

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.660 OF 2022

DISTRICT : MUMBAI

Sub.:- Allotment of Quarter

Dr. Yogesh M. Kokadwar.)
Age : 47 Yrs, Working as Medical Officer,)
Office of Superintendent, Byculla District)
Prison, Mumbai – 400 008.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department,)
Campus of Gokuldas Tejpal)
Hospital, 8th Floor, Lokmanya Tilak)
Marg, Mantralaya, Mumbai – 1.)
2. Additional Director General of Police)
& Inspector General of Prisons, M.S,)
Old Central Building, 2nd Floor,)
Pune – 411 001.)
3. The Deputy Inspector General)
(Prison), South Region, Byculla,)
Mumbai.)
4. The Superintendent.)
Mumbai Central Prison, Sane Guruji)
Marg, Mumbai – 400 011.)
5. The Superintendent.)
Byculla District Prison, Mumbai – 8.)
6. Dr. Sayed Ahemed Khan.)
Working as Medical Officer,)
Office of Superintendent, Mumbai)
Central Prison, Sane Guruji Marg,)
Mumbai – 400 011.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 19.04.2023

JUDGMENT

1. The Applicant has challenged the communication dated 29.06.2022 issued by Respondent No.4 – Superintendent, Mumbai Central Prison, thereby seeking recovery of penal rent at the rate of Rs.150/- per sq.ft. from 17.05.2022 till vacating the quarter, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was serving as Medical Officer at Mumbai Central Prison on the establishment of Respondent No.3. By order dated 06.08.2021, the Applicant was transferred to Primary Health Centre, Tarapur, District Palghar and in his place posted Respondent No.6 - Dr. Sayed A. Khan, who was serving at Byculla District Prison. Though Applicant was transferred by order dated 06.08.2021, he was not relieved and continued to work at Bombay Central Prison for longer time. Ultimately, he was relieved w.e.f.16.02.2022 only. Later, Government by order dated 06.04.2022 cancelled his transfer order dated 06.08.2021 whereby he was posted at Tarapur, District Palghar meaning thereby he was to continue at Mumbai Central Prison. However, when Applicant reported for duty, the Respondent No.4 – Superintendent, Mumbai Central Prison declined to get him joined stating that there is no vacancy because in the meantime, Respondent No.6 had already joined the post of Medical Officer at Mumbai Central Prison. Since Applicant continued the quarter allotted to him at Mumbai Central Prison, the Respondent No.4 issued him notice to vacate the quarter, otherwise he would be

liable to pay penal charges at the rate of Rs.150/- per sq.ft. The Applicant made representation on 02.05.2022 (Page No.24 of Paper Book) stating that his transfer order dated 06.08.2021 is already cancelled and he is waiting for posting because of non-availability of post at Mumbai Central Prison. By the said representation, he requested to allow him to retain quarter for six months in terms of G.R. dated 29.07.2011. Later, Government by order dated 25.05.2022 realizing the mistake that there was no vacancy at Mumbai Central Prison, transferred him to Byculla Prison where he joined on 26.05.2022. On joining at Byculla Prison, he made an application on 27.05.2022 for allotment of quarter in the Jail Premises, so that he could vacate the quarter allotted to him in Mumbai Central Prison. Ultimately, Applicant vacated the quarter on 03.08.2022 after he was allotted quarter at Byculla.

3. It is on the above background, the Respondent No.4 – Superintendent, Mumbai Central Prison had issued recovery notice dated 29.06.2022 directing the Applicant to pay penal charges at the rate of Rs. 150/- per sq.ft. from 17.05.2022 excluding 3 months' concession from the date of his relieving.

