

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.951 OF 2021**

**DISTRICT : MUMBAI  
SUB : Retiral benefits**

Shri Sopan Y. Pawar, Age 63 years, )  
Occ : Retired, R/at A/16, Tribhuvan Co-op. Hos. Soc.)  
Ltd., Near Jalaram Mandir, Nehru Road, Dombivali (E),)  
Dist. Thane 421201. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through Addl. Chief Secretary, )  
Home Department, Having Office at )  
Mantralaya, Mumbai-400 032. )
- 2) The Director General of Police, D.G. Office, )  
Shahid Bhagatsingh Road, Mumbai 400 023. )
- 3) The Police Commissioner, Government Railway )  
Police, P.D' Mellow Marg, Wadi Bunder, Signal )  
Building, 4th floor, Mumbai 400 009. )
- 4) The Commissioner of Police, O/at Crawford Mkt.)  
Mumbai-I,, Shahid Bhagat Singh Road, )  
Mumbai 400 001. )....**Respondents**

**Shri G. B. Pawar, learned Advocate for the Applicant.**

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

**CORAM : A.P. Kurhekar, Member (J)**

**DATE : 30.06.2023**

**ORDER**

1. The Applicant has challenged communication dated 12.02.2020 issued by the Respondent No.1 - Government about recovery of licence fees of Rs.46,360/- for retention of quarter and claim interest on the delayed payment of retiral benefits *inter-alia* contending that interest

calculated by communication dated 12.02.2020 is incorrect invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to O.A. are as under :-

The Applicant is retired Police Inspector. He retired on 31.05.2015 from the establishment of Respondent No.4 - Police Commissioner, Mumbai. While he was serving as Police Sub-Inspector on the establishment of Respondent No.3 - Police Commissioner, Railway Police, he was allotted government accommodation by Railway Police. He was transferred from Railway Police to C.P. Mumbai establishment on 25.06.1999. He sought permission from C. P. Railway Police to retain the quarter. The Respondent No.3 - C.P. Railway Police permitted to retain government accommodation. Later, the period of retention was extended from time to time. He got quarter on the establishment of C.P. Mumbai on 10.08.2014 and vacated Railway Police Quarter on 18.08.2014. After retirement, he was not paid retirement benefits on the ground of recovery of licence fee of Rs.46,360/- for retention of Railway Police quarter. The Applicant then filed O.A. No.123/2019 in this Tribunal for directions to Respondents to refund the amount of Rs.46,360/- which was recovered from his gratuity and also claimed interest on delayed payment of retirement benefits. In O.A. the Applicant had challenged recovery of licence fees of Rs.46,360/- *inter-alia* contending that he was not liable to pay any such licence fee.

3. The Tribunal had disposed of the O.A.No.123/2019, issuing following directions :-

*" (i) The respondent no.1 (Home Department) is directed to take a conscious decision whether their communication dated 24.11.2016 directing respondent no.3 to recover an amount of Rs.46,360/- as license fee is as per the provisions and whether the same are applicable to the applicant?*

*(ii) The respondent no.1 should also fix the responsibility for delayed payment, in the payment of terminal benefits to the applicant as mentioned in Rule 129-B(4) of MCS (Pension) Rules, 1982.*

*(iii) The interest calculated as per the appropriate rules be paid to the applicant for delayed payment.*

*(iv) The above directions should be implemented within a period of three months from today and communicated to the applicant within two weeks thereafter.*

4. Accordingly, the Respondent No.1- Government took decision and communicated the same to the Applicant on 12.02.2020 confirming its stand about liability of the Applicant to pay license fees of Rs.46,360/- for retention of Railway Police quarter. Insofar as interest is concerned, the Respondents calculated interest on belated payment of gratuity and other benefits from 25.11.2016 only and it was directed to be paid by the Secretariate, Maharashtra State Legislative Assembly.

5. It is on the above background, the Applicant has challenged communication dated 12.02.2020 rejecting his claim for refund of Rs.46,360/- and also challenged the calculation of interest done by the Respondents in communication dated 12.02.2020. In the said communication, the Respondent No.1 has calculated the interest from 25.11.2016 till the date of actual payment of retirement benefits. However, admittedly the interest so calculated from 24.11.2016 is not paid even till date. Indeed, the Applicant is challenging calculation of interest from 25.11.2016 *inter-alia* contending that the amount due fall on the date of retirement on 31.05.2015 and he is entitled to interest after three months period i.e. from 01.09.2015. Notably, 25.11.2016 date determined for calculation of interest is the date on which his representations were rejected by the Respondents. As such, in effect by impugned communication claim of interest from 01.09.2015 to 24.11.2016 has been denied.

