

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 718 of 2014

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Hon'ble Mr. C. V. Sankar, Member (A)

1. Mr. Jerimio Naik, aged about 63 years, S/o: Late
 Sahadev Naik, At:- Totomaha, PO; Mndakia, PS;
 Raikia, Dist - Kandhamala, at present Ananda
 Bhawan, 3rd Line, Ayodhya Nagar, Berhampur - 10
Applicant.

VERSUS

1. Union of India, represented through its Secretary,
 Department of Post, Dak Bhawan, Sansada Marg, New
 Delhi – 110001.

2. Chief Post Master General, Odisha Circle, PMG
 Square, Bhubaneswar, Dist – Khurda.

3. Superintendent of Post Office, Berhampur Division,
 Berhampur – 760001.

4. Director of Accounts, Office of the Director of Postal,
 Mahanadi Vihar, Cuttak – 753004.

.....Respondents.

For the applicant : Mr. S. Mohanty, Advocate.

For the respondents: Mr. J. K. Nayak, Advocate.

Heard & reserved on :20.01.2021

Order on :02.02.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

(i) *To admit the case and issue notice to the respondents to file their show cause as to why the case of the applicant shall not be allowed and after hearing the parties, the case of the applicant be allowed and pass necessary order to quash the impugned order vide Annexure – 17 dated 15.09.2014 as the same is illegal, arbitrary and not sustainable in the eye of law and the gratuity amount of the applicant be released along with interest without any further delay;*

(ii) *And/or pass any other order(s) which deems fit and proper for adjudication of the case.*

2. The brief of the case as inter alia averred by the applicant in the OA is that he retired after attaining the age of superannuation vide retirement notice dated 30.06.2011 (Annexure A/1). He was sanctioned provisional retirement gratuity of Rs. 6,17,1000/- and office order dated 01.07.2011 (Annexure A/2) was issued for drawal and disbursement of the said amount to the applicant in time observing the usual formalities and adjusting all govt dues outstanding against the applicant. The applicant was issued pension payment order and pension of the applicant

was fixed vide order dated 27.07.2011 (Annexure A/3).

The applicant submitted that since the condition of the applicant's wife was serious and his daughter was prosecuting her study in MKCG Medical College Berhampur the applicant submitted an application dated 02.03.2012 (Annexure A/4) to PMG, Berhampur to retain the quarter willing to pay the market rent for the said quarter as calculated by the department.

When no step was taken the applicant again submitted another application dated 13.02.2012 (Annexure A/5) to retain the quarter but the respondents still did not reply and the applicant presumed that the respondent had no objection if the quarter is retained by the applicant. The applicant submitted that vide letter dated 02.4.2012 (Annexure A/6), Respondent No.3 intimated the applicant to vacate the quarter by 29.2.2012 and the allotment stands cancelled w.e.f. 01.03.2012 as the applicant was given permission to retain the quarter for a period of eight months from 01.07.2011 to 29.02.2012. Thereafter the Respondent No. 3 vide letter dated 02.04.2012 requested the Asst. Engineer (Civil) to calculate the applicable market rent of the quarter from 01.03.2012 and intimate the amount to be recovered to the office. The applicant submitted that the Respondent No. 3 vide letter dated 06.09.2012 (Annexure A/8) asking to vacate the

quarter within three days from receipt of the letter failing which suitable police action would be initiated against the applicant. The applicant then submitted an application dated 10.09.2012 (Annexure A/9) stating that since the market rent was not calculated he had not vacated the quarter. Thereafter the respondents vide letter dated 20.06.2013 (Annexure A/10) issued to the applicant to deposit Rs. 1,34,064/- for 16 months occupation of the quarter up to June 2013. The applicant then handed over the quarter key vide letter dated 09.07.2013 (Annexure A/11) and sought clarification from the respondents about the damage rent amount fixed by the respondents. The respondents vide letter dated 22.07.2013 (Annexure A/12) asked the applicant to specify the nature of clarification and also requested the applicant to deposit the damage rent. The applicant submitted that no clarification was given to the applicant. The applicant requested vide letter dated 19.07.2013 (Annexure A/13) to supply information on calculation of damage rent. Thereafter the applicant wrote a letter dated 09.09.2013 (Annexure a/14) to the respondent to calculate the marker rent instead of damage rent which was prevailing during the month of March, 2012 so that he would deposit the full amount. The applicant also submitted an RTI application dated

09.09.2013 (Annexure A/15) to know how the market rent has been calculated by the respondents. He agains submitted another application dated 09.10.2013 (Annexure A/16) intimating the respondents that the market rent in respect of the quarter has not been calculated properly. Thereafter the respondents vide impugned order dated 15.09.2014 (Annexure A/17) under the head of intimation of revised gratuity on 25.09.2014 stated that total amount of Rs. 1,35,145/- to be recovered from the gratuity (Rs. 68,658/-) and pension of the applicant (13,760/- per month from September 2014 and last instalment of Rs. 11,447 for the month of January 2015). The applicant submitted that impugned order is totally wrong both on merit as well as technicality which is clear form the letter dated 05.04.2013 (Annexure A/18), dated 03.04.2013 (Annexure A/19) and letter dated 09.04.2013 (Annexure A/20). Hence the OA.

