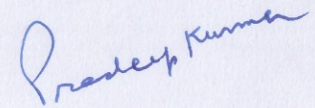


Central Administrative Tribunal
Cuttack Bench

Pre-delivery Order in OA No.590/2014 is sent herewith
for consideration please.

With regards,



(Pradeep Kumar)
Member (A)
13.01.2021

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



**Central Administrative Tribunal
Cuttack Bench, Cuttack**

OA/100/890/2014

Order reserved on : 11.01.2021
Order pronounced on: 15.01.2021

(Through Video Conferencing)

**HON'BLE MR. PRADEEP KUMAR, MEMBER (A)
HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER (J)**

Sri V.Satyanarayan Murty, aged about 46 years,
Son of V.Dharma Rao of Paloor Bangla Street,
Berhampur, Dist. Ganjam,
Presently working as Asstt., Kendriya
Vidyalya Sangathan, Sambalpur,
At./P.O./Dist. Sambalpur.

... Applicants

(By Advocate: Sh. S.K.Ojha with Sh. S.K.Nayak)

VERSUS

1. The Commissioner, Kendriya Vidyalaya
Sangathan, Head Office, 18-Institutional Area,
Saheed Jit Singh Marg, New Delhi-110602.
2. The Dy. Commissioner, Kendriya Vidyalaya
Sangathan, Regional Office, Pragati Vihar Colony,
Mancheswar, Bhubaneswar, Dist. Khurda-75017.
3. The Principal,
Kendriya Vidyalaya, Sambapur,
At./P.O./Dist. Sambalpur.

... Respondent

(By Advocate: Sh. H.K.Tripathy)

**ORDER****Hon'ble Shri Pradeep Kumar Member (A)**

The applicant herein is working in Kendriya Vidyalaya Sangathan (KVS). He was posted to Bhubaneswar. He was allotted a Type-II quarter in the year 2008. In due course, he was allotted a Type-III quarter at Bhubaneswar on 01.06.2012. In exigency of service, applicant was transferred to Sambalpur on 01.08.2012, where he joined on 07.09.2012.

However, the applicant was aggrieved at this transfer and filed OA No.590/2012. The OA was allowed vide judgment dated 22.04.2013. This was challenged by the respondents by filing a Writ No.5280/2013 before Hon'ble High Court of Orissa wherein the orders by this Tribunal were set aside on 23.05.2013. The applicant thereafter approached Hon'ble Apex Court by filing SLP No.20174/2013. The same was dismissed on 25.11.2013. With this, the orders by Hon'ble High Court became final.

However, during the prosecution of OA No.590/2012, the applicant preferred a MA No.782/2012 wherein

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directions were issued on 30.08.2012 to permit the applicant to make a representation for retention of the said Type-III quarter at Bhubaneswar till the end of school session, i.e. till 31.03.2013. The instant OA pertains to damage rent in relation to unauthorised retention of this quarter and it is necessary to bring out the background.

2. This representation was submitted on 31.08.2012. The same was rejected on 08.12.2012. Thereafter, taking the plea that applicant's daughter was studying in class 10th at Bhubaneswar, he submitted another representation on 11.10.2012 to retain the said quarter until 31.03.2013.

3. Thereafter, a charge sheet came to be issued to the applicant on 03.12.2012 wherein three charges were laid. While working at Bhubaneswar in the Accounts Branch, the applicant was transferred to administrative Branch and the first charge related to this transfer order. The second charge pertained to : that even though the applicant was retaining the said Type-III quarter, neither had he made any application for retention of the same nor the directions issued to vacate the said quarter were complied with. The

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third charge related to : certain non-performance of the duty assigned to him.

The Disciplinary Authority imposed certain punishment on 19.12.2012 in this charge sheet. The appeal was preferred and the same was rejected vide Appellate Authority order dated 14/16.08.2013.

However, the applicant was aggrieved at this punishment and he preferred OA No.661/2013. This was partly allowed vide orders dated 18.04.2019 wherein the matter was referred to the Appellate Authority to pass fresh directions. The operative part of this order reads as under:

"12. It seen from the orders of the Appellate Authority that applicant had been issued with an order dated 8.10.2012 for vacating the staff quarters but he did not vacate the same. Therefore, in the face of order dated 8.10.2012, applicant's representation dated 04.09.2012 for retention of quarters stood rejected. The further contention of the applicant that the order of the Appellate Authority does not come within the purview of Rule-11 of CCS (CCA) Rules, 1965 and the punishment as modified by the Appellate Authority affecting his pension amounts to major punishment under a minor departmental proceedings falls to the ground in view of Rule-11(iii)(a) of CCS(CCA) Rules, 1965, which reads as under:

"Rule-11(iii)(a) reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension".

