

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2576 OF 2014**

Ekta Aswal D/o Mr. Vinod Kumar Aswal

..Petitioner

Vs.

D. I. G. (Deputy Inspector General) & Ors

..Respondents

Mr. Rahul Walia a/w Ms Rimi Jain I/b Ms Yogita Singh for the Petitioner

Mr. Y. S. Bhate a/w Mr. D. P. Singh for the Respondents

**CORAM :R. M. SAVANT, &
M. S. KARNIK, JJ**

DATE : 26th SEPTEMBER, 2018

P.C.

1 The Writ Jurisdiction of this Court is invoked against the orders/communications dated 8-11-2013, 25-11-2013, 29-11-2013, 18-1-2014 and 22-1-2014. In so far as the said communications / orders are concerned, they are as follows: the communication dated 8-11-2013 is a charge sheet which was served upon the Petitioner, the communication dated 25-11-2013 is an order issued by the authorities directing the Petitioner to vacate the service quarters in question. The order dated 29-11-2013 is an order passed by the Disciplinary Authority i.e. Deputy Commandant (Administrative) CISF Unit, imposing punishment of stoppage of two increments of the Petitioner with future effect. Thereafter the order dated 18-1-2014 is passed by the Appellate Authority i.e. Senior Commandant CISF Unit, in the Appeal filed by the Petitioner and lastly by the communication dated 22-1-2014 the Petitioner is directed to vacate the quarters in view of the development in the departmental proceedings.

2 At this stage, it is required to be noted that the above Writ Petition had come for admission before a Division Bench of this Court on 30-1-2014 on which day the Division Bench granted ad-interim relief in terms of prayer clause (d) and issued a further direction that the Petitioner would not be evicted from the service quarters and neither recovery of penal rent would be made from the Petitioner. Hence from 30-1-2014 the Petitioner has continued to occupy the service quarters under the orders of this court. We are informed by the Learned Counsel for the Petitioner Mr. Walia that the Petitioner has vacated the service quarters on 25-11-2017 and handed over possession to the authorities due to her transfer from Mumbai.

3 The gravamen of the allegations in the departmental proceedings was in respect of the service quarters which was allotted to the Petitioner and in respect of which service quarters the allegation was that the same was not occupied by the Petitioner as it was found locked during the course of the inspection. As indicated above the charge sheet was served upon the Petitioner, the Petitioner submitted her reply and her defence in the said reply was that for some period between August to September 2013 her mother was unwell and that she had to be moved to Delhi and was admitted in Metro Hospital, in Delhi. The Petitioner showed her inclination to produce the relevant hospitalization papers if the administration so deemed it fit. The

departmental proceedings have ultimately culminated in the order passed by the Disciplinary Authority whereby the punishment of stoppage of two increments with future effect was passed against the Petitioner. The Petitioner thereafter invoked the remedy by way of an Appeal, which Appeal was also dismissed by the Appellate Authority. Ultimately as a result of the orders passed in the departmental proceedings, the last communication dated 22-1-2014 came to be addressed to the Petitioner directing her to vacate the service quarters. We are informed by the Learned Counsel for the parties that a remedy by way of a Revision under Rule 54 of the CISF Force Rules 2001, is available to the Petitioner. In view of the said alternate remedy being available to the Petitioner we do not deem it appropriate to entertain the Petition in so far as the challenge to the orders passed by the Disciplinary Authority and the Appellate Authority, are concerned. We therefore relegate the Petitioner to the said remedy by way of a Revision.

4 However, there is a dispute as regards whether the Petitioner is liable to pay penal rent for the period between 30-1-2014 i.e. the date when the Division Bench passed the ad-interim order and 25-11-2017 i.e. when the Petitioner has vacated the service quarters. The Learned Counsel appearing on behalf of the Respondent Mr. Bhate would strenuously urge before us that since the charge against the Petitioner has been proved in the departmental proceedings, the Petitioner is liable to pay the penal rent for the said period

also i.e. 30-1-2014. However, the Learned Counsel very fairly states that though the computation of the penal rent has been notionally made, no such demand as yet been made by the Respondents in view of the fact that the above Petition is pending.

5 In our view, it would be necessary to clear the air in so far as the said aspect is concerned so that the parties know where they stand. In so far as the occupation of the Petitioner between 30-1-2014 and 25-11-2017 is concerned, there can be no dispute about the fact that the Petitioner was protected by the ad-interim order which was passed by a Division Bench of this Court in the above Writ Petition on 30-1-2014. Hence the occupation of the Petitioner can be said to be under the said order passed by the Division Bench. In the absence of any direction as contained in the said order as regards the payment of penal rent, it would have to be held that the said ad-interim order was passed by the Division Bench being satisfied that the Petitioner had made out a prima facie case for grant of the said order. In our view therefore the Petitioner cannot be charged penal rent for the period 30-1-2014 and 25-11-2017 when the Petitioner ultimately vacated the quarters. Since the Petitioner has continued to occupy quarters till 25-11-2017, we are of the view that the interest of justice would be served if the Petitioner is directed to pay the normal rent, if not already paid, for the period between 30-1-2014 and 25-11-2017. If any recovery at the penal rent has already been made by the

Respondent for the said period, then the same would have to be adjusted and in the event a refund is required to be made to the Petitioner, then such refund would have to be made within eight weeks from date, but we clarify that the aforesaid directions would be restricted to the period between 30-1-2014 and 25-11-2017. The Petitioner may file the Revision within 4 weeks from date. The fact that the Petitioner was prosecuting the instant Petition in this court from 27-1-2014 would be taken into consideration by the Revisionary Authority, if the issue of limitation arises. The Revisionary Authority is expected to decide the Revision expeditiously bearing in mind the time frame which has been stipulated by the Rules. In the light of the directions as above, the above Writ Petition to stand disposed of.

[M. S. KARNIK, J]

[R.M.SAVANT, J]

Meera
Mahesh
Jadhav

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by Meera
Mahesh Jadhav
Date:
2018.09.27
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