

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.580 OF 2019**

**DISTRICT : PUNE**

Shri Dnyaneshwar S. Shinde. )  
Age : 59 Yrs, Retired as Subhedar, )  
Residing at Ananda Height, Flat No.9, )  
Nirgudi Road, Chirke Colony, )  
Pune – 411 047. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )  
2. The Addl. Director General of Police )  
And Inspector General, )  
Maharashtra State, )  
Pune – 411 001. )...**Respondents**

**Mrs. Punam Mahajan, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

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

**DATE : 10.12.2020**

**JUDGMENT**

1. The Applicant has challenged the order dated 04.04.2019 whereby his request for House Rent Allowance (HRA) from November, 2010 to November, 2014 was rejected and the action of adjustment of

Rs.2,42,715/- from gratuity is confirmed invoking Section 19 of Administrative Tribunals Act, 1985.

2. Undisputed facts necessary for the disposal of present O.A. are as under :-

(i) Applicant was serving as Subheddar in Central Prison, Yerawada, Pune. While he was serving at Pune, the Quarter No.128 was allotted on 11.06.2002.

(ii) By order dated 31.05.2010, he was transferred to Kolhapur.

(iii) Applicant, however, continued his possession over Quarter No.128 allotted to him while he was at Pune.

(iv) By order dated 17.10.2010, the Applicant was deputed at Central Prison, Yerawada, Pune on deputation and was relieved on the same day.

(v) Later, Superintendent, Yerawada, Central Prison, Pune by order dated 23.07.2011 cancelled the deputation and was relieved on same day for joining at Kolhapur.

(vi) As Applicant retained the Quarter of Pune unauthorizedly, he was served with the notice dated 15.11.2012, 12.11.2014 and 23.12.2015 whereby he was informed that he will be liable to pay penal rent at the rate of Rs.50/- p.m. in terms of Government Resolution dated 29<sup>th</sup> July, 2011.

(vii) HRA was paid to the Applicant for the period from July, 2010 to October, 2010 despite retention of Pune Quarter and no HRA was paid from November, 2010 to the Applicant.

(viii) Superintendent, Yerawada, Central Prison, Pune by letter dated 23.12.2015 informed the Applicant that his possession over service quarter allotted to Pune being unauthorized, he is liable to

pay penal rent at the rate of Rs.50/- p.m. after excluding initial six months' period on payment of license fee and amount of Rs.4,97,230/- was due towards unauthorized occupation and after deducting sum of Rs.1,12,997/- plus Rs.33,777/- from salary, remaining amount of Rs.3,10,580/- was to be recovered from his salary.

- (ix) The Applicant ultimately vacated the quarter on 03.11.2014.
- (x) The Applicant stands retired on 31.05.2017.
- (xi) After retirement, the Applicant made representation dated 25.09.2018 raising grievance about recovery of penal rent and adjustment of penal rent from gratuity and also claimed HRA for the period from November, 2010 to November, 2014.
- (xii) As his representation was not responded, he had initially filed O.A.No.189/2019 with limited prayer for direction to the Respondent No.2 to decide his representation dated 25.09.2008 within stipulated time.
- (xiii) O.A.No.189/2019 was disposed of by order dated 05.03.2019 by directing Respondent No.2 to decide the representation within a month.
- (xiv) Consequent to direction of Tribunal, the Respondent No.2 by order dated 04.04.2019 rejected his representation holding that he is not entitled to HRA for the period from November, 2010 to November, 2014 and the action of adjustment of gratuity towards penal charges is legal.

3. Thus, after adjusting some amount of penal charges from regular pay and allowances, it remains 2,42,715/- towards penal charges for unauthorized occupation of service quarter and the same has been adjusted from gratuity of the Applicant. It is on the above background,

the Applicant has filed the present O.A. challenging the action of recovery of penal charges and for direction to the Respondents to refund Rs.2,42,715/- adjusted from gratuity.

4. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the impugned action of recovery on following grounds :-

(a) The impugned action of adjustment of Rs.2,42,715/- from gratuity of the Applicant towards recovery of penal charges for unauthorized occupation of quarter is unsustainable in law, as there could be no such recovery from the retiral dues of the Government servant.

(b) The Respondents ought to have availed the remedy under the provisions of 'Public Premises (Eviction of Unauthorized Occupants) Act, 1971' for the recovery of penal charges.

(c) The Applicant was not paid HRA for the period from November, 2010 to 3.11.2014 to which he was entitled in law but by impugned order HRA of the said period has been rejected without any valid reasons.

(d) As the amount of Rs.2,42,715/- is adjusted from gratuity after retirement of the Applicant, the said action on the part of Respondents is unsustainable in law in absence of show cause notice as contemplated under Rule 134A of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity).

(e) Imposition of penal charges at the rate of Rs.50/- p.m. in terms of G.R. dated 29<sup>th</sup> July, 2011 is illegal since G.R. dated 29.07.2011 is applicable to the quarters situated in Mumbai only.

4. Smt. Punam Mahajan, learned Advocate in this behalf sought to place reliance on the decision of Hon'ble Bombay High Court 2004(3) Mh.L.J. 478 (N.C. Sharma Vs. Union of India) and the decision of Hon'ble Supreme Court in **1994(II) CLR 885 (R. Kapur Vs. Director of Inspection, (Painting and Publication) Income Tax & Another)**. She also referred two decisions rendered by this Tribunal in **O.A.No.695/2012 (Dadasaheb B. Ghumare Vs. State of Maharashtra) decided on 15.01.2013** and **O.A.No.739/2017 (Shivaji Pophale Vs. Commissioner of Police & Ors.) decided on 04.06.2019**.

5. Per contra, Ms. K.S. Gaikwad, learned Presenting Officer sought to support the impugned action of adjustment of Rs.2,42,715/- from gratuity contending that the possession of the Applicant over service quarter allotted at Pune was totally unauthorized since he failed to vacate the same after his transfer to Kolhapur, and therefore, levying of penal charges for the period from 01.06.2010 to 03.11.2014 is legal. In this behalf, she placed reliance on the decision of Hon'ble High Court in **Writ Petition No.752/2018 (Prakash L. Damale Vs. Municipal Corporation of Greater Bombay) decided on 22.10.2019** wherein the action taken by Municipal Corporation Greater Bombay for recovery of penal charges from retiral benefits was held legal. However, the learned P.O. fairly concedes that after retirement, no notice under Section 134A of 'Rules of 1982' was issued to the Applicant before adjusting Rs.2,42,715/- from gratuity.

6. Indisputably, while Applicant was serving at Central Prison, Yerawada, the Quarter No.128 was allotted to him on 11.06.2002. Later in 2010, by order dated 31.05.2010, he was transferred to Kolhapur and was required to vacate the quarter, but admittedly, he continued the possession. Thereafter, for short period, he was again deputed at Central Prison, Yerawada by order dated 17.10.2010 which came to an end on 23.07.2011. As such, in view of Applicant's transfer from Pune to Kolhapur on 31.05.2010, he was not entitled to retain the quarter

allotted to him at Pune. He vacated the quarter only on 03.11.2014 and thereafter, retired on 31.05.2017. While he was in service, the penal charges were levied and sum of Rs.2,14,515/- were recovered from salary and remaining amount of Rs.2,42,715/- was adjusted from gratuity. The period of unauthorized use of occupation was from 01.06.2010 to 03.11.2014. Admittedly, no permission was granted to retain the quarter.

7. The issues posed for consideration are as under :-

(I) Whether it is permissible to deduct penal charges for unauthorized occupation of Government servant from gratuity.

(II) Whether denial of HRA to the Applicant from November, 2010 to 03.11.2014 because of retention of quarter at Pune is just and legal.

(III) Whether penal charges levied by the Respondents are correct.