Shodish Kumar



13. Since the appellate Authority in modification of the punishment imposed by the Disciplinary Authority has awarded punishment by reducing the applicant by one stage from Rs.12860 + 4200(GP) to Rs.12360 + 4200 (GP) in the time scale of pay of Rs.9300-34800 + 4200 (GP) for a period of one year without cumulative effect and not adversely affecting his pension with immediate effect, in our considered view, this punishment is well within the ambit of Rule-11 of CCS(CCA) Rules, as above.

14. However, it is the case of the applicant that had the Appellate Authority taken into account the grounds urged in Paragraph-5 of the appeal, then, he would have come to a conclusion otherwise than what has been arrived at vide his order dated 14/16.08.2013(A/17) and to this extent, a prejudice has caused to him. I also find from the orders of the Appellate Authority that even though in his order, he has mentioned about the chronological events as submitted by the applicant in his appeal, but he has not dealt with the same with reference to materials on record while passing the order under dated 14/16.08.2013(A/17) and to that extent the order of the appellate authority suffers from infirmity. In view of this, I am of the considered view that the ends of justice would be met if the matter is remitted back to the Appellate Authority to give a relook to that part of the submission made by the applicant in his appeal at Paragraph-5 only and pass an appropriate order within a period of 45 days from the date of this order. Ordered accordingly.

16. In the result, the O.A. is allowed to the extent indicated above, with no order as to costs."

(Emphasis supplied).

4. It is seen that in respect of retention of the said Type-III quarter, the matter was adjudicated and directions are contained in para 12 as highlighted above.

5. Since the quarter was still not vacated, another chargesheet was issued on 21.8.2013. In the course of this disciplinary proceeding, the applicant was granted personal

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hearing also on 27.8.2013. Thereafter it was decided to initiate action under PPE Act-1971. The competent authority under PPE Act issued notice on 3.9.2013 to vacate the quarter within 15 days. Another order was issued under this PPE Act on 20.11.2013 to vacate the quarter within 15 days.

This was challenged by filing OA-23/2014. This OA was dismissed on 30.1.2014 at admission stage. Thereafter, the respondents issued an office order dated 31.12.2013 for imposing the damage rent. It is seen from this order that the total due rent including damage rent was worked out as under:

01.08.2012 to 01.10.2012; at normal rent of Rs.310/- PM.

01.10.2012 to 31.03.2013; at double the normal rent, i.e., Rs.620/- PM, for six months duration.

01.04.2013 till 31.12.2013; at 41 times the normal rent for a period of 9 months i.e. Rs.12,710/- PM.

6. With this, the damage rent was calculated as Rs.1,16,560/- for which instalment for recovery was fixed at Rs.3760/- p.m. starting from January 2014.

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7. It is noted that once the damage rent office order was issued on 31.12.2013, the applicant made an appeal also on 10.01.2014 which was not decided. It is seen that in this representation the applicant requested for retention upto 31.3.2015 on the plea that his daughter was studying class 10+2 at Bhubaneswar.

Simultaneously, the applicant also filed OA No.22/2014 against this damage rent. This OA was disposed of on 10.03.2014 with a direction to the respondents to decide the pending appeal dated 10.01.2014 and not to make any recovery till the appeal is decided.

The said appeal was decided on 29.04.2014. With this, it appears that the recoveries were also re-started.

8. The applicant has now approached the Tribunal by filing the instant OA against these damage rent recoveries.

Relief has been sought to hold that the charge memo dated 21.08.2013 to vacate the quarter is illegal. Relief has also been sought to quash the office order dated 31.12.2013 wherein damage rent has been imposed. It

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has also been prayed that the Appellate Authority order passed on 29.04.2013 be quashed and direction be also issued to refund the damage rent which was already recovered. Certain other reliefs are also sought. Interim relief was also sought against recovery.

