

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 29 of 2018

**Present: Hon'ble Mr. Swarup Kumar Mishra, Judicial Member
Hon'ble Mr. T. Jacob, Administrative Member**

1. Sri Shiba Prasad Mishra, aged about 51 years, S/o – Late Arun Chandra Mishra, resident of Vil – Mangalajodi, PO – Tangi, Via – Tangi, PS – Tangi, Dist – Khurda, Odisha, PIN – 752023, presently working as SPM, Sector – 6, SO under Rourkela, HO, Rourkela – 769002.
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.....Applicants

VERSUS

1. Union of India represented through its 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 Post Master General, Sambalpur Region, Sambalpur – 768001.
4. The Senior Superintendent of Post Offices, Sundargarh Division, Sundargarh – 770001.
5. The General Manager (Town Services), SAIL, Rourkela Steel Plant, Rourkela – 769011.

.....Respondents.

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

respondents: Mr.M.R. Mohanty, counselHeard &

reserved on : 10.03.2021 Date of Order: 20.07.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The original application has been filed by the applicant challenging the order of damage rent to the tune of Rs. 10,30,900/- and recovery at a

monthly installment of Rs. 10,000/- till completion of recovery 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/C-158 dated 16.11.2017 at Annexure A/9. 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.

2. The applicant who was working as Postal Assistant was allotted a quarter at Rourkela 3 SO, as per the allotment order vide Annexure A/1. Subsequently he was transferred from the post of PA Rourkela 3 SO to the post of SPM, Barsuan SO vide memo dated 06.05.2014 (Annexure A/2). It is the claim of the applicant that since there is no quarter or private accommodation available at the interior place at Barsuan which was hilly area, therefore the applicant orally requested for permission to retain the quarter. It was also ascertained that the applicant was again reposted at Rourkela in the month of May, 2017. It is submitted that the respondents department have demanded damage rent from the applicant for the period from 01.08.2014 to 30.06.2017. The applicant has vacated the said quarter on 01.07.2017. It was submitted by learned counsel for the applicant that although there was demand of total higher amount towards damage rent, subsequently, the respondents in their counter affidavit vide Annexure R/6 have stated that the applicant have to pay outstanding of Rs. 15,14,110/-. It was submitted by learned counsel for the applicant that the quarter in question was allotted by the Postal Department and some quarters were allotted by the SAIL to the Postal Department. The present

quarter was allotted to the applicant that the allotment of quarter in favour of the applicant having not been cancelled and there is no order that the applicant is in unauthorized occupation in question charging of damage rent at higher rate on the applicant for occupation of the said quarter is illegal and arbitrary.

3. Learned counsel for the applicant had drawn the attention to the relevant circulars and rules as shown in Annexure A/15. He had further submitted that as per Annexure A/14, the order of cancellation was issued mentioning that the said cancellation is with effect from 01.08.2014 to 30.06.2017. He had also submitted that the order of cancellation cannot be retrospective. He has further submitted that the market rate of Rs. 65,000/- per month as imposed on the applicant is exorbitant and arbitrary. Ld. Counsel for the applicant further submitted that as per the circular of Postal Department vide Annexure A/13 dated 06.05.2003, if no other person is available to take any particular quarter then an employee can be permitted to retain the quarter for a further period on medical or educational ground.

4. Learned counsel for the respondents had further submitted that letter to the applicant was sent by the department vide Annexure R/7 which was delivered to the applicant on 03.12.2016 wherein explanation was called from the applicant. Learned counsel for the applicant submitted that the applicant in his reply vide Annexure A/6 dated 15.02.2017 assured that he will vacate the quarter by 30.04.2017. Ld. Counsel for the respondents submitted that in view of the undertaking given by the applicant at the time of allotment of quarter in his favour and in view of clause as shown in

Annexure A/1, from the date of transfer of the applicant from Rourkela the allotment of quarter in his favour had been deemed to have been cancelled and the applicant was to pay normal fees after two months and thereafter the licence fee for the next six months.

5. It was submitted by the Ld. Counsel for the applicant that in the absence of any eviction order passed by the Estate Officer under the Public Eviction Act, no damage rent can be imposed on the applicant.

6. Ld. Counsel for the applicant had relied upon by the decision given by the Tribunal in OA No. 28/2018 which was disposed of on 28.01.2020. Ld Counsel for the respondents on the other hand had relied on the decision of the CAT, Lucknow Bench passed in OA No. 80/2007 dated 21.10.2013 that the Hon'ble Tribunal taking into consideration of CAT Full Bench Judgment in Ram Pujan V UOI & ors [(1996) 34 ATC 434 (FB)] and held that "Retention of accommodation beyond the permissible period would be deemed to be unauthorized occupation and there would be an automatic cancellation of allotment and penal rent can be levied according to the rates prescribed from time to time". He also gave emphasis of Rule 23 and FRSR (Annexure R/9) and the new Rule 64 and sub rule 5 of SR 317 b.

7. Learned counsel for the applicant relied on few citations including the following:

- a) CAT, Cuttack Bench order dated 28.01.2020 in OA No. 28/2018.
- b) CAT, Principal Bench order dated 21.10.2011 in OA No. 3114/2010.
- c) CAT, Allahabad Bench order in OA No. 1536/2005

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

- a) CAT, Lucknow Bench order dated 24.10.2013 in OA No. 80/2007

9. Heard learned counsel for both the sides and have carefully gone through their pleadings and citations relied upon by them. It is admitted fact that the applicant was relieved on 28.05.2014 from Rourkela SO. As per the provisions enumerated in letter dated 07.03.1996 (Annexure R/1) on transfer to other station, an allottee can retain the Govt. accommodation for a period of two months on payment of normal licence fee and further six months on payment of twice the normal licence fee on medical/educational grounds. The applicant did not represent for retention of quarters beyond the permissible period till 15.02.2017 when he said he was unaware of the rules and assured to vacate the quarters by 30.04.2017. The applicant vacated the quarters on 01.07.2017. Ignorance of rules cannot be an excuse as every employee is supposed to know the rules. The citations as relied by the learned counsel for the applicant are not applicable to the facts and circumstances of this case.

10. It is seen that the normal permissible period for retention of quarter was completed on 26.07.2014 i.e. two months from his relieving date. The applicant thereafter ought to apply for retention of quarters under the rules if so advised. The applicant has failed to do so within the stipulated period and had retained the quarters till 01.07.2017. Retention of quarter beyond permissible limits, without approval of competent authority, is deemed to be unauthorized and the applicant is liable to pay the damage rent from 27.07.2014 to 30.06.2017 under the provision of SR 317 B 22. As such, there appears to be no illegality in the impugned order requiring judicial interference in the matter.

11. Accordingly the OA being devoid of merit is dismissed. There will be no order as to costs.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)