8. **As to Issue No. (I) :**

Now turning to the decision referred by the learned Advocate for the Applicant in **N.C. Sharma's** case (cited supra), the recovery of penal charges were sought from Railway employee on account of retention of quarter despite transfer to other place from retiral benefits. It is in that context, the Hon'ble High Court while deciding **N.C. Sharma's** case, relied on its previous decision **2003 (3) Mh.L.J. (V.U. Warriar Vs. Secretary, Oil and Natural Gas Commission & Anr.)** and on that basis held that the Respondents therein ought to have taken recourse of the provisions of 'Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and further held that it is not permissible for the authorities to fall back on the pension rules pertaining to grant of retiral benefits and to effect recovery therefrom. It is on the basis of decision of Hon'ble High Court in **N.C. Sharma's** case, this Tribunal decided **O.A.No.739/2017**

**(Shivaji Pophale Vs. Commissioner of Police & Ors.) decided on 04.06.2019** and recovery was quashed with liberty to the Respondents to recover the dues by adopting due process of law.

9. However, as of now, the legal position is quite changed since the decision in **V.U. Warriar's** case which was relied by Hon'ble Bombay High Court in **N.C. Sharma's** case was challenged by ONGC before Hon'ble Supreme Court wherein the decision of Hon'ble High Court was set aside as noticed from the Judgment reported in **(2005) 5 SCC 245 (Secretary, ONGC Ltd. & Anr. Vs. B.U. Warriar)**. As such, it will be useful to refer this subsequent decision which now hold the field and clinch the issue in favour of Respondents.

10. It would be apposite to refer the decision of Hon'ble Supreme Court in **Secretary, ONGC Ltd. & Anr. Vs. B.U. Warriar**. It was a case pertaining to retention of quarter by the employee of ONGC Ltd, even after retirement. Earlier, the Hon'ble Bombay High Court delivered the Judgment in favour of the Applicant (reported in 203 (3) Mh.L.J., Page 168) wherein it was held that to recover damages from retired employees for unauthorized occupation, the employer has to pursue appropriate remedy in law, but the said amount cannot be set off against pension and gratuity amount payable to retired employee. Being aggrieved by the decision, the ONGC carried the matter before the Hon'ble Supreme Court and while setting aside the decision of Hon'ble Bombay High Court, the Hon'ble Supreme Court upheld the action of ONGC to deduct the amount of penal charges for unauthorized occupation from the gratuity and turned down the contention raised by the employee that it cannot be deducted from retiral benefits. In this behalf, Para No.17 of decision is material, which is as follows :-

***“17. Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be allowed. It is no doubt true that pensionary benefits, such as gratuity, cannot be said to be 'bounty'. Ordinarily, therefore, payment of benefit of gratuity cannot be withheld by an employer. In the instant case, however, it is the specific case of the Commission that the***

*Commission is having a statutory status. In exercise of statutory powers under Section 32(1) of the Act, regulations known as the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 have been framed by the Commission. In Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi and Anr., [1975] 1 SCC 421 the Constitution Bench of this Court held that regulations framed by the Commission under Section 32 of the Oil and Natural Gas Commission Act 1959 are statutory in nature and they are enforceable in a court of law. They provide for eligibility of grant of gratuity, extent of gratuity, etc. Regulation 5 deals with recovery of dues of the Commission and reads thus :*

*“5. Recovery of Dues.- The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of Commission's dues before the payment of the death-cum retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of the deceased officer, as the case may be.”*

*The above regulation leaves no room of doubt that the Commission has right to effect recovery of its dues from any officer without his consent from gratuity. In the present case admittedly the respondent retired after office hours of February 28, 1990. According to the Commission, he could be allowed four months' time to occupy the quarter which was granted to him. His prayer for extension was considered and rejected stating that it would not be possible for the Commission to accept the prayer in view of several officers waiting for quarters. He was also informed that if he would not vacate the quarter, penal rent as per the policy of the Commission would be recovered from him. But the respondent did not vacate the quarter. It was only after eviction proceedings were initiated that he vacated the quarter on May 16, 1991. In the circumstances, in our opinion, it cannot be said that the action of the Commission was arbitrary, unlawful or unreasonable. It also cannot be said that the Commission had no right to withhold gratuity by deducting the amount which is found “due” to Commission and payable by the respondent towards penal charges for unauthorized occupation of the quarter for the period between 1-7-1990 and 15-5-1991.”*

