

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 314 of 2018

Present: Hon'ble Mr. Swarup Kumar Mishra, Judicial Member

Niranjan Khuntia, aged about 51 years, S/o Late Narayan Khuntia, At/PO-Gopei, PS-Patkura, Dist-Kendrapara at present working as PGT (Math), KV Khurda Road, Jatni, Dist-Khurda.

.....Applicant

VERSUS

1. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110016.
2. Dy. Commissioner, Kendriya Vidyalaya Sangathan, Pragati Vihar Colony, Mancheswar, Bhubaneswar, Dist-Khurda-751017.
3. Principal, Kendriya Vidyalaya, Khurda Road, Ratanga Colony, Jatni, Dist-Khurda, 752050.
4. Principal, Kendriya Vidyalaya, No.-III, Mancheswar, Bhubaneswar, Dist-Khurda, 751017.

.....Respondents

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.H.K.Tripathi, counsel

Heard & reserved on : 24.6.2021 Order on :

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

“8.1 That the order dated 1.6.2018 and 15.5.2018 (Annexure A/8 series) and order dated 14.6.2018 (Annexure A/10) be quashed.
8.2 That any other order/orders as it would deem fit and proper to give complete relief to the applicant.”

2. A sum of Rs. 3,62,600/- is sought to be recovered as damage rent from the applicant since it is alleged that the applicant was in unauthorized occupation of two quarters simultaneously, i.e. one quarter at Paradip and another quarter at Bhubaneswar. It is claimed by the respondents that the applicant was in possession of the quarter at Bhubaneswar from 25.5.2013 to 15.4.2014 i.e. for a period of about seven months while he was serving in KV-3 at Bhubaneswar. He was in occupation of the quarter at Regional Office Staff Quarter at Paradip for a period of about 30 months. The applicant was transferred from KV No.III Bhubaneswar to KV Paradip Port and was relieved on 17.8.2013. He joined at KV Paradip Port on 26.8.2013. It is the specific stand of the respondents that although the applicant had made representation to the Principal, KV No.III Bhubaneswar for further retention of the quarter at Bhubaneswar by making representation vide Annexure A/2 dated 18.10.2013 and subsequently submitted another representation dated 4.4.2014 vide Annexure A/3 to the Dy. Commissioner, KVS, Regional Office, Bhubaneswar through the Principal, KV Paradip Port, he has not disclosed that he was in occupation of the quarter at Bhubaneswar. Therefore the same has been treated as unauthorized occupation of both the quarters for a period of total 30 months and is liable to pay penal rent.

3. It is the specific stand of the applicant that he had misled the authorities regarding occupation of both the quarters at Paradip and Bhubaneswar. On the other hand he has approached the authorities for further retention of quarter at Bhubaneswar on the ground of education of his son as he was

transferred in the mid-academic session and therefore he was entitled for occupation of the quarter for a further period of eight months. The quarter at Paradip was allotted in favour of the applicant vide order dated 10.4.2014 (Annexure A/4) on the basis of the request made by him by application dated 4.4.2014 vide Annexure A/3. The damage rent for unauthorized occupation was intimated to the applicant vide Annexure R/. It is submitted on behalf of the applicant that he was paying licence fee for occupation of the quarter at Paradip vide Annexure A/11 to the rejoinder filed by the applicant. It is contended on behalf of the applicant that the authorizes were well aware that the applicant was in occupation of the quarter in question at Paradip as the same has been mentioned while license was being deducted from him for occupation of both the quarters. Therefore the question of suppression of the same fact does not arise. It is also contended by the learned counsel for the applicant that in absence of any finding or decision taken by the authorities that the applicant is in occupation of any quarter, the applicant cannot be saddled with liability of paying penal rent. In this regard he has further submitted that no show cause notice has been sent to the applicant and no opportunity was given to him to make his stand clear that he is not in unauthorized occupation of both the quarters since those have been duly allotted to him on the basis of the application made by him to the competent authorizes. In this regard learned counsel for the respondents submits that notice of eviction was sent to the applicant vide Annexure R/3 which shows that the applicant was in unauthorized occupation of the quarters. This

Tribunal is not satisfied by the fact that merely sending notice vide Annexure R/3 would suffice in order to enable the applicant to know that the authorities have come to the conclusion that he is in unauthorized occupation of quarters in question. There is sufficient force in the submission made by the learned counsel for the applicant that specific notice or an opportunity of being heard should have been given to the applicant so that he could make his stand clear. It was incumbent on the part of the authorities to give notice or an opportunity of being heard to the applicant. That being the position this Tribunal is of the view that there is violation of principles of natural justice whereby serious prejudice has been caused to the applicant. In this regard learned counsel for the respondents had relied on the decision of Calcutta High Court in the case of Lallan Thakur –vs- UOI & Ors. [WP No. 29595 (W) of 2016] dated 21.9.2017. The said decision is not applicable in this case since that case is related to the Railway department and it is not known that the rules governing the employee in the said case is similar to the rules applicable to the applicant in the present case. The authorities could not have jumped to the conclusion that the applicant has suppressed the fact regarding occupation of both the quarters at Paradip and Bhubaneswar simultaneously without giving him due opportunity in this regard to make his stand clear.

5. The fact that subsequently the authorities came to know that the applicant was in simultaneous possession of two quarters shows that the authorities at Paradip and higher authorities i.e. Dy. Commissioner and other authorities had the scope of accepting this if they had made any enquiry from

the school authorities. In absence of such steps taken by the authorities action taken by them in imposing penal rent is arbitrary, irrational and harsh.

6. The respondents have filed the rules in question vide Annexure R/4, "Kendriya Vidyalaya Sangathan (Allotment of Residence) Rules, 1998." Rule 19 of the said rules reads as under :

"Where, after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residents remains or has remained in occupation of the employee to whom it was allotted or of any persons claiming through him, such employee shall be liable to pay damages for use and occupation of the residences, services, furniture and garden charges etc. as may be determined by the Govt. or the Sangathan from time to time. This is without prejudice to the right of the competent authority to evict him from the residence and the disciplinary action that may be initiated against such defaulting employee."

It is seen that there is no such provision in the rule that mere occupation of quarters in two stations would automatically amount to unauthorized occupation. In the present case the applicant vide Annexure A/2 dated 18.10.2013 submitted by the applicant to the Principal, KV No.III, Bhubaneswar was not considered. The authority could have either rejected or allowed the said application. Besides that the Principal could have forwarded the said application to the higher authorities but that has not been done and the representation vide Annexure A/3 dated 4.4.2014 to the Dy. Commissioner had been rejected by issuing the communication dated 10.4.2014 vide Annexure A/4.

7. In view of the above discussions, the OA is allowed. The impugned order is set aside and the matter is remanded back to the departmental authorities for fresh consideration. There will be no order as to costs.

(SWARUP KUMAR MISHRA)

MEMBER (J)

I.Nath