4. The learned Advocate for the Applicant sought to assail the impugned action of recovery *inter-alia* contending that basically, in terms of G.R. dated 29.07.2011, the Applicant being transferred out of Bombay was entitled to retain the quarter for 6 months, and therefore, impugned action of charging penal rent is totally impermissible. She further pointed out that the transfer order to 06.08.2021 was later cancelled by the Government thereby reposting the Applicant at Mumbai Central Prison, and therefore, Applicant was entitled to continue the quarter. She has further emphasized that there was no intention of the Applicant to retain the quarter unauthorizedly, but he was compelled to continue the quarter because of non-allotment of quarter at Byculla. On this line of submission, she submits that the impugned action is unsustainable in law.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer made feeble attempt to justify the impugned action stating that once Applicant was relieved, he was entitled to retain the quarter for 3 months, subject to payment of license fee and after expiration of 3 months' period, his possession over the quarter was unauthorized and was liable to pay penal rent at the rate of Rs.150 per sq.ft. in terms of G.R. dated 30.08.2018.

6. The facts as narrated above are not in dispute. Though Applicant was transferred on 06.08.2021, he was not relieved till 16.02.2022. That apart, Government itself cancelled his transfer order dated 06.08.2021 by issuing order dated 06.04.2022 meaning thereby he was to continue at the same place i.e. of Mumbai Central Prison. However, the Government that time forgot to keep in mind that in the meantime, Respondent No.6 Dr. Khan had already joined in place of Applicant. Therefore, that time itself Government ought to have given some different posting to the Applicant. Thus, apparently, there was no coordination between the Department which resulted into such kind of anomalous situation. Be that as it may, the technical effect of cancellation of transfer order is allowing the Applicant to continue at Mumbai Central Prison and to have the same quarter.

7. Indeed, since by order dated 06.08.2021 Applicant was transferred to Tarapur, District Palghar out of Mumbai, he was entitled to retain the quarter in terms of G.R. dated 29.07.2011. The perusal of said G.R. reveals that considering the difficulties faced by the Government servants who are transferred out of Mumbai, the Government had given 6 months' concession to retain the quarter, subject to payment of regular license fee. The learned P.O. has not pointed out any subsequent G.R. modifying the condition of 6 months' entitlement to retain the quarter as mentioned in G.R. dated 29.07.2011. This being so, Applicant was entitled to retain the quarter for 6 months from 16.02.2022. The period of 6 months would be come to an end on 16.08.2022. Whereas, he has

vacated the quarter on 03.08.2022. In such situation, obviously, the impugned action of recovery of penal charges at the rate of Rs.150/- per sq.ft. is totally unsustainable.

8. That apart, by modified transfer order, the Applicant was accommodated at District Prison Byculla, which is hardly 3 kilometer away from Mumbai Central Prison. This being so, indeed, he would have been allowed to continue the same quarter which was allotted to him at Mumbai Central Prison and there was no such need to vacate the quarter. However, the establishment being different, he was to vacate the quarter and to apply for another quarter where he was posted i.e. at District Prison Byculla. Notably, after joining at Byculla Prison, the Applicant immediately applied for quarter, but he was not given the quarter for one or other reasons. He vacated the quarter of Mumbai Central Prison immediately after getting quarter at Central Prison Byculla. As such, in the facts and circumstances of the case, the Applicant cannot be charged with the penal liability to pay the charges at the rate of Rs.150/- per sq.ft. It is not a case that he has taken double benefit at one time. He has not paid HRA after he was transferred from Mumbai Central Prison to Central Prison Byculla. Suffice to say, the impugned action of imposing penal charges is arbitrary and unsustainable in law. All that, the Applicant is liable to pay license fee from 16.02.2022 till the date of vacating quarter.

9. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned action of recovery by order dated 29.06.2022 is unsustainable in law and required to be quashed. Hence, I pass the following order.

ORDER

(A) The Original Application is allowed partly.

- (B) The impugned action of recovery by order dated 29.06.2022 is quashed and set aside.
- (C) The Applicant is, however, liable to pay license fee from 16.02.2022 till the date of vacating the quarter and it be paid within a month from today. If not paid, the Department will be at liberty to recover the same with interest in accordance to law.
- (D) No order as to costs.

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

Mumbai

Date : 19.04.2023

Dictation taken by :

S.K. Wamanse.

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