

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.739 OF 2017**

**DISTRICT : THANE**

Shri Shivaji Narayan Pophale, )  
Age : 60, Occu.: Retired Sr. Police Inspector, )  
R/o. 3/701, Sunflower, High Land Residency, )  
Kolshet Road, Thane (W). )...**Applicant**

**Versus**

1. The Commissioner of Police. )  
Thane, Having Office at Thane. )
2. The Commissioner of Police,(Railway), )  
Mumbai, O/at.4<sup>th</sup> floor, Area Manager )  
Building, P.D'mello Road, Wadi Bundar, )  
Mumbai 10. )
3. The Director General of Police and )  
Inspector General of Police, M.S, )  
Old Council Hall, Shahid Bhagatsingh )  
Marg, Mumbai – 400 039. )
4. The State of Maharashtra, through )  
Additional Chief Secretary, Home Dept. )  
Mantralaya, Mumbai – 400 032. )...**Respondents**

**Mr. A. V. Bandiwadekar, Advocate for Applicant**

**Mrs. A.B. Kololgi, Presenting Officers for Respondents.**

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

**DATE : 04.06.2019**

**JUDGMENT**

1. In the present OA, challenge is to the impugned order dated 17.5.2017 whereby sum of Rs.10,11,959/- has been ordered to be recovered from the gratuity and pension payable to the Applicant on his retirement who stands retired on 31.03.2015.

2. Shortly stated facts giving rise to the present application can be stated as follows:-

The Applicant joined service as Police Constable on 05.09.1983 and during the course of service, he was promoted up to Sr. P.I. and stands retired on 31.03.2015. In 1992, he was serving on the post of PSI in Railway Police on the establishment of Respondent No.2 i.e. Commissioner of Police, (Railway), Mumbai. The Superintendent Of Police (Railway), Mumbai by order dated 17.01.1992 allotted Government accommodation namely quarter no.23, 5<sup>th</sup> floor, Sir Bhalchandra Road, Dadar T.T., Mumbai 14 to the Applicant. Later, by order dated 12.06.2008, he was promoted to the post of P.I. and transferred to Ratnagiri. Accordingly, he was relieved on 16.06.2008. On 23.10.2009, he made representation to Respondent No.2 to allow him to continue in accommodation of police quarter on the ground that his father aged 88 years being suffering from Cancer and Brain Hemorrhage requires continuous treatment in Mumbai and his two sons are also taking education in collage at Mumbai. He was not allotted service quarter at Ratnagiri nor HRA was paid to him. However, he was served with the notice dated 13.11.2009 directing him to vacate the service quarter. Thereafter, he made various representations for retention of the quarter on the family difficulties, but the Respondent No.2 went on issuing notices directing him to vacate the service quarter and to pay penal charges. Ultimately, he vacated the quarter of Mumbai on 26.09.2013. thereafter he was again transferred to Thane in 2014. While serving at Thane he stands retired w.e.f. 31.03.2015. After retirement also he made

representations for waiver of penal charges and to release retiral dues, but in vain. Ultimately, the Respondent No.2 passed an order for recovery of penal charges of Rs.10,11,959/- and asked the Respondent No.1 to recover the same from the Applicant. Consequently, the Respondent no.1 by impugned order dated 17.05.2017 issued directions for recovery of Rs.4,32,023/- from gratuity and remaining amount of Rs.5,39,936/- from the pension of the Applicant towards penal charges for unauthorized occupation of service quarter for the period from 17.09.2008 to 26.09.2013. As such, by impugned order sum of Rs.10,11,959/- has been sought to be recovered which the Applicant has challenged in the present O.A. contending that proposed action of recovery is unsustainable in law.

3. Respondent Nos.1 and 2 have filed reply inter-alia resisting the claim of the Applicant and sought to justify the impugned order for recovery of Rs.10,11,959/- towards penal charges for unauthorized occupation of service quarter. The Respondents contend that in view of transfer of the Applicant by order dated 12.06.2008, he was relieved on 16.06.2008 and, therefore, he was required to vacate the quarter. However, he failed to vacate the service quarter. Therefore, notice was given to him on 24.09.2009 to vacate the quarter and failing which he will be liable to pay penal charges but the Applicant failed to vacate the service quarter and went on making representations on one or other ground. Thereafter again, the Respondent No.2 issued notices dated 13.09.2012, 22.01.2013, 16.04.2013 directing the Applicant to vacate the service quarter and to pay penal charges as quantified in the notices. In terms of G.R. dated 18.11.2005. The service quarter can be retained only for first three months and for second three months', it can be retained on payment of license fee. However, after expiration of six months period, the allottee is liable to pay penal charges. Accordingly, in terms of G.R. dated 18.11.2005, the Applicant is liable to pay penal charges of Rs.10,11,959/-for unauthorized occupation of service quarter for the period from 17.09.2008 to 26.09.2013. The Respondents thus

