

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 28 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Mrutunjay Barik, aged about 46 years, S/o late Baikuntha Nath Barik, resident of Vill-Bandhakuda, PO-Patalipanka, Via-Kujang, PS-Patakura, Dist.- Kendrapara, Odisha, Pin – 754141, presently working as SPM, Rourkela-13, SO under Rourkela HO, Rourkela-769013.

.....Applicant

VERSUS

1. Union of India, represented through the Secretary of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist.- Khurda, Odisha-751001.
3. The Postmaster General, Sambalpur Region, Sambalpur-768001.
4. The Senior Superintendent of Post Offices, Sundargarh Division, Sundargarh-770001.

.....Respondents.

For the applicant : Mr.C.P.Sahani, counsel

For the respondents: Mr.A.K.Mohapatra, counsel

Heard & reserved on : 6.12.2019

Order on : 28.1.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

2. The applicant while working as Postal Assistant (in short PA) at Rourkela was allotted a quarter No. PT-105 in the year 2012. When he was transferred to Bisra and joined there on 21.7.2016, he continued to occupy the said quarter. On 25.4.2017 (Annexure-A/2) he was instructed by the respondents to vacate the quarter no. PT-105 and in reply, the applicant submitted a representation dated 3.5.2017 (Annexure-A/3) requesting for 15 days time. On 7.6.2017, the applicant was re-posted at Rourkela and on 21.6.2017 (Annexure-A/5) he made a representation to be allowed to retain the same quarter as he has been posted at Rourkela. When the quarter was not re-allotted in his favour, he vacated it on 1.9.2017 vide the report at Annexure-A/6. Thereafter, vide the impugned order dated 16.11.2017, the respondent no. 4 imposed the damage rent of Rs. 2,25,919/- on the applicant with the order of recovery at the rate of Rs. 10,000/- per month from the pay of the applicant from November, 2017 (Annexure-A/7).

3. The applicant challenged the order dated 16.11.2017 (A/7) in this OA with the following prayers:-

- “(i) Admit the Original Application and
- (ii) After hearing the counsels for the parties be further pleased to quash the impugned order vide Memo No. D/G-26/PT-105 dated 16.11.2017 at Annexure-A/7. And consequently, orders may be passed directing the Respondents to refund the amount recovered from the pay of the applicant with interest.

And/Or

- (iii) Pass any other order(s) as the Hon'ble Tribunal deem just and proper in the interest of justice considering the facts and circumstances of the case and allow the OA with costs.

4. Following main grounds have been urged by the applicant in the OA:-

(i) Bisra is situated within 20 km from Rourkela for which there was no need to change the quarter after the applicant's posting at Bisra in view of the provisions of the CCS (Joining Time) Rules, 1979 (Annexure-A/10), under which the station falling within the jurisdiction of the same municipality or corporation will be treated as same station. This is also reiterated in Govt. of India's letters at Annexure-A/11.

(ii) No cancellation of the allotment of the quarter in question was done by the respondents. Had it been cancelled, the applicant would have vacated immediately. As per the Govt. of India OM dated 7.9.2016 (Annexure-A/12), the damage rent is to be charged from the date of cancellation of allotment.

(iii) The applicant was not granted any TA for joining at Bisra and the licence fee was being recovered from the applicant. He also did not draw any HRA.

(iv) As per the circular dated 6.5.2003 (Annexure-A/13), occupation beyond 8 months can be permitted by Head of Circle at the double the licence fee.

(iv) Since the applicant was re-posted within one year at Rourkela, as per the Govt. Of India OM dated 31.7.2000 (Annexure-A/14), the allotment should have been regularized and no damage rent could have been charged.

(v) The damage rent has been arbitrarily calculated at 40 times, which was applicable for general pool quarter and not for the quarter in question.