3. The respondents in their counter inter alia averred that the applicant had retired on superannuation on 30.06.2011 and had vacated the quarter on 05.07.2013 i.e. after 24 months and 04 days of his retirement (8 months with permission and unauthorizdly for 16 months 04 days). The respondents submitted that as per Rule No. SR 317-B-

11(2) (ii) (Annexure R/2) a government servant after retirement can retain quarter for 2 months on normal license fee and another 2 months on double the normal licence fee from the date of retirement. And as per second provision to SR 317-B-22 of Fundamental & Supplementary Rules, 1992 (Annexure R/3) envisages that in the event of retirement or terminal leave, the allottee shall be eligible to retain the government accommodation for a further period of two months on payment of four times of normal license free and subsequent two months on payment of six times of normal license fee for special reasons. Further para 2 of Government of India, Directorate of Estate OM dated 29.10.1997 and 02.02.1998 (Annexure R/4) also envisage the same thing and the allottee will be required to apply for retention of Govt. quarter on medical/educational grounds before expiry of the initial period of four months duly supported by documentaty proof along with bank draft in respect of licence fee and the applicant failed either to apply in time or to make deposit the required licence fee. The respondents further submitted that the applicant vide letter dated 28.02.2012 (Annexure R/5), 02.04.2012 (Annexure R/6) and 06.09.2012 Annexure R/7) was directed to vacate the unauthorized occupation of the quarter as the allotment has been cancelled w.e.f.

01.03.2012. The respondents submitted that ass per Deptt. Of Post letter dated 16.01.2003 (Annexure R/8) the damage rent was calculated by Asst. Engineer, Berhampur Civil Sub Division vide calculation sheet dated 11.06.2013 (Annexure R/11) an amount of Rs. 8379/- per month was arrived, thus totaling the amount to Rs. 134064/- for 16 months which was communicated to applicant vide letter dated 20.06.2013 (Annexure R/9). The respondents submitted that since the applicant left the quarter on 05.07.2013 without depositing damage rent of Rs. 134064 + Rs 1081 (for four days from 01.07.2013 to 04.07.2013) = Rs. 135145/-, the Post Master General, Berhmapur Region directed to adjust the said amount from 10% of Retirement Gratuity amounting to Rs. 68658/- and Dearness relief of the applicant. Accordingly the Asst. Director (Accounts) wrote a letter dated 05.06.2014 (Annexure R/12) to Sr. Accounts Officer (Pension) for recovery of outstanding amount and accordingly Sr. Accounts Officer (Pension) issued to order to Sr. Postmaster, Berhmapur vide letter dated 12.09.2014/15.09.2014 (Annexure R/13) that the damage rent of Rs. 135145/- has to be recovered as (a) withheld DCRG amount of Rs. 68658 of the applicant may be totally adjusted and (b) rest amount of Rs. 66487/- has to be recovered from Dearness

Relief @ Rs. 13760/- per month commencing from the month of September, 2014 and last instalment being Rs. 11447/- in January, 2015. The respondent submitted that recovery of outstanding government dues pertaining to Govt. accommodation is in accordance with Rule 72 (5) and Rule 72 (6) of CCS (Pension) Rules, 1972 (Annexure R/14) and as per Rule 71 (3) (a) of CCS (Pension) Rules, 1972 (Annexure R/17) which envisages "The expression 'Government Dues' includes – (a) dues pertaining to Government accommodation including arrears of license fee, if any".

4. Learned counsel for the applicant relied on some citations in his rejoinder including the following citations:

- a) CAT, Patna Bench in OA No. 92/1995 in RP Singh verus Union of India and others.
- b) MANU/OR/0715/2010 in WP (c) No. 11120 of 2003 (Gagan Kumar Behera vrs Union of India and others.
- c) MANU/SC/0476/2002 (Union of India and others versus Madan Mohan Prasad)

5. Learned counsel for the respondents relied on few citations including the following:

- a) CAT, Principal Bench order dated 13.12.2017 in OA No. 690/2014.

b) Hon'ble Supreme Court order dated 14.09.2000 in CA No. 5195-5197 of 1998 Wazir Chand versus Union of India and others. 2001 (2) Supreme 447.

6. We have gone heard the learned counsels, carefully gone through their pleadings and citations relied upon. The citations relied by learned counsel for the applicant is not applicable to the facts and circumstances of this case.
7. It was submitted by learned counsel for the applicant since no proceeding under public premises eviction act has been initiated and there is no order passed by estate officer to hold that occupation of quarter is unauthorized and regarding any specific direction by the estate officer for payment of any damage rent, the applicant is not liable to pay any such damage rent. Admittedly the applicant had retired on superannuation on 30.06.2011 and had vacated the quarter on 05.07.2013 i.e. after 24 months and 04 days of his retirement (8 months with permission and unauthorizedly for 16 months 04 days). Accordingly to the calculation chart, the amount of Rs. 135145/-(Rs. 134064 + Rs 1081 for four days from 01.07.2013 to 04.07.2013) as damage rent is due against the applicant .

8. Learned counsel for the applicant has relied on few citations and submitted that in view of said decision gratuity amount of the applicant after retirement cannot be withheld since the amount in question does not come under the definition of Govt. dues. Citations as relied upon are not applicable in the present case since those cases were dealing with matters relating to period prior to amendment in question made vide DOPT OM No. 20/16/1998-P&PW(F) dated 19th April 2010 wherein it is stated “on account of licence fee or damages remaining unpaid after adjustment from the withheld amount of gratuity mentioned under sub-rule (5) above, may be ordered to be recovered by the Directorate of Estates through the concerned Accounts Officer from the Dearness Relief without the consent of the pensioners and in such case no Dearness Relief shall be disbursed until full recovery of such dues has been made”. Therefore as per the amended provision the damage rent and damages for the occupying the Govt. quarter clearly comes under definition of Govt. dues.

9. Accordingly the OA is dismissed but in the circumstances without any cost.

(C. V. SANKAR)
MEMBER (A)
(csk)

(SWARUP KUMAR MISHRA)
MEMBER (J)