6. In view of above, the issue posed for consideration is whether the Applicant is entitled to refund of Rs.46,360/- which are already recovered as a licence fee from his gratuity and interest on delayed payment of retirement benefits from 01.09.2015.

7. Heard Shri G.B. Pawar, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

8. **As to refund of license fees of Rs.46,360/-**

By impugned order dated 12.02.2020, the respondents have charged license fees of Rs.46,360/- and rejected the claim of the Applicant to refund the same which has been already recovered from his gratuity.

9. Shri G. B. Pawar, learned Counsel for the Applicant submits that as per rules and notifications, the Applicant was entitled to rent free accommodation and there was no such liability to pay license fees. He has pointed out that C.P. Railway Police permitted the Applicant to retain quarter in view of Circular dated 22.05.1992. After his transfer to C.P. Mumbai, he applied for quarter and it was allotted on 10.08.2014. The Applicant, therefore, vacated railway quarter on 18.08.2014. He, therefore, submits that there was no such liability to pay even license fees for retention of railway police quarter.

10. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer sought to contend that there is no such specific or special order of the Government allotting rent free quarter to the Applicant and in absence of it, the claim of the Applicant that railway police quarter was rent free quarter is unsustainable. She further submits that licence fee is distinct issue then HRA and license is always charged on quarters in terms of G.R. dated 30.12.1991 at stipulated rate depending upon the type of quarter. She, therefore, submits that recovery of licence fees of Rs.46,360/- from gratuity is legal and valid.

11. At the very outset, the perusal of Circular dated 22.05.1992 issued by office of C.P. Mumbai reveals that in view of difficulties faced by police officials, the following decision was taken :-

" पोलिस आयुक्त बृहन्मुंबई (१०) पोलिस अधिकारी आपल्या जिल्ह्यात बदलून गेलेले आहेत व ते अधिकारी पोलिस आयुक्तांच्या अधिपत्याखालील शासकीय निवासस्थानात राहात आहेत. तसेच आपल्या जिल्ह्यातून बृहन्मुंबईत (१२) पोलिस अधिकारी बदलून आलेले आहेत व ते आपल्या जिल्ह्याच्या अधिपत्याखालील शासकीय निवासस्थानात राहत आहेत.

लोहमार्ग मुंबई जिल्हा व मुंबई शहर यांचे मुख्यालय, मुंबई हे जवळ जवळ एकच आहे. पोलिस अधिका-यांच्या बदल्या ह्या नेहमीच होत असतात. बदलीमुळे त्यांची त्वरीत रिक्त करून घेतली जातात. त्यामुळे त्याचे कौंटुबिक जीवन अस्थिर होते व शासकीय निवासस्थानाची टंचाई असल्याने लगेचच त्यांना निवासस्थाने पुरवणे शक्य होत नाही. पोलिस अधिका-यांच्या लोहमार्ग, मुंबई येथे होणा-या बदलांमुळे हा प्रश्न पुढेही कायमस्वरूपी उद्भवणारा आहे. त्यामुळे पोलिस आयुक्त, बृहन्मुंबई येथे बदली होवून आलेल्या किंवा गेलेल्या पोलिस अधिका-यांची शासकीय निवासस्थाने रिक्त करून देण्यात येऊ नयेत किंवा त्यांना शासकीय निवासस्थाने आपआपसांत बदली करून देण्यात यावीत."

12. Thus, having regard to the difficulties faced by police personnel, the decision was taken to allow police personnel serving on the establishment of Railway Police to continue the quarter even after their transfer to C.P. Mumbai. It further provides for mutual exchange of quarter. It is in view of the said circular, the Applicant was permitted to retain railway police quarter after his transfer to Mumbai Police. Thus, this is not a case, where Applicant retained quarter unauthorizedly.

13. In present case, the issue pertains to legality of recovery of license fees. In this behalf, it is necessary to see instructions issued by the Government in official gazette about occupation of Government quarters. Rule 850 from Bombay Government Gazette dated 09.07.1959 is as under :-

850. In special circumstances, for reasons which should be recorded Government -

- (a) may, by general or special order, grant rent-free accommodation to any Government servants, or class of Government servants, or
- (b) may, by special order, waive or reduce the amount of rent to be recovered from any Government servant.

Note 1- Government servants, or any classes of Government servants, who have been granted rent-free accommodation shall not be liable to pay rent for subsidiary services, mentioned in Rule 844 above.

