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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION NO. 304 OF 1987.

Date of decision .. February 17 , 1988.

Sri A.K.Pani, son of Sri S.Pani,
Executive Engineer ,Calcutta General Electrical Circle,
2, Central Public Works Department, Nijampalace,Calcutta-20.

.... Applicant.

Versus

1. Union of India,
represented by the Accountant General, Orissa,Bhubaneswar.
2. Senior Deputy Accountant General (A& E),
Office of the Accountant General, Orissa,Bhubaneswar.
3. SuperintendingEngineer, (Electrical), Calcutta
Central Electrical Circle-2, CentralPublic Works
Department, Calcutta-20.

.... Respondents.

M/s B.L.N.Swamy & B.V.B.Das,
Advocates.

... For Applicant.

Mr. Ganeswar Rath,Addl.Standing
Counsel (Central)

... For Respondents.

C O R A M :

THE MON'BLE MR. B.R. PATEL, VICE CHAIRMAN

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1. Whether the reporters from local papers have been
permitted to see the judgment ? Yes .
2. To be referred to the Reporters or not ? No .
3. Whether His Lordship wishes to see the fair
copy of the judgment ? Yes.
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J U D G M E N T
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VICE CHAIRMAN,

The admitted facts of this case are that the applicant was an Executive Engineer (Electrical) C.P.W.D. When he joined the post at Bhubaneswar, there was no quarters under the C.P.W.D. at Bhubaneswar . The Accountant General, Orissa , Bhubaneswar who had quarters to spare allotted him one on 17th January 1980. This quarters was too small for the applicant's family. So a bigger type of quarters was allotted to him on 24.3.1980 at a rent of Rs.177.00 per month. He was served with a notice on 22nd September 1986 to vacate the quarters within ten days. The applicant, however, vacated the quarters on 5.7.1987 on his transfer to Calcutta .He has been charged penal rent at the rate of Rs.1,890.14 per month in addition to Rs.40.00 per month towards water charges with effect from 10.9.1986 to 5.7.1987. It is against this order of penal rent that the applicant has moved the Tribunal under section 19 of the Tribunals Act, 1985.

2. The respondents have maintained in their counter that on the request of the applicant , the Accountant General, Orissa, Bhubaneswar allotted a quarters as a special case to the applicant on the specific condition that the applicant would vacate the quarters when required by the Accountant General for his own officers and staff . The allotment of quarters is governed by the rules " Allotment of Government Residence under the Administrative Control of Accountant General Orissa, Bhubaneswar Rules,1967". As the applicant did not vacate the quarters when required,



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he has been charged penal rent under Rule XVII of the aforesaid rules governing overstaying in residence after cancellation of the allotment. As the penal rent has been charged according to rules, the prayer of the petitioner cannot be acceded to.

3. The prayer of the petitioner is to quash the order OOC No. 383 dated 5.8.1987 as at Annexure- 1. This order of the Senior Deputy Accountant General (Admn.) levies market licence fee at the rate of Rs.1,890.14 per month plus water tax at the rate of Rs.40.00 per month with effect from 10.9.1986 to 5.7.1987.

4. I have heard Mr. B.L.N.Swamy, learned counsel for the applicant and Mr. Ganeswar Rath, learned Addl. Standing Counsel (Central) for the respondents. Mr. Swamy has pleaded that the applicant was not in a position to vacate the quarters as it was not possible for him to find suitable private accommodation on reasonable rent at Bhubaneswar. According to him, the reasonableness of rent has to be considered not with reference to the prevalent market rent for similar dwelling houses but solely with reference to the capacity of the officer to pay. Bhubaneswar is a developing town and due to the location of number of offices and industries, the rent payable for private accommodation has gone very high beyond the capacity of the officer. He has also pleaded that the officer had school going children and his father was under treatment and it was not possible for him to move to any house that was available. The third point urged

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by Mr. Swamy was that the applicant was an Executive Engineer (Electrical), C.P.W.D. and the C.P.W.D. did not have any quarters of their own at Bhubaneswar as the Division was created for the first time at Bhubaneswar and the applicant was posted there. The work of the Executive Engineer (Electrical) was to look after construction , maintenance of electricity for the office building, supply of water to all the Central Government offices and staff quarters including the office of the Accountant General, Orissa, Bhubaneswar and being a Central Government employee in charge of the work in connection with the quarters of the Accountant General and in view of the fact that there was no quarters of C.P.W.D. available, his case should be considered in its proper perspective and he should not be charged such high penal rent. Finally, Mr. Swamy has contended that the allotment of Government residence under the Administrative control of the Accountant General, Orissa , Bhubaneswar Rules 1967 is meant for the offices and staff under the Administrative control of the Accountant General and since the applicant was not under the Administrative control of the Accountant General, Orissa, the rules do not apply to him. It was a special arrangement which was made by the Accountant General on his request considering the special circumstances of the case.