contend that action of recovery of Rs.10,11,959/- is in consonance with Rule 132 (3) (a) of Maharashtra Civil Services (Pension) Rules, 1982 (Hereinafter referred to as Pension Rules 1982). It is not in dispute that after the transfer of the Applicant to Ratnagiri, he was neither allotted service quarter nor HRA was paid to him. With this pleading, the Respondents prayed to dismiss the O.A.

4. The Applicant in support of his pleading has placed on record the copies of his representations dated 20.04.2011, 10.08.2012, 03.11.2012, 10.04.2013, 18.04.2014, 08.05.2014, 25.09.2014, 21.02.2015 and 22.02.2016 (which are at page Nos.28 to 48 of Paper Book). Whereas the Respondents have also produced the copy of G.R. dated 18.11.2005 at page No.8 and also produced copies of notices dated 24.09.2009, 13.09.2012, 01.10.2012, 22.01.2013 and 16.04.2013 (Which are at page Nos.76 to 79 and 84 of PB).

5. During the pendency of O.A., the Applicant has amended the O.A. for grant of benefit of judgment passed by the Hon'ble Chairman in **O.A. No.41 of 2016 (S.B. Sawant V/s State of Maharashtra & Ors.)**, decided on 10.08.2018, on the principle that the Applicant being similarly situated person is entitled to the same relief. In O.A.No.41/2016, the Police Quarter was allotted to the Applicant but having failed to vacate the premises, he was slapped with the recovery of penal charges for 51 months. The Applicant had challenged the order of recovery on the ground of discrimination amongst other grounds having found that the Respondents has adopted practice of pick and choose policy for recovery of penal charges without taking any such action against other retired police personnel for the recovery of penal charges. The Tribunal has allowed the O.A. and impugned order of recovery has been set aside with a rider that no recovery shall be done against the Applicant unless recovery of pending penal rent is done from other officers named in O.A. In so far as the decision rendered by this Tribunal

in O.A.No.41/2016 dated 10.08.2018 is concerned, admittedly, it has attained finality.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant has pointed out that admittedly after transfer of the Applicant to Ratnagiri neither service quarter has been allotted to him nor HRA was paid to him and, therefore, the impugned action of recovery of penal charges is unsustainable in law. He has further pointed out that during the tenure of Applicant at Ratnagiri, the department has even deducted the service charges of the quarter from his salary. He urged that in such situation the recovery of Rs.10,11,959/- from the gratuity and pension of the Applicant is not at all sustainable and no such course of action is permissible in the eye of law in view of the judgment passed by this Tribunal as well the judgment of the Hon'ble Bombay High Court and Hon'ble Supreme Court. The judgments referred to by the learned Advocate for the Applicant will be dealt with a little later.

6. Per contra, Smt. Archana B.K., learned Presenting Officer for the Respondents sought to contend that the impugned action of recovery of penal charges is in consonance with Rule 132(3)(a) and Rule 134A of Pension Rules 1982 and G.R. dated 18.11.2005.

7. In view of above, the question posed for consideration is whether the impugned action of recovery of Rs.10,11,959/- from the gratuity and pension payable to the Applicant is sustainable in law. Admittedly, after transfer of the Applicant to Ratnagiri, he was not allotted service quarter nor HRA has been paid to him. On the contrary, the services charges @116 per month seems to have been recovered from the salary of the Applicant. The Applicant has produced certificate dated 05.04.2019 issued by the Superintendent of Police, Ratnagiri certifying that no HRA was paid to the him during his tenure at Ratnagiri. Besides, the Applicant has produced pay slip of October, 2013 which shows that service charges @ 116 per month was being deducted from his salary. As such, there is no denying that neither service quarter was allotted to him

nor HRA was paid to him. This aspect is crucial one which needs to be borne in mind while appreciating the contentions raised by the parties.