Note 3 : A list of Government servants who have been granted rent-free accommodation or house rent allowance in lieu thereof or who are allowed to pay reduced rent is given in Appendix LV. No rent shall be recovered from Ministers, Deputy Ministers and Parliamentary Secretaries when accommodation is made available to them by Government."

14. Whereas Appendix LV which is referred in note no.3 of Rule 850 is the list of Government servants who have been granted rent free quarters. Material to note, as per Sr.No.122 of Appendix LV all subordinates police officers below the rank of Inspector in the mofussil and below the rank of Superintendent in Greater Bombay are declared entitled to rent free quarter. Thus, by this general order published in Government gazette on 09.07.1959, the Applicant is declared entitled to rent free quarter. Pertinent to note, as per Note No.1, below rule 850 as reproduced above, the Government servants who have been granted rent free accommodation shall not be liable to pay rent for subsidiary services mentioned in Rule 844. Whereas as per Rule 844 for the purposes of assessment of rent, the capital cost of a residence owned by Government shall include the cost or value of subsidiary services viz., sanitary services, water supplier, electrical inspection. Thus, in case of rent-free quarter, there is no liability to pay for subsidiary services.

15. The Respondents have not produced on record any material to establish that while Applicant was allotted railway police quarter, license fees was recovered from him. That apart, in order issued by C.P. Railway permitting the Applicant to retain quarter of railway police, there is no such whisper that he was to pay license fees. Therefore, the Respondents contention that Applicant was liable to pay license fees is totally unacceptable.

16. Indeed, G.R. dated 24.05.2001 issued by Government, Finance Department itself makes it clear that where employees entitled to rent free quarter but not allotted in that situation, the Government servant is entitled to rent free accommodation as per permissible rates as well as license fees together as HRA. The contents of G.R. dated 24.05.2001 are as under:-

" शासनाच्या विविध प्रशासकीय विभागांखालील काही विशिष्ट पदांना त्यांच्या सेवाशर्तीनुसार मुंबई नागरी सेवा नियम, १९५१ मधील नियम ८५० खालील तरतूदीअन्वये भाडेमाफ निवासस्थानाची सवलत मंजूर करण्यात आली आहे. जे कर्मचारी त्यांच्या सेवाशर्तीनुसार, भाडेमाफ निवासस्थान मिळण्यास पात्र आहेत, मात्र ज्यांना अशी निवासस्थाने पुरविण्यात आलेली नाहीत, असे कर्मचारी खालील अटीची पूर्तता करण्याच्या अधीन राहून वरील (५) येथील आदेशान्वये दिनांक १ सप्टेंबर, १९९० पासून, त्यांना त्यांच्या वेतनगटानुसार सर्वसाधारणपणे देय होऊ

शकणारा घरभाडेभत्ता अधिक वेतनाच्या आधारे ज्या प्रकाचे निवासस्थान मिळण्यास संबंधित कर्मचारी पात्र असेल त्या प्रकारच्या निवासस्थानासाठी आकारण्यात येणारे अनुज्ञापत्र शुल्क इतकी रक्कम , भाडेमाफ निवास स्थानाच्या बदल्यात घरभाडे भत्ता म्हणून मिळण्यास पात्र असतील.

१) शासकीय निवासस्थाने वाटपासाठी उपलब्ध नसावीत.

२) शासकीय कर्मचा-यांच्या कुटुंबाच्या सदस्यांव्यतिरिक्त इतर सदस्य त्याच्यासोबत राहत नसावा.

३) शासकीय कर्मचारी त्याच्या मुख्यालयाच्या नागरी हद्दीत राहात असावा. मुंबई हे मुख्यालय असणा-या कर्मचा-यांच्या बाबतीत मुंबई नागरी सेवा नियमांतील नियम ४४६ खाली विहित केलेली नागरी हद्द ग्राह्य मानली जाईल.

टीप : जर शासकीय कर्मचारी राहात असलेल्या निवासस्थानापेक्षा त्याच्या कर्तव्यस्थानाला जवळ असेल असे कोणतेही निवासस्थान वाजवी अटीवर, म्हणजे त्याला घरभाडेमाफ निवासस्थानाऐवजी मिळणा-या घरभाडेभत्ताच्या रकमेच्या मर्यादेत भाडे असलेले, मिळविणे शक्य नव्हते, आणि त्याचे निवासस्थान नागरी हद्दीच्या पलीकडे असूनही, त्या पदाशी संलग्न असणा-या कर्तव्यांवर विपरीत परिणाम होत नाही याबद्दल नियंत्रक अधिका-याची खात्री पटून त्याने तसे प्रमाणपत्र जोडल्यास वरील अट शिथिल करता येईल. नियंत्रक अधिका-यांच्या प्रकरणी त्यांच्या लगतच्या वरीष्ठ अधिका-यांनी असे प्रमाणपत्र दयावयाची आहे.