11. Material to note that while deciding the matter, the Hon'ble Supreme Court also referred the decisions in **R. Kapur's** case, **Gorakhpur University's** case which were referred in the decision of Hon'ble Bombay High Court in **N.C. Sharma's** case and finally held that the action of ONGC deducting penal charges from the retiral benefits is legal in view of Rules and Regulations framed by the ONGC in this behalf. Regulation 5 deals with the recovery of dues of the Commission which *inter-alia* empowers the Commission to effect recovery of

Commission's due from retiral benefits even without obtaining his consent.

12. As such, in view of decision of Hon'ble Supreme Court in **V.U. Warriar's** case, it is no more *res-integra* that the Government dues including penal charges for unauthorized occupation of service quarter can be recovered from the gratuity and other retiral benefits. This being the latest position of law, the decisions relied by the Applicant is of no assistance to him. While deciding **O.A.No.739/2017**, the decision of Hon'ble Supreme Court in **V.U. Warriar's** case was not brought to the notice of this Tribunal. Be that as it may, now in view of decision of Hon'ble Supreme Court in **U.V. Warriar's** case, the contention raised by the Applicant that recovery of penal charges from retiral benefits is not permissible will have to be rejected.

13. The submission advanced by the learned Advocate for the Applicant that after retirement of the Applicant, fresh notices under Section 134A of 'Rules of 1982' were required to be given and admittedly, it being not given, the action of deduction of penal charges from gratuity is unsustainable is totally misconceived and fallacious.

14. At this juncture, it would be apposite to reproduce Rule 132 and 134A of 'Rules of 1982' which are as follows :-

**"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.)”

15. As such, it is crystal clear that under Rule 132 of ‘Rules of 1982’, the Government dues which include dues pertaining to Government accommodation can be justified from the retirement gratuity of the Government servant. Material to note that there is no such requirement of issuance of notice to the Government servant prior to adjustment of gratuity towards Government dues. Whereas, where the recovery of Government dues on account of Government accommodation is sought from the pension, in that event only, as per proviso to Rule 134A, a prior notice to Government servant is mandatory. There is material distinction in between Rule 132 and Rule 134A of ‘Rules of 1982’. In the present

matter, admittedly, the amount of penal charges was adjusted from gratuity and not from pension. This being the position, it is squarely covered by Rule 132 of 'Rules of 1982'.

16. Indeed, the Government by G.R. dated 13.11.2001 (Page No.76 of P.B.) made it clear that in terms of Rule 132 of 'Rules of 1982', the penal charges on account of retention of Government quarter can be recovered from gratuity and directions were accordingly issued to take appropriate action against concerned defaulters.

17. **As to Issue No.(II) :**

True, after transfer of the Applicant to Kolhapur, no quarter was allotted to him. Besides, no HRA was paid from November, 2010 to 03.11.2014. However, only because no service quarter was provided to him at Kolhapur, he cannot justify retention of quarter allotted to him while in service at Pune. After transfer, he was bound to vacate the quarter and then to apply for quarter at Kolhapur. It appears that, as he had retained quarter allotted to him at Pune, he was not allotted quarter at Kolhapur and HRA was also not paid from November, 2010 to 03.11.2014. In such situation, all that, he can ask for HRA for the period in which it was not paid but at any rate cannot escape the liability to pay the penal charges for unauthorized occupation of quarter.

18. The learned P.O. could not point out any G.R. or provision to deprive of the Applicant from getting HRA while he was serving at Kolhapur. Non-payment of HRA cannot be justified on the ground of retention of another quarter. Otherwise, it would amount to double penalty i.e. deprivation of HRA and also to pay penal charges. In such situation, the Government can charge penal rent for retention of quarter beyond permissible period but HRA cannot be denied. Therefore, the impugned order rejecting representation of the Applicant for grant of HRA for the period from November, 2010 to 03.11.2014 is unsustainable

and Respondents are liable to pay HRA of the said period to the Applicant. The denial of HRA would be harsh and iniquitous. However, in so far as action for levying penal charges and deduction of the same from gratuity, it cannot be questioned in view of aforesaid discussion.