8. In so far as G.R. dated 18.11.2005 is concerned, it provides that in case of transfer, retirement etc. the allottee will be entitled to retain quarter for first three months without license fee. For second three months, quarter can be retained with prior permission of the Head of the Department subject to payment of monthly license fee. It further provides that after the period of permissible retention of the quarter, the allottee would be liable to pay penal charges.

9. Now, turning to the facts of the present matter, the perusal of order dated 18.07.2014 passed by the Respondent No.2 reveals that department has waived license fee of first three months and charged Rs.870/- for next three months. For the subsequent period of 31 months and 51 days sum of Rs.3,82,529/- has been charged @ Rs.25/- per sq.ft. and for remaining period of 25 months 26 days sum of Rs.6,28,560/- has been charged @Rs.50/- per. sq. ft. As such, total amount of Rs.10,11,959/- has been ordered to be recovered towards penal charges in terms of G.R. dated 18.11.2005 for recovery of penal charge in case of unauthorized occupation of service quarter.

10. This takes me to refer relevant rules of Pension Rules 1982 referred by the learned P.O. In this behalf, it would be apposite to reproduced Rule 132 and 134A of the Pension Rules 1982.

***“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.)”*

11. In so far as Rule 132(3)(a) is concerned, it speaks about arrears of license fee and not penal charges. Whereas Rule 134A provides for the recovery of dues pertaining to Government accommodation from the Government Servant after his retirement. Here, proviso to Rule 134A (iii) is material which mandates that the Government shall give reasonable opportunity to pensioner to show cause as to why amount due should not be recovered from him and it further provides that the amount found due can be recovered from the pensioner in the installment so that the amount of pension is not reduced below minimum fixed by the Government. However, in the present case, no such show cause notice contemplated in Rule 134A has been given and directly order of adjustment of entire gratuity of Rs.4,32,023/- and remaining amount of Rs.5,79,936/- has been ordered to be recovered from pension without

specifying its installment as mandated in the proviso quoted above. This being the position, the action of recovery of Rs.10,11,959/- at once cannot be said in consonance with Pension Rules 1982.

12. Learned Advocate for the Applicant referred to the judgment of Hon'ble Supreme Court **1994 (II) CLR 885 R. Kapur V/s Director of Inspection (Painting & Publication) Income Tax and Anr.** In that case, the Central Administrative Tribunal held that death-cum-retirement gratuity cannot be withheld because of pendency of claim for recovery of unauthorized occupation of quarter. The Hon'ble Supreme Court while confirming the view taken by CAT in Para No.9 and 10 held as follows:-

*"9. This Court in M. Padmanabhan Nair's case (supra) has held as under: 'Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rates till actual payment.'"*

*10. The Tribunal having come to the conclusion that D.C.R.G. cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The D.C.R.G. due to the appellant will carry interest at the rate of 18% per annum from 1.6.1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48A. Thus, the civil appeal is allowed. However, there shall be no order as to costs."*

13. He further referred the judgment of the Hon'ble Bombay High Court in **2004(3) Bom.C.R. 24 N.C. Sharma V/s Union of India**, wherein it has been held that in case of unauthorized occupation of quarter by the Government servant, the remedy is to recover penal charges as per the provisions of **Public Premises (Eviction of Unauthorized Occupants) Act, 1971** and it is not permissible to the authority to fall back on rules pertaining to grant of terminal benefit and

effect recovery therefrom. Here, it would be apposite to reproduce Para No.19 which is as follows:-

*“19. A debate was raised before us that the direction in this decision to recover dues for unauthorised occupancy of official quarters in accordance with law would include the Rules in question and powers conferred there under. We find it difficult to accept this contention. Here, the direction of the Division Bench cannot be misconstrued to mean recourse to any other mode than institution of proceedings under [Public Premises \(Eviction of Unauthorised Occupants\) Act](#). If the premises partake the character of public premises then the remedy provided by [Section 7](#) of this enactment coupled with the right of appeal provided thereunder would be the only remedy. In case of a doubt about the nature of occupancy and the character of the premises, civil suit is the other remedy. The moment authorities seek to recover penal damages in respect of official accommodation or its retention beyond the permissible period, then the aforesaid modes of recovery only are available. It is not permissible for the authorities to fall back on the Rules pertaining to grant of Terminal benefits and effect recovery therefrom.”*

14. Reference was also made to **1995 SCC (L & S) 1114 S. C. Bose & Anr. V/s Comptroller & Auditor General of India & Ors.** In that case, the order for recovery of penal charges for unauthorized accommodation in departmental pool quarters was challenged. After transfer, the employee was entitled to accommodation in General Pool quarters. However, no allotment of quarter from General Pool was made and allottee continued to stay in accommodation of Departmental Pool quarters. The Hon'ble Supreme Court held that since concerned employee was entitled to allotment of accommodation from General Pool quarters, his stay in departmental quarters and action of department in recovering penal rent for continuing accommodation of departmental quarter is unjustified and the same was consequently set aside.