(वर नमुद केलेल्या तिनही अटी वरील (१) येथील आदेशान्वये दि.१ एप्रिल १९७२ पासून लागू आहेत. अट क्र. (३) खालील टीप वरील (३) येथील आदेशान्वये दि.१ नोव्हेंबर, १९८१ पासून लागू आहे.)

३. मुंबई नागरी सेवा नियमांच्या परिशिष्ट ५५, विभाग-२ मधील वैद्यकीय विभागाखालील तळटिप रद्द करण्यात येत असून वरील विभागाच्या शेवटी असलेल्या टिपेमधील अट क्र.१ ते ४ ऐवजी वरील अटी समाविष्ट करण्यात याव्यात.

४. त्या कर्मचया-यांना सेवाशर्त म्हणून नवे तर इतर कोणत्याही उपयोगासाठी आवश्यक नाही अशी निवासस्थाने वाटपासाठी भाडेमाफ रितीने उपलब्ध करून दिली असतील, त्या कर्मचा-यांना भाडेमाफ निवासस्थानाऐवजी मिळणा-या घरभाडेभत्ताबाबतचे आदेश लागू होणार नाहीत.

५. या परिपत्रकान्वये निर्गमित करण्यात येत असलेल्या सूचना म्हणजे या विषयी पूर्वीच देण्यात आलेल्या आदेशांतील तरतूदीपैकी सध्या अंमलात असणा-या तरतूदीचे केवळ माहितीसाठी केलेले एकत्रिकरण आहे. या परिपत्रकान्वये कोणतेही नवे आदेश देण्यात आलेले नाहीत. मात्र, प्रकरणे सादर करतांना या परिपत्रकाचा संदर्भ देण्यास हरकत नाही. भाडेमाफ निवासस्थानाऐवजी घरभाडेभत्ताबाबतची यापूर्वीची प्रकरणे, संबंधित कालावधीत अंमलात असणा-या आदेशांतील तरतूदीअन्वये विनियमित करण्यात यावीत.

६. मुंबई नागरी सेवा नियम, १९५९ मधील यासंबंधातील सध्याच्या तरतूदी वरील मर्यादेत सुधारण्यात आल्या आहेत असे समजले जावे. या नियमांना औपचारिक सुधारणा यथावकाश करण्यात येतील.”

17. Thus, the harmonious construction of aforesaid rules and G.R.s clearly established that Applicant was not liable to pay license fees. It is precisely for this reason, no license fee was recovered from the Applicant while he was in service with Railway Police. He was allotted to continue the quarter without there being any stipulation of liability to pay license fees. Suffice to say recovery of Rs.46,360/- from the Applicant is totally arbitrary and unsustainable in law.

18. The aforesaid view is fortified by the decision rendered by the Tribunal in Aurangabad Bench in **O.A.No.584/2017 (Mohammad Abdul Sami V/s State of Maharashtra & Ors.)**, decided on 20.08.2019 wherein the petitioner was found entitled to HRA and license fees till

government quarter was provided to him but it was not paid. The Tribunal allowed the O.A. directing Respondents to pay license fees in addition to rent. The Tribunal referred the same G.R. dated 24.05.2001 and concluded that Government servant to whom quarters are not provided as per their entitlement are entitled to rent and license fees in lieu of government quarter.

19. **Claim about interest :**

At the very outset, it needs to be clarified that by communication dated 12.02.2020 the Respondent No.1 had calculated liability to pay interest of Rs.56,657/- calculated from 25.11.2016 and directions were issued to the Secretariate Maharashtra State Legislative Assembly but till date the said amount of Rs.56,657/- is not paid. This position is fairly conceded by learned P.O.

20. As stated above, the reason for withholding retiral benefits was the issue of recovery of license fees of Rs.46,360/- for retention of quarter which could not have been the ground to withhold retiral benefits. Indeed, as concluded above there was no such liability of the Applicant to pay license fees of Rs.46,360/-. The Respondents, therefore, cannot disown the liability to pay interest on retirement benefits as discussed above. There are administrative lapses on the part of Respondents for not releasing retirement benefits within stipulated period of three months and one month as provided in Rules and G.R.s.

