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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 216 OF 1990

Date of decision: 22nd August, 1991.

Banamali Mallik

Applicant

Versus

Union of India and others

Respondents

For the applicant

: M/s. Devanand Misra,
Deepak Misra,
R.N. Naik, A. Deo,
B.S. Tripathy,
Advocate.

For the Respondents

: Mr. A.K. Misra, Sr.
Standing Counsel (Central)

C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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J U D G M E N T

K.P.ACHARYA, VICE CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays for a direction to be issued to the Opposite Parties not to recover the penal rent @ 40% of the pay of the Petitioner for the period the Petitioner was in occupation of the quarters allotted to him bearing No. Type 2 B at 15 Cantonment Road, Cuttack.

2. Shortly stated, the case of the Petitioner is that while he was working as Sub-PostMaster, Mangalabag Sub Post Office, he was allotted a quarters 'Type 2 B, 15 Cantonment Road' within the town of Cuttack. Petitioner occupied the same. On 13th April, 1987, the Petitioner was transferred from the said post Office to Kanika Rajabati Post Office and made a representation for allotting to him the very same quarters. Before the representation was disposed of, the Petitioner had approached this Bench with an application Under Section 19 of the Administrative Tribunals Act, 1985 for quashing of the order imposing licence fee @ 40% of the basic pay of the Petitioner

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for unauthorised occupation which formed subject matter of OA 240 of 1987 which was disposed of by a Division Bench on January, 27, 1988 in which direction was given to the Chief Post Master General to dispose of the representation and pending disposal of the representation licence fee to the extent of 20 per cent of the basic pay would be realised. Thereafter another application forming subject matter of OA 104 of 1989 was filed by the Petitioner which was disposed of on 6th April, 1990 in which a prayer was made to quash Annexure-1 directing the Petitioner to vacate the quarters and Annexure-2 a reminder to vacate the quarters and also to command the Opposite Parties in the said application for allotting the quarters in question to the petitioner. This case forming subject matter of OA 104 of 1989 was dismissed on merits by the Learned Single Judge. The present application has been filed with a prayer to quash the order for recovery of licence fee @ 40 per cent.

3. In their counter the Opposite Parties maintain that there is absolutely no justification for exempting the petitioner from payment of the licence fee @ 40% because he has intentionally remained
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in the quarters in question, not only by causing inconvenience to other persons who are entitled to get the same benefit but also it was in gross violation of the orders passed by the superior authority. Hence the case being devoid of merit, is liable to be dismissed.

4. I have heard Mr. B.S.Tripathy, learned Counsel for the applicant and Mr. A.K. Misra learned Senior Standing Counsel(CAT) for the Respondents at some length. Mr. A.K.Misra learned Standing Counsel submitted that the Division Bench while disposing of OA 240 of 1987 had directed that licence fee @ 20% of the basic pay should be realised from the Petitioner pending disposal of the representation filed by the Petitioner and accordingly the Departmental Authorities respecting the judgment of the Division Bench have realised licence fee @ 20% of the basic pay per month. Now the prayer of the Petitioner is that the order of imposition of licence fee be quashed which would amount to Single Judge stepping over the judgment of a Division Bench which is not permissible. I think there is substantial force in the aforesaid contention of Mr. Misra, learned Standing Counsel. I cannot sit on appeal over the judgment passed by a Division Bench

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Bench. Therefore, the order passed by the Division Bench directing realisation of licence fee @ 20% of the basic pay of the Petitioner from the date of unauthorised occupation till disposal of the representation cannot be interfered with.

5. Now coming to the question of imposition of licence fee to the extent of 40% of the basic pay of the Petitioner after disposal of the representation, Mr. Misra learned Standing Counsel submitted that this order should not also be interfered with because the Petitioner has unauthorisedly occupied the quarters in question. On the other hand, it was submitted by Mr. Tripathy that Single Judge while respecting the order of the Division Bench should also impose the licence fee @ 20% of the basic pay without prejudice to his contention that the entire order imposing licence fee should be quashed. Even though strenuous argument was advanced by Mr. Tripathy to quash the entire order relating to imposition of licence fee @ 20%, I cannot persuade myself to accept this argument because the Petitioner has remained in unauthorised occupation knowingly well that the quarters in question was earmarked for the Post Master of the particular Post Office and I also feel that there was absolutely no justification on the part of the Petitioner to remain in unauthorised

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occupation of the quarters thereby causing inconvenience to other officers who are entitled to get the quarters and this was also in gross violation of the orders passed by the superior authority. In view, of these tale-telling circumstances appearing against the Petitioner, I do not feel inclined to quash the order imposing licence fee but I cannot close my eyes to the fact that there is a heavy dearth of houses in Cuttack town and perhaps that might have stood on the way of the Petitioner to vacate the quarters in question and land himself with his family on the plain road. Though I do not at all appreciate the conduct of the Petitioner in violating the orders of the higher authority which can not but be deprecated, yet I feel inclined to take a lenient view on the quantum of the licence fee to be realised from the Petitioner. Hence it is directed that licence fee ^{at} ~~of~~ _{to} 30% of the basic pay of the petitioner be realised from him from the date on which copy of the order passed by the Competent Authority disposing of the representation was served on the petitioner till the date on which the petitioner actually vacated the quarters and it is further directed during this intervening period namely commencing from the date of judgment passed in OA 240 of 1987 till the date prior to the

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delivery of the order to the Petitioner licence fee @ 20% from the basic pay should be realised from the petitioner.

9. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

Handwritten signature
22/8/91.
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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.