his own house availed HRA payable to him and stands retired on 31.10.2018. It is only on 28.09.2019, Respondent No.4- Superintendent Open District Prison, Yerwada issued notice to him stating that Rs.89,076/- and Rs.20,790/- is recoverable from him for private use of government vehicle as per objection raised in audit report and secondly recovery of Rs.2,72,495/- towards HRA already paid to the Applicant

was to be recovered stating that he refused to occupy the Quarter. Thus, recovery of Rs.3,82,361/- was sought to be made from retiral benefits. Thereafter, again the Applicant made representation to release his gratuity which was withheld but in vain. Ultimately, Respondent No.4 issued letter dated 13.08.2020 to A.G. for recovery of Rs.3,82,361/- from retiral benefits of the Applicant which is under challenge .

4. Heard Shri S. B. Gaikwad, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

5. At the very outset, it needs to be stated though the Applicant has challenged the recovery of Rs.3,82,316/-, Shri S. B. Gaikwad, learned Counsel for the Applicant fairly stated that he is not challenging the recovery of Rs.89,076/- and recovery of Rs.20,790/- sought to be made towards private use of government vehicle and restricting his claim towards recovery of Rs.2,72,495/- only as per instruction from his client. Thus, challenge is restricted to Rs.2,72,495/- only. Learned Counsel for the Applicant on specific instruction from his client on phone fairly stated that his client is ready to permit A.G. to deduct Rs.89,076/- and Rs.20,790 (Total 1,09,866/-) from his gratuity and he is forgoing his claim to that extent.

6. Now, turning to the recovery of HRA of Rs.2,72,495/- which is admittedly paid to the Applicant, there is no denying that after transfer to Pune, he made an application dated 18.08.2016 addressed to Respondent No.2- Additional Director General of Police, Yerwada, Pune (Page 17 of PB) making it clear that he owns house at Ghanori, Pune and requested for permission to stay in his house. However, nothing has been communicated to him in that behalf. The Applicant, therefore, continued to stay in his own house under the bonafide belief that permission is granted.

7. It is only after one year, quarter no.5 was allotted to the Applicant by allotment letter dated 05.05.2017 but immediately by letter dated 08.05.2017 the Applicant brought to the notice of Additional Director

General of Police and Inspector General of Prison that he is already staying in his own house and not in the need of quarter. To this letter also there was no response from the department. Material to note that the said quarter was then allotted to one Shri Deshpande by allotment letter dated 20.06.2017 immediately within a month and it was admittedly occupied by Shri Deshpande.

8. Suffice to say, this is not a case that where on transfer of the Applicant, the quarter was available and allotted to him but he refused to occupy the same. The quarter which was allotted to him after one year was re-allotted to Shri Deshpande within a month. Though, the Applicant time and again requested the Respondent No.2 for permission to stay in his own house, nothing was communicated to him either way. Therefore, the Applicant has reason to believe that he allowed to stay in his own house.

9. True, the Applicant was paid HRA as per his entitlement. Now, the question is whether the HRA already paid to the Applicant quantified at Rs.2,72,495/- can be recovered from the Applicant from his gratuity.

10. Learned P.O. in reference to G.R. dated 30.05.1989 sought to contend that where a Government servant refused to occupy the quarter he is not entitled to HRA and, therefore, amount paid towards HRA can be recovered.

11. I have gone through the G. R. dated 30.05.1989 and find no merits in the submission advanced by learned P.O. In the first place, when the Applicant was transferred from Morshi to Pune that time no quarter was shown available or allotted to the Applicant. Therefore, the Applicant had no choice except to occupy his own house and continued to stay there till retirement. However, it is only after retirement, quarter no.5 was allotted but immediately after one month, it was re-allotted to Shri Deshpande in view of the letter given by Applicant that he is occupying in his own house and not in need of Government quarter. Insofar as G.R. dated 30.05.1989 is concerned, Clause-2 of G.R. is as follows :-

“२. शासकीय निवासस्थान नाकारणारे अथवा वाटप करण्यात आलेले निवासस्थान एक महिन्याच्या पूर्व सूचनेने रिक्त करणारे शासकीय कर्मचारी निवासस्थान रिक्त केल्याचा दिनांक किंवा पूर्व सूचनेच्या दिनांकानंतर ३० दिवस यापैकी जो दिनांक नंतरचा असेल, त्या दिनांकापासून घरभाडे भत्ता मिळण्यास पात्र राहतील.”

12. As such, as per Clause -2 even if the quarter is not occupied or allotted but vacated with pre-intimation in that event also, a Government servant is entitled for HRA after 30 days from intimation. As such, it cannot be said that the Applicant was not entitled to HRA. Furthermore, the quarter afforded to Applicant did not remain vacant so as to cause loss to Government since immediately it was allotted to Shri Deshpande. Apart the department at his own made payment of HRA to the Applicant and the said payment of HRA seems to have been paid in pursuance of his letter dated 18.08.2016 whereby he requested for permission to occupy own house instead of Government accommodation. In such situation, recovery of HRA after retirement would be totally unjust and iniquitous It is not a case of loss to Government revenue due to refusal of Government quarter.

13. The totality of the aforesaid discussion leads me to sum up that recovery to the extent of Rs.2,72,495/- towards HRA is not sustainable in law. Insofar as recovery of remaining amount of Rs.1,09,866/- is concerned, it has to be recovered from gratuity payable to the Applicant. Hence the following order :-

ORDER

- (A) Original Application is allowed partly.
- (B) Impugned order dated 17.08.2020 to the extent of Rs.2,72,495/- towards HRA only is quashed and set aside.
- (C) The Respondents are at liberty to recover remaining amount of Rs.1,09,866/- from the gratuity payable to the Applicant.
- (D) Insofar as interest on delayed payment is concerned, the Applicant is at liberty to redress the grievance independently.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Date : 24.12.2021

Place : Mumbai

Dictation taken by : Vaishali Santosh Mane

D:\E drive\VSO\2021\Judgment 2021\December 21\O.A.33 of 2021 recovery.doc