21. Admittedly, the Applicant stands retired on 31.05.2015 and there was no such hurdle in the form of D.E. or judicial proceeding for withholding of retirement benefits. However, his retirement benefits were withheld because of issue of recovery of license fees about quarter he retained was not settled. That issue was not at all relevant or justifiable for withholding retirement benefits. If there was any such liability to pay license fees, it ought to have been resolved independently but at any rate it could not have been the reason to withhold all retiral benefits.



22. The Applicant is claiming interest on gratuity, leave encashment and GIS. As per Rule 129-A of Maharashtra Civil Services (Pension) Rules where the payment of gratuity has been delayed and delay in payment was attributable to administrative lapses, an interest at the rate applicable to GPF deposits shall be paid on the amount of gratuity in respect of period beyond three months. He further provides that no interest shall be payable in case provisional gratuity is paid. In present case, admittedly, no provisional gratuity was paid. This being the position, the payment of gratuity has been delayed due to sheer administrative lapses attributable to the department and Applicant cannot be deprived of the interest. The gratuity of Rs.3,84,280/- was paid on 27.07.2017 though it was payable on 01.09.2015. This being so, the Respondents are liable to pay interest on gratuity amount from 01.09.2015 till 27.07.2017 at the rate applicable to GPF.

23. As regard leave encashment, admittedly, the leave encashment of Rs.5,84,220/- was paid on 27.07.2017. In terms of G.R. dated 20.06.1996 in normal course (except where D.E. is initiated), the Government servant is entitled to interest on leave encashment if amount of leave encashment is not paid after the period of one month from the date of retirement. In present case, the Applicant retired on 31.05.2015 and, therefore, leave encashment was due and payable on 01.07.2015. However, it was paid on 27.07.2017. In impugned communication, the Respondent No.1 calculated interest on leave encashment from 25.11.2016 but still not paid. Indeed, liability to pay interest is from 01.07.2015. The Respondents are, therefore, liable to pay interest on leave encashment at the rate applicable to GPF from 01.07.2015 to 27.07.2017.

24. Insofar as GIS is concerned, the Applicant was paid GIS amount of Rs.1,17,744/- on 08/08.2017. In impugned order, the Respondent No.1 calculated interest on GIS also from 25.11.2016 which is totally incorrect. The Respondents ought to have granted interest on GIS after

three months in terms of G.R. issued by the Finance Department on 17.05.1992 which *inter-alia* provides even in case of departmental proceeding is pending against a government servant, the amount of GIS should not be withheld and it requires to be paid within three months from the date of retirement. Thus, GIS was due and payable on 01.09.1995 but paid on 08.08.2017. There was no such legal hurdle to withhold GIS.

25. The totality of the aforesaid discussion leads me to sum up that impugned communication dated 12.02.2020 denying refund of Rs.46,360/- recovered as a licence fee is totally arbitrary and unsustainable in law. At the time of retirement, there was no such legal hurdle in the shape of D.E. or criminal prosecution so as to withhold retirement benefits. The reason that the issue of licence fees or penal charges for retaining railway police quarter was pending could not have been the ground to withhold retiral benefits. If there was any such liability for retention of quarter, it could have been ascertained independently and for that matter withholding of retiral benefits was totally arbitrary. As such, withholding of retiral benefits for no such justifiable reasons amounts to denial and deprivation of utilizing retiral benefits which certainly comes under administrative lapses. The Applicant is, therefore, entitled to refund of license fees of Rs.46,360/- and he is also entitled to interest on delayed payment of gratuity, leave encashment and GIS for the period by which it is delayed. Hence, the following order :-

**ORDER**

- (A) Original Application is allowed.
- (B) Impugned communication dated 12.02.2020 is quashed and set aside.
- (C) The Respondents are directed to refund of Rs. 46,360/- recovered as licence fees from gratuity within a month from today failing to which amount shall be paid with interest at the rate applicable to GPF from the date of default till the date of actual payment.

- (D) The Respondents are also directed to pay interest on amount of gratuity and GIS to be calculated from 01.09.2015 till the date of payment i.e 27.07.2017 and 08.08.2017 respectively within a month from today.
- (E) The Respondents are also directed to pay interest on the amount of leave encashment at the rate applicable to GPF from 01.07.2015 to 27.07.2017. It be calculated and paid accordingly within a month from today.
- (F) The Respondents are jointly and severally responsible for the compliance of the order within a month from today.
- (G) No order as to costs.

Sd/-

**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date : 30.06.2023  
Dictation taken by: Vaishali S. Mane  
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