

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

Original Application No. 392 of 1988.

Date of decision : June 28, 1990.

Nrusingha Charan Bhoi ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. P.V. Ramdas,
B.K. Panda, Advocates.

For the respondents ... Mr. Aswini Kumar Misra,
Sr. Standing Counsel (CAT)

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C O R A M:

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *M*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N. SENGUPTA, MEMBER (J) The relief that the applicant claims in this original application is to quash the order asking recovery of penal rent from 23.11.1982 till upto 25.7.1984 and for a direction to refund the penal rent already collected.

2. Most of the facts are undisputed in this case.

On 11.10.1972 the applicant was allotted quarters No. 156 in

P & T Colony, No. I at Bhubaneswar by the Senior Superintendent, Railway Mail Service (R.M.S.). The applicant was in occupation of the said quarters till 24.7.1984. The applicant was asked by the Senior Superintendent of Post Offices, Bhubaneswar to occupy the quarter No. 19 in P & T Colony, No. II and this allotment was on 12.11.1982 and he passed an order for vacating quarters No. 156 in P & T Colony No. I on the very same day. After 12.11.1982 as the applicant continued to occupy the quarters No. 156, an order for realisation of penal rent was passed by the Senior Superintendent of Post Offices on 6.4.1983. Against this order directing realisation of penal rent, the applicant moved the High Court of Orissa in its writ jurisdiction. The Hon'ble Judges of the High Court ordered that the applicant was to occupy the new quarters allotted to him within a month and directed the applicant to apply to the concerned authority with regard to refund of the penal part of the rent realised. It is alleged by the applicant that he, in accordance with the directions of the High Court of Orissa, applied to the authorities for refund of the penal rent and this representation of his has been turned down. All these allegations are practically undisputed.

3. The case of the respondents is that as the applicant was not pulling on well with his neighbours in P & T Colony No. I it was necessary to order shifting

in accordance with Rule 25 of the Allocation and Allotment Rules. Since the applicant did not comply with the orders passed by the Senior Superintendent of Post Offices, he rendered himself liable to pay penal rent and as such he is not entitled to the reliefs that he has prayed for.

4. We have heard Mr. P. V. Ramdas, learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents. Mr. Ramdas's contention is really two fold i.e. there has been no order of cancellation of allotment. Even if the allotment of Quarter No. 19 in 2nd P & T Colony may be taken to be the implied order of cancellation of the quarters in 1st P & T Colony, no order having been passed to that effect, the realisation of penal rent is without any basis. On the other hand, it has been strenuously urged on behalf of the respondents that as there was a report by the Police that the applicant was not pulling on well with his neighbours in 1st P & T Colony, and as the Police requested for shifting the residence of the applicant from 1st P & T Colony, the applicant was allotted Quarters No. 19 in 2nd P & T Colony, by a person under whom the applicant was serving at the relevant time.

5. So far as the first point i.e. the applicability of Rule 45-A(iv) (iii) is concerned, this Tribunal had had the occasion to deal with such a question in O.A. 373 of 1987 (R.C. Mohanty v. Union of India and others) disposed of on 28.4.1988. It was observed therein that

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before penal rent could be realised there must be an order of cancellation or in other words, unless there is an order of cancellation, realisation of penal rent would be illegal. Instructions of the D.G.P&T to be found at page 240 of P. Muthuswamy's compilation of F.R.S.R (10th Edition) are as under:

" Before recovery of enhanced licence fee under F.R.45-A IV(c)(iii)(1) could be ordered, it would be necessary to cancel the allotment. In the absence of such cancellation of allotment, permission to retain the quarter will be presumed and recovery of enhanced licence fee would become irregular. "

These instructions leave absolutely no scope to doubt our views expressed earlier that an order of cancellation is sine qua non for realisation of enhanced licence fee or in ^{words,} ~~order~~ other, penal rent.

6. As about the contentions of learned counsel for the Department that the applicant was not pulling on well with his neighbours in the 1st P & T Colony, change of residence was necessary, we would like to refer to the counter, particularly, paragraph 1(iii) at page 2 of the counter (Refer to page 29 of the brief). It has been stated there that Rule 25 of the Allocation and Allotment Rules provides that if an official to whom residence has been allotted conducts in a manner prejudicial to the maintenance of harmonious relation with his neighbours may be shifted to other quarters of the same type preferably in the same locality. Here only an allegation was made and allegation ~~is~~ has not been proved ^{or at least that} to say ~~at least~~ it was the applicant who was responsible, it would not be proper to enter into

controversy as to the fact whether the applicant or any other person was responsible for the situation in P & T Colony No.1. Moreover, the allotment of the quarter was not at issue. Rule 45-A IV(c) (iii) of F.R. states as follows:

" (c) Notwithstanding anything contained in sub-clause (b) above the Central Government may-

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(iii) by general or special order, provide for taking a licence fee in excess of that prescribed in sub-clause (b) or sub-clause (c) (i) above from an officer -

(i) who is not required or permitted to reside on duty at the station at which the residence is supplied to him, or xx xx xx "

In view of this Rule, we have no hesitation in holding that the realisation of the rent was improper and the penal rent should be refunded to the applicant within a period of three months from the date of receipt of a copy of this judgment.

7. This application stands allowed. No costs.

K. M. M. 28.6.90
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Vice-Chairman



H. S. Gupta
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Member (Judicial) 28/6/90