5. Counter has been filed by the respondents opposing the OA on the ground that the applicant, after his transfer never represented for retention of the quarter beyond the permissible date as per the DG (Posts)'s circular dated 17.2.1996 (Annexure-R/1 of the Counter). The applicant completed normal

retention period on 19.9.2016 after which he was liable to [pay the damage rent till date of vacation. It is stated that Bisra is situated at a distance of 15 km from Rourkela and it is a rural area and hence, it is not coming within the same station as Rourkela. It is further averred that the allotment of quarter is deemed to be cancelled as per the circular at Annexure-R/2. The applicant was informed about the normal retention period of quarter, but still he did not respond to the instructions. It is stated that the penal rent has been calculated as per the circular dated 22.7.2016 (Annexure-R/5). For the averment at para 5.3 of the OA that occupation beyond 8 months can be permitted by Head of Circle as per the circular dated 6.5.2003 (A/13), there is no specific denial of this averment.

6. The applicant filed Rejoinder, reiterating the stand in the OA. It is averred that the matters regarding unauthorized occupation of quarter is to be handled by the Estate Officer who can declare if the occupation of the quarter was unauthorized or not and to determine the damage rent. The rule 8 of the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971 (Annexure-A/15) has been referred to in this regard. It is also stated that as per the DG's circular dated 2.7.1952 (Annexure-A/16), for imposing damage rent, cancellation of allotment was necessary.

7. Heard learned counsel for the applicant and the respondents reiterating the contentions in their respective pleadings and perused the record. The issue to be decided in this case is **whether it was necessary to cancel the allotment of quarter and/or to declare the occupation of quarter to be unauthorized before imposing the damage rent as per the rules.**

8. In reply to the contention that for imposing damage rent, cancellation of allotment was necessary, the respondents have cited the S.R. 317-B-B-22 (Annexure-R/2, which states as under:-

“Overstayed in residence after cancellation of allotment

S.R.317-B-22. Where, after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or had remained in occupation of the officer to whom it was allotted or of any persons claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges as may be determined by Government from time to time, or twice the licence fee he was paying, whichever is higher:

[Provided that an officer in special cases, except in case of death, and retirement or terminal leave, may be allowed by the Directorate of Estates to retain a residence for a period not exceeding six months beyond the period permitted under SR 3127-B-II(2), on payment of twice the flat rate of licence fee or twice the licence fee he was paying, whichever is higher.]

The S.R. 317-B-22 as cited by the respondents does not state that after the normal retention period of the quarter, the allotment will be deemed to be cancelled. Further, the Estate Officer is authorized to allow retention of quarter up to six months on payment of twice the rate of licence. Similarly, the circular at Annexure-R/1 permitted the authorities to allow retention of the quarter for six months beyond normal retention period. But the respondents did not allow such extension in response to the representation of the applicant after he rejoined at Rourkela dated 21.6.2017 (Annexure-A/5) although his request for retention of the quarter after rejoining was not allowed and the reason stated in the Counter is that no representation was received from the applicant after normal retention period of two months.

9. It is noted that no notice was issued by the respondents to the applicant after failure of the applicant to vacate the quarter after two months and first letter/notice issued to the applicant in this regard was on 25.4.2017 (Annexure-A/2) which was after about six months from 20.9.2016 when the normal retention period was completed. The reason for not informing the applicant or issuing any notice immediately after 20.9.2016 has not been explained in the Counter. Further, the allotment of the said quarter was not cancelled. Under the S.R. 317-B-22 (Annexure-R/2), the damage rent can be imposed after cancellation or deemed cancellation of the allotment of the quarter. The circular of the DG dated 21.5.1993 circulated at Annexure-R/1 did not provide for automatic cancellation of the allotment of quarter after normal/permitted period of retention of the quarter. Beyond permitted retention period, retention of quarter will be treated as unauthorized for which the competent authority was required to take action for vacation of quarter as soon as possible at least by issuing a notice to the occupant of the quarter, which was not done in this case.

10. There is no averment in the Counter if the authorities have disposed of the representation dated 21.6.2017 (A/5) although in para 14 of the Counter it is mentioned that the authorities considered and did not accede to the same. But no order rejecting the said representation has been furnished by the respondents in their pleadings, which shows that no decision of the authorities on the representation dated 21.6.2017 was communicated to the applicant. Thus, the decision to impose the damage rent was taken without disposing of the representation dated 21.6.2017 of the applicant to be permitted to retain the quarter on his posting at Rourkela w.e.f. 7.6.2017.