19. **As to Issue No. (III) :**

Smt. Punam Mahajan, learned Advocate for the Applicant adverting to G.R. dated 29.07.2011 relied by the Respondents for recovery of penal charges submits that the said G.R. pertains to recovery of penal charges of the quarters in Greater Mumbai, and therefore, the levying of penal charges at the rate of Rs.50/- is incorrect. I find substance in her submission in so far as quantum of penal charges per sq.ft. is concerned.

20. The Respondents have placed on record the G.R. dated 15.06.2015 to justify levying of penal charges at the rate of Rs.50/- per sq.ft. The perusal of G.R. dated 15.06.2015 (Page No.49 of P.B.) reveals that it is applicable to entire Maharashtra excluding Greater Mumbai. However, material to note that, as per this G.R, the rates of penal charges are prescribed as per classification of the cities issued by Finance Department, Government of Maharashtra by G.R. dated 24.08.2009 which made classification of the cities falling in 'X', 'Y' and 'Z' category. It is stated in G.R. dated 15.06.2015 that the rates prescribed in G.R. dated 29.07.2011 would apply, but it should be as per classification of Cities. Clause No. 14 of G.R. further made it clear that this G.R. dated 15.06.2015 would also apply to the pending recoveries. This being the position, it is necessary to find out whether Pune falls in category 'X', 'Y' or 'Z'.

21. The learned P.O. today has tendered the G.R. dated 24<sup>th</sup> August, 2009 about the classification of Cities as referred in G.R. dated 15.06.2015. It is taken on record and marked by letter 'X'. The perusal of G.R. reveals that only Mumbai City falls in 'X' category. Whereas,

Pune, Nagpur, Nashik, Amravati Municipal Corporation, Aurangabad, Bhivandi, Solapur and Kolhapur fall within category 'Y'. As per G.R. dated 15.06.2015 for quarters situated in 'Y' category (Pune), the penal rent to be levied is at the rate of Rs.35/- per sq.ft. Thus, it is quite clear that penal charges of Rs.50/- per sq.ft. is applicable to Mumbai only and for Pune, it should be at the rate of Rs.35/- per sq.ft. This being the position, the levying of penal charges at the rate of Rs.50/- per month is incorrect. The Respondent No.2 is thus required to calculate the penal charges at the rate of Rs.35/- per sq.ft. afresh.

22. The totality of aforesaid discussion leads me to conclude that the action of Respondents to adjust penal charges from gratuity of the Applicant is legal and valid but levying of charges at the rate of Rs.50/- per sq.ft. is incorrect and it needs to be calculated afresh at the rate of Rs.35/- per sq.ft. as concluded above. The O.A, therefore, deserves to be allowed partly. Hence, I proceed to pass the following order.

### **ORDER**

- (A) The Original Application is allowed partly.
- (B) The impugned action of Respondent No.2 to deduct/adjust penal charges for unauthorized occupation of service quarter from gratuity is held legal.
- (C) The impugned communication dated 04.04.2019 rejecting HRA for the period from November, 2010 to 03.11.2014 is unsustainable in law and to that extent, it is quashed.
- (D) The Respondent No.2 is directed to pay HRA from November, 2010 to 03.11.2014 to the Applicant as per the then prescribed rates within two months from today.

- (E) The Respondent No.2 is further directed to re-calculate the penal charges at the rate of Rs.35/- per sq.ft. afresh and it shall be adjusted towards gratuity payable to the Applicant and remaining balance amount after deducting amount due shall be refunded to the Applicant within two months from today.
- (F) No order as to costs.

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

Mumbai

Date : 10.12.2020

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2020\December, 2020\O.A.580.19.w.12.2020.Recovery of Penal Charges.doc

Uploaded on