5. While admitting the facts, Mr. Rath has submitted that the quarters was allotted to the applicant specifically on the condition that he would vacate

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it as soon as it was required by the Accountant General, for use of his officers and staff. Since the applicant has not done it he has been charged with penal rent under the rules quoted above which have been framed under the provisions of Rule 45 of the Fundamental Rules. When the applicant did not vacate the quarters, Eviction Proceedings were started on 28.11.1986 which finally ended against the applicant. The applicant thereupon preferred an appeal before the District Judge, Puri. The appeal was however dismissed as not pressed. Sri Rath strenuously opposed any relief to be given to the applicant on the ground that there was no scope whatsoever to give any such relief.

6. The Allotment of Quarters Rules referred to above lay down the principle governing the allotment of Government residential accommodation at staff Bhubaneswar to the officers and staff serving under the Accountant General, Orissa, Bhubaneswar and as such, ordinarily these rules will not apply to a person who is not an officer or a member of the staff serving under the Accountant General, Orissa. These rules however, been framed under the provisions of Rule 45 of the Fundamental Rules and Rule 45-A of the Fundamental Rules provide for penal rent in case of over-stayal in residence after cancellation of allotment. I am, therefore, inclined to hold that this rule applies in the case of allotment of the quarters under the Administrative control of the Accountant General to any other Government servant even if the latter is not under the Administrative control of the Accountant General, Orissa. Rule XVII provides that

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where an allotment has been cancelled and an officer continues to occupy the quarters thereafter he shall be liable to pay (damages for use and occupation of the residence, services, furnitures and garden charges, equal to market licence fee as may be determined by Government from time to time or twice the licence fee he was paying whichever is higher .Basing on this rule the Accountant General has charged the officer penal rent at Rs.1890.14 in addition to the water charges. This has been done as per rule and I donot consider the action taken by the Accountant General, Orissa to be illegal. I also agree with Mr. Rath that the officer gave an undertaking to vacate the quarters if it was required by the Accountant General. But in view of the special circumstances obtaining at Bhubaneswar which is a growing city with a number of offices and industries which are competing with each other for hiring private accommodation/which rent for such accommodation is increasing day by day and it is not possible for a Government officer to compete in the matter of hiring private accommodation in view of the emoluments he is getting, I am of the view that a lenient view should be taken in this case. I also appreciate that there should be discipline amongst the Government officers in the matter of occupation of Government quarters. While therefore up-holding the decision of the Accountant General, Orissa in the principle of levy of penal rent, I consider it necessary to reduce the incidence of pehalty to a reasonable limit which the officer would be able to pay without too much hardship in these difficult days of costly living. The other factor which has weighed with me in holding this view is that the officer has since vacated the quarters and it is only for a period of about eight to nine

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months that he occupied the quarters after the cancellation of the allotment and too much should not be made of the undertaking given by the officer at the time he occupied the quarters for vacating it as and when he was required to do so because of the fact of non-availability of private accommodation at a rate which he could pay. Even as it is the notice for vacation of quarters was served on him on 22.9.1986 and he was to vacate within the days i.e., by 2.10.1986. There is therefore no justification for charging penal rent with retrospective effect from 10.9.1986. Considering the various factors involved in such matters under F.R. 45-A, the Deputy Accountant General (Admn.)/Senior Deputy Accountant General (A) has been given the discretion to allow an officer to retain a residence for a period not exceeding four months on payment of twice the standard licence fee or twice the licence fee he was paying whichever is higher. This is a fit case where the competent authorities can exercise their discretion as a special case in favour of the applicant. When this is done there will remain only four to five months for charging penal rent strictly according to rules. In view of the high penal rent and the circumstances I have indicated above considering the place and paying capacity of the officer, I am of the view that ends of justice would be met if the officer is required to pay for the whole period of unauthorised occupation licence fee at twice the rate at which he was paying prior to the service of the notice for vacation of the quarters. He should, however, pay the water charge and electricity charge as calculated by the competent authority.

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7. The application is thus partly allowed leaving the parties to bear their own costs.

Pran Kumar 17.2.88
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Vice Chairman.



Central Administrative Tribunal,
Cuttack Bench.
February 17, 1988/Roy, SPA.