15. Learned Advocate for the Applicant further referred to the judgment passed by this Tribunal in **O.A.No.695/2012 (Dadasaheb B. Ghumare V/s The State of Maharashtra & Ors.)**, decided on 15.01.2013 wherein in similarly situation order of recovery of Rs.3,37,550/- towards recovery of penal charges for occupation of the

Government accommodation was challenged. In that case also no HRA was paid to the Applicant at the new place of posting and the service charges were continuously recovered from him. The Tribunal placed reliance on the decision of **R. Kaur's** case and **N.C.Sharma's** case cited supra and held that the arrears of penal charges cannot be set off against pension and gratuity payable to the retired employee. The O.A. was accordingly allowed.

16. Thus, conspectus of these decisions is that pension and gratuity cannot be withheld even if employee has confirmed the occupation of the Government quarter and the penal charges for unauthorized occupation of the quarter cannot be set off against the pension and gratuity amount payable to the retired employee. Thus, it is no more *res-integra* that the pension and gratuity are valuable rights and becomes property in the hands of employee on their retirement and the payment of pension and gratuity cannot be withheld on the ground of recovery of penal charges for unauthorized occupation of quarter. To recover such damages from retired employee, the Respondents needs to pursue appropriate remedy in law may be under the provisions of **Public Premises ( Eviction of Unauthorised Occupants) Act, 1971** or other law as may be permissible but the said amount cannot be set off against the pension and gratuity payable to retired employee. Suffice to say, pension and gratuity are no longer bounty to be distributed by the Government to its employee on their retirement but have become valuable rights and property in their hands and it cannot be withheld on the ground of recovery of penal charges for unauthorized occupation of quarter.

17. Interesting to note that the Applicant has been transferred to Ratnagiri by order dated 12.06.2008 and stands retired on 31.03.2015. Meantime, he surrendered the quarter on 26.09.2013. The Respondents did take no steps except issuance of notices from time to time for the recovery of the penal charges from the Pay and Allowances of the Applicant during his tenure. They did nothing except issuance of

notices. The Respondents ought to have taken necessary steps to recover the said amount by taking appropriate measures in accordance to rules. However, no such appropriate action was taken and the Applicant was allowed to retire on 31.03.2015. Even after retirement, the Applicant made various representations to release gratuity and pension. It is only after more than two years after retirement, the Respondent No.1 woke up and issued impugned order dated 17.05.2017 for recovery of Rs.10,11,959/- in lump sum from the gratuity and pension payable to the Applicant without issuing any show cause notice to him, which is clearly unsustainable in law.

18. As stated above, after the transfer of the Applicant to Ratnagiri, he was neither allotted quarter nor HRA was paid to him. On the contrary, the service charges of the quarter were continuously deducted from his salary. There is no denying that he was entitled to the quarter at Ratnagiri. This being the position, it would be iniquitous and harsh to recover penal charges for retention of service quarter allotted to him from pension and gratuity, which is not dependent upon the vacation or the payment of penal charges. The learned P.O. could not point out any decision or Rule [except Rule 132(3)(a) and 134(a) of Pension Rules, 1982 which are not applicable to the present situation as discussed above] in support of impugned action of recovery of penal charges. Suffice to say, there is no escape from the conclusion that the impugned action of recovery of Rs.10,11,959/- is unsustainable in law in view of the aforesaid discussion of law and facts.

19. The necessary corollary of the aforesaid discussion leads me to sum up that the impugned action of recovery is not sustainable in law and the Original Application deserves to be allowed. Hence, the following order.

**ORDER**

- (A) The impugned order dated 17.05.2017 and 18.07.2014 are quashed and set aside.
- (B) It would not be permissible to Respondents to adjust the penal rent from the gratuity and pension of the Applicant and of course, this is without prejudice to the rights of the Respondents to recover damages from the Applicant by pursuing appropriate remedy as may be permissible in law.
- (C) The Respondents are directed to release gratuity and pension within a month from today.
- (D) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 04.06.2019

Dictation taken by : V.S.Mane