11. The respondents have communicated to the applicant as to how the total quantum of the damage rent payable by the applicant was calculated. In Annexure-R/5 of the Counter, a Directorate circular dated 22.7.2016 of has

been enclosed based on which the calculation of Rs. 2,25,915/- towards damage rent was made which was communicated to the applicant alongwith the impugned order dated 16.11.2017 (A/7). It is stated in the Counter that this amount will be Rs.3,43,103/- as per the revised rate as per the Directorate circular dated 7.9.2016 (Annexure-R/7). The circular dated 22.7.2016 (Annexure-R/5) states as under:-

“The undersigned is directed to refer to the Directorate of Estates O.M. of even number dated 4.6.2013 vide which revised rates of damages for unauthorized occupation of general pool residential accommodation were issued and the revised rates have been valid upto 31.3.2014 or until further orders and O.M. No. 18011/2/2006-Pol.III dated 22.6.2015 vide which Rates of damages for subletting of GPRA were fixed throughout the country.

2. The matter has been reviewed by the competent authority and it has been decided to revise the rates of damages for unauthorized occupation of general pool residential accommodation for various cities and other stations in the country as below and the revised rates of damages will be applicable to all unauthorized occupants as on 1.7.2016 and to those who are subsequently declared unauthorized occupant.”

12. From above that the circular at Annexure-R/5 based on which the damage rent has been calculated as enclosed with the impugned order dated 16.11.2017 (A/7), is applicable for cases where occupation of the general pool quarter has been declared to be unauthorized. There is nothing in the said circular that the damage rent will be applicable after end of the permissible period for retention of the quarter. The circular at Annexure-R/7 states as under:-

“In partial modification of this Directorate’s Office memorandum of even number, dated 22nd July, 2016 on the subject noted above, the undersigned is directed to state that the matter of charging damages in cases of unauthorized occupation of GPRA quarters has been reviewed by the competent authority and it has been decided to revise the rates of damages for unauthorized occupation of general pool residential accommodation for various cities and other stations in the country as below and the revised rates of damages will be applicable to all unauthorized occupants as on 1.7.2016 and to those who are subsequently declared unauthorized occupant.”

As per the circular at Annexure-R/7 also, it is required to declare the occupation of quarter to be unauthorized before imposing damage rent.

13. The respondents have not furnished any circular or rules to prove their contention that after end of the normal quarter retention period of two months, the occupation of the quarter is deemed to be unauthorized even without cancelling the allotment or declaring the occupation to be unauthorized. Based on the materials available on record, I am of the considered opinion that it was necessary for the authorities to declare the applicant’s occupation of the quarter in question to be unauthorized as required under the circular at Annexure-R/5 and/or to cancel the allotment of the quarter as per the S.R. 317-B-22 (Annexure-R/2), before going ahead with the imposition of the

damage rent on the applicant. In this case, the respondents have not even issued a notice to the applicant and continued to recover the normal licence fee from the salary of the applicant for the quarter after 20.9.2016. **Hence, the question framed in paragraph 7 of this order is accordingly answered in affirmative against the respondents.**

14. For the reasons as stated above, the impugned order dated 16.11.2017 (Annexure-A/7) is quashed and the matter is remitted to the Respondent no. 2 to consider the case of the applicant to regularize the occupation of the quarter in question by the applicant from 20.9.2016 till 31.8.2017 in accordance with the circular dated 6.5.2003 (annexure-A/13 of the OA) and take a decision about excess licence fee or rent that would be payable by the applicant for this period. The amount already recovered from the applicant in pursuance to the damage rent will be adjusted against the excess rent if found payable by the applicant over and above the normal licence fee from already recovered after consideration by the Respondent No. 2 as stated above and excess amount recovered, if any, be refunded to the applicant or balance amount payable by applicant be informed to him. The respondent No.2/competent authority will pass a speaking order after consideration of the case as above to be communicated to the applicant within four months from the date of receipt of this order.

15. The OA stands allowed as above. There will be no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)