

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.732 OF 2017

DISTRICT : MUMBAI

1. Shri Tanaji Hari Dhekale.)
Age : 59 Yrs., Retired Assistant Police)
Inspector, Protection IV, Office of)
Addl. Commissioner of Police,)
Protection & Security, Vaju Kotak Marg,)
Mumbai – 400 001 and residing at D/56,)
Worli Police Camp, Sir Pochkhanwala)
Road, Worli, Mumbai – 400 030.)

2. Miss Manisha Tanaji Dhekale.)
Age : 32 Yrs., Working as Police Sub)
Inspector, Dadar Police Station,)
V.S. Matkar Marg, Dadar (W),)
Mumbai – 400 028 and residing at D/56,)
Worli Police Camp, Sir. Pochkhanwala)
Road, Worli, Mumbai – 400 030.)...Applicants

Versus

1. The Government of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)

2. Commissioner of Police, Mumbai.)
Having office at Crawford Market,)
Mumbai.)

3. Deputy Commissioner of Police.)
Head Quarter-II, Mumbai having office)
at Crawford Market, Mumbai.)...Respondents

Mr. M.D. Lonkar, Advocate for Applicants.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : **26.02.2019**

JUDGMENT

1. The Applicants have challenged the impugned orders dated 20.02.2017, 19.03.2017 and 06.07.2017 pertaining to the recovery of penal charges and rejection of the request to transfer Government Quarter in the name of Applicant No.2.

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

The Applicant No.1 is retired Assistant Police Inspector and Applicant No.2 is his daughter. The Applicant No.1 stands retired in 2016. While in service, Quarter No.D-56 was allotted to him. The Applicant No.2 joined Police Force in 2004 and later in 2013, she was promoted to the post of Police Sub Inspector. In 2011, on the request of Applicant No.2, Quarter No.A-4/1 was allotted to her. She took the possession of Quarter but continue to stay in the Quarter No.D-56 with her father i.e. Applicant No.1. In view of guidelines and Circulars issued by the Government, the Applicants made joint representation to Respondent No.2 on 06.12.2016 for transfer of Quarter No. D-56 to Applicant No.2. However, the representation was rejected on 20.02.2017 on the ground that the Applicant No.2 is already in occupation of Quarter No.A-4/1 which was allowed to her in 2011. Then again, they made representation on 01.03.2017 which was also rejected on 19.03.2017. Thereafter again, the Applicant No.2 made representation on 11.04.2017 contending that the Quarter No.A-4/1 allotted to her is inhabitable and requested for allotment of Quarter No.D-56 (of her father) to her. In the meantime, the Respondent No.2 allotted another Quarter i.e. Quarter No.D-5 which was newly constructed to the Applicant No.2 by order dated 17.05.2017. However, the Applicant did not take the possession of the

same, and therefore, it was later on allotted to another. As the Applicant No.1 did not vacate Quarter even after retirement, by order dated 06.07.2017, the Respondent No.2 ordered recovery of penal charges of Rs.32,580/- (excluding three months permissible period) and also directed to handover the possession within seven days. On this background, the Applicants have challenged the impugned orders pertaining to recovery of penal charges and rejection of transfer of Quarter No.D-56 to Applicant No.2. The Applicants contend that, though the request of some of the employees for transfer and for change of Quarter has been accepted by the Department, their request was rejected and they are subjected to discrimination.

3. The Respondent Nos.2 & 3 resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicants to the relief claimed. The Respondents sought to justify the rejection of the request of Applicants to transfer the Quarter No.D-56 in the name of Applicant No.2 on the ground that Applicant No.2 was already occupying the Quarter No.A-4/1, and therefore, two Quarters cannot be allowed to one person. Thereafter again, on the request of Applicant No.2, the Quarter No.D-5, which was newly constructed, was allotted to her, but she did not occupy the same without stating any reason for the same, and therefore, it was later allotted to another employee Mr. Gadge. As such, the rejection of the request to transfer Quarter No.D-56 in the name of Applicant No.2 was in accordance to policy and guidelines. There is no discrimination as alleged by the Applicant. After retirement of Applicant No.1, he was allotted to continue his occupation for three months as per Circulars and was bound to vacate the same on expiration of period of three months. However, he failed to handover the possession, and therefore, penal charges of Rs.32,580/- was imposed for unauthorized occupation by order dated 06.07.2017. The Respondents, therefore, prayed to dismiss the application.

4. The material development is that, during the pendency of this application, the Quarter No.D-56 was allotted to Applicant No.2 on 03.09.2017 and Applicant No.2 had vacated Quarter No.A-4/1 on 15.12.2018. As such, in view of the subsequent development, the question posed for consideration is whether the earlier rejection on the request of Applicant No.1 to transfer Quarter No.D-56 in the name of Applicant No.2 was incorrect and secondly, whether the order of recovery of penal charges is legal.

5. Shri M.D. Lonkar, learned Advocate for the Applicant urged that, had the Respondent No.3 accepted the request from the Applicants for transfer of Quarter No.D-56 in the name of Applicant No.2, the question of imposing penal charges would not have arose. He further sought to contend that the Quarter No.A-4/1 which was allotted to Applicant No.2 was not habitable, and therefore, her request for transfer of Quarter No.D-56 from father to daughter ought to have been accepted in view of department's own Circular. On this line of submission, he urged that though during the pendency of the proceeding the Quarter No.D-56 has been allotted to Applicant No.2, the legality of the impugned orders needs to be decided, particularly, order of recovery of penal charges from Applicant No.1.