9. Further recoveries were stayed vide order dated 12.12.2014. Counter reply was filed on 13.7.2015.

10. The applicant pleaded that while calculating the damage rent, the respondents have relied upon an order dated 07.09.2013 issued by Ministry of Urban Development (MOUD). It is pleaded that even though this letter indicates that the revised rates are applicable w.e.f. 01.01.2013, however, since the letter itself was issued on 07.09.2013, the damage rent cannot be charged for the period 01.04.2013 onwards.

11. The applicant had also pleaded that the damage rent could not be imposed by the respondents as they are not the competent authority for the same and the respondents themselves were not clear whether the quarter was retained on unauthorised basis.

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12. Per contra, the respondents opposed the OA. It was pleaded that the applicant was transferred on 01.08.2012 and thereafter the extent rules permitted retention of the quarter for two months at normal rent and thereafter in case an application has been made to this effect in time, it can be permitted to be retained for a period of six months at double the normal rent. In the instant case, no such application was made in time, i.e. upto 01.10.2012. The applications for retention were made subsequently on 11.10.2012 wherein permission to retain was sought until 31.03.2013.

13. Despite this, while working out the damage rent recoveries, the same are calculated on the basis that first two months retention is charged at normal rent (1.8.2012 to 1.10.2012), the next six months retention is charged at double the normal rent (1.10.2012 to 31.3.2013) and retention beyond (01.04.2013 onwards) at 41 times the normal rent, as was ordered by MOUD circular dated 07.09.2013, which is applicable w.e.f. 01.01.2013.

Shadley Kumar



14. In view of the above, the applicant has already been allowed to retain the quarter for the maximum period of eight months which works upto 31.03.2013, which was the original request also of the applicant, in keeping with the need for education of his daughter who was in class 10 at that point of time. Any retention beyond 1.4.2013 is unauthorised and charging of damage rent in terms of instructions by MOUD is in order and cannot be faulted.

15. It was further pleaded that action has already been initiated under PPE Act and hence the factum that the quarter was under unauthorised occupation is already settled by the action as was taken by competent authority under PPE Act. The applicant had approached the Tribunal against action under PPE Act by filing OA No.23/2014 which was already dismissed on 30.01.2014. In keeping with the above, there is no merit in the OA and it was pleaded that the stay needs to be vacated and OA needs to be dismissed.

16. Matter has been heard at length. Sh. S.K.Ojha with Sh.S.K.Nayak, learned counsel represented the applicant

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and Sh. H.K.Tripathy, learned counsel represented the respondents.

17. The applicant is on a transferrable job and administrative transfers are in the exigency of service. In the instant case, the applicant was transferred from Bhubaneswar to Sambalpur. He was aggrieved at this transfer and preferred the OA No.590/2012 which was allowed on 22.04.2013 but these orders were quashed by the subsequent direction of Hon'ble High Court of Orissa on 23.05.2013. The applicant had already joined at the new place of posting on 07.09.2012.

18. In keeping with this, the retention of quarter at Bhubaneswar needs to be governed by relevant rules only which permit retention for two months (01.08.2012 to 01.10.2012) at normal rent and for next six months (01.10.2012 to 31.03.2013) at double the normal rent and any period of retention beyond this initial eight months time (w.e.f. 01.04.2013 onwards) needs to be charged at damage rent. There was some controversy as to whether applicant had applied for these 8 months retention in time

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or not. However, as things stand in terms of order dated 31.12.2013, the first eight months of retention ended on 31.03.2013 and the same has been charged at the rate applicable. Any period of retention beyond 1.4.2013 has to be charged at damage rent only and action by the respondents cannot be faulted.

19. The applicant has stated in the pleadings that at some stage, he has vacated the said quarter. However, the date for such vacation is not mentioned in OA. On a query from the Bench, learned counsel for applicant submitted across the Bar that the said quarter was vacated at the end of December 2013.

20. In view of the foregoing, the office order dated 31.12.2013 for the damage rent is in conformity with the extent instructions and cannot be faulted. The pleas made by the applicant are without merit and are liable to be dismissed.

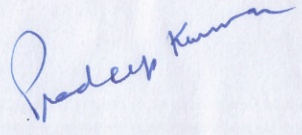
This Tribunal accordingly orders dismissal of the OA. The stay orders granted also stand vacated.

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The respondents are at liberty to recover the balance amount of damage rent, if any, in the monthly instalments already notified. No costs.

(**Swarup Kumar Mishra**)
Member (J)


(**Pradeep Kumar**)
Member (A)

/sunita/