6. Per contra, Smt. A.B. Kololgi, learned Presenting Officer contends that Applicant No.2 was already occupying the Quarter No.A-4/1 without raising any grievance of its suitability and the ground that the said Quarter is not inhabitable was raised for the first time in letter dated 01.03.2017 which is quite belated and after-thought. She has further pointed out that the request for transfer of Quarter No.D-56 in the name of Applicant No.2 was not acceptable in view of Circular dated 02.02.2015, and therefore, it can be faulted with. As regard recovery of penal charges, the learned P.O. submitted that there is no illegality in imposing of penal charges as per the rates prescribed by the Government for unauthorized occupation of the Quarter.

7. Firstly, let us see whether the orders dated 20.02.2017 and 19.03.2017 can be faulted with, whereby the request for the transfer of Quarter No.D-56 in the name of Applicant No.2 was rejected. In his behalf, admittedly, the Applicant No.2 was allotted Quarter No.A-4/1 and the same was occupied by her. However, simultaneously, she was requesting for transfer of Quarter No.D-56 in her name in view of retirement of her father. The contention of Applicant No.2 that the Quarter No.A-4/1 was not habitable was raised for the first time in letter dated 01.03.2017. Till then, she did not raise any grievance about suitability or condition of the said Quarter. Furthermore, on her request, another Quarter D-5 from newly constructed building was allotted to her on 17.05.2017, but she did not occupy the same. No reason for refusal to accept the said Quarter is forthcoming. As such, since the Applicant No.2 was occupying the Quarter No.A-4/1 so long as she did not surrender the possession of the same, the question of transfer of Quarter No.D-56 in her name did not arise.

8. Furthermore, the Applicants' request for exchange of Quarter was not acceptable in view of Clause Nos.I & III of Circular dated 2nd February, 2015, which are as follows :

“1) पोलीस आयुक्त, बृहन्मुंबई यांचे अधिपत्याखालील खाजगी इमारतीतील भाडेतत्वावरील शासकीय सदनिका पोलीस अधिकारी/ अंमलदार यांना वाटप झाल्यास त्यांनी सदर शासकीय निवासस्थानाचा ताबा घेताना सेवानिवृत्तीनंतर / सेवासमाप्तीनंतर अथवा आंतरजिल्हा बदलीवर कार्यमुक्त केल्यानंतर ३ महिन्यात वाटप केलेले सदनिका रिक्त करण्याच्या अटीवर ताबा देण्यात येईल.

III) निवासस्थान आपापसात बदली करून वाटप करण्याच्या प्रकरणांमध्ये संबंधित दोघापैकी एखादा अधिकारी/ अंमलदार हा अर्ज केल्याच्या दिनांकापासून दोन वर्षांच्या आत सेवानिवृत्त होणार असल्यास/ खाजगी निवासस्थानात रहावयास जाणार असल्यास, त्यांची आपापसात निवासस्थान बदलीची विनंती विचारात घेतली जाणार नाही. अशा दोघाही अर्जदारांनी त्याबाबत असे लेखी हमीपत्र देणे बंधनकारक राहिल. तसेच आपापसात शासकीय निवासस्थान बदलून मागणी केलेल्या प्रकरणात विशेष अपवादात्मक परिस्थितीत एखादया पोलीस अधिकारी/ अंमलदाराने कमी क्षेत्रफळाच्या शासकीय निवासस्थानांची मागणी केल्यास वाटप करण्यात येईल. परंतु पदास देय असलेल्या क्षेत्रफळापेक्षा मोठया क्षेत्रफळाची सदनिका देय राहणार नाही.”

9. In view of above, the stipulation No.(III) in Circular dated 2nd February, 2015 which is the basis of Applicants for change of Quarter, the rejection of transfer of Quarter No.D-56 in the name of Applicant No.2 cannot be termed

illegal, as admittedly, the Applicant No.1 was due for retirement within two years.

10. In so far as the alleged discrimination is concerned, the instances pointed out by the learned Advocate for the Applicant will not advance their case a little bit. True, as per Allotment Order dated 24th December, 2016 (Page Nos.44 to 47 of the Paper Book), the request of some of the Police Personnel for change of Quarter has been accepted. What is pertinent to note that it pertains to the change of Quarter, which was accepted by the Department. Whereas in the present case, the Applicant No.2 was already occupying the Quarter No.A-4/1 and her father was also occupying Quarter No.D-56. The Applicant NO.2 was also allotted Quarter D-5 from newly constructed building, but she did not occupy it. Furthermore, the Applicant No.1 was occupying the Quarter meant for A.P.I. whereas the cadre of Applicant No.2 was P.S.I. This being the position, I find no substance in the submission advanced by the learned Advocate for the Applicants that the Applicants were subjected to discrimination.

11. Now, turning to third impugned order dated 06.07.2017 whereby the Respondent No.1 was ordered to pay penal charges of Rs.32,580/-, admittedly, the Applicant No.1 retired on 30.11.2016 and was allowed to continue the Quarter for next three months as per the policy of the Government. Therefore, he was bound to vacate Quarter on 01.03.2017. However, he continued to occupy the Quarter and failed to surrender the same. At the same time, material to note that the Applicant No.2 continued her occupation of Quarter No.A-4/1, which she ultimately vacated only on 15.12.2018. As such, Applicant's family was occupying two Quarters, though it was as per the allotment, but the occupation of the Applicant No.1 over Quarter onward 01.03.2017 cannot be said authorized. He has not obtained permission for retention after retirement, and therefore, he cannot avoid the obligation to pay penal rent for unauthorized occupation in terms of G.R. dated 18.11.2005.

12. The necessary corollary of the aforesaid discussion leads me to sum-up that the challenge to the impugned orders is devoid of merit and the application deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

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

Mumbai

Date : 26.02.2019

Dictation taken by :

S.K. Wamanse.

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