

(110)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 436 of 1990.

Date of decision: September 12, 1991.

Arun Kumar Mandal ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. B.S. Tripathy,
B.K. Sahoo, S. Mallik,
K.P. Mishra, & K.M. Samal,
Advocates.

For the respondents ... Mr. Ganeswar Rath,
Addl. Standing Counsel (CAT)

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 ? *Ad*
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

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(12)

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J U D G M E N T

K.P.ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the impugned order vide Annexure-1 and to direct the appropriate authority to allot a suitable quarters of Type-C-III to the applicant and to direct the competent authority to refund the higher rate of licence fee already recovered from the monthly salary of the applicant with interest of 18 per cent per annum.

2. Shortly stated, the case of the applicant is that he is at present working as Senior Auditor under the Government of India attached to the Office of the Accountant General(Audit), Orissa, Bhubaneswar. In the year 1970 the applicant was allotted a Type-II quarters which he had occupied. In the year 1989, according to Rules, though the applicant was entitled to a Type-III quarters and such an allotment order was passed in his

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(17)
favour yet, no such communication having been received by the applicant he could not avail the Type -III quarters said to have been allotted in his favour and consequently, he had not occupied any Type III quarters and even though he had not ~~kept~~^{possessed} any Type III quarters, he was issued with a demand of rent prescribed for a Type III quarters though he was physically occupying a Type II quarters. The grievance of the applicant is that the authorities committed a gross illegality by recovering rent for Type III quarters from his pay and therefore, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that it is incorrect on the part of the applicant to state that he had not received any communication allotting the Type III quarters in his favour. For the reasons best known to him, he did not occupy the Type III quarters and the applicant is now building up an incorrect story of non-receipt of the communication just to avoid the rules prescribed for payment of higher rent even though he is in occupation of an inferior type of quarters for which rent is much less. In the circumstances stated above, it is maintained by the respondents that the case being devoid of merit is liable to be dismissed.

4. I have heard Mr.S.Mallik, learned counsel for the applicant along with Mr.K.P.Misra and Mr.Ganeswar Rath, learned Addl. Standing Counsel(CAT) for the respondents at some length. Almost all the facts are admitted except the non-receipt of the communication by the applicant regarding the allotment of Type III quarters. Mr.Rath, learned Addl.

Standing Counsel contends before me that according to

Rule 4 of the "Allotment of Government residence under the Administrative control of the Accountant General, Orissa, Bhubaneswar Rules, 1967" the applicant is liable to pay higher rent even though he has occupied a lower type of quarters because the story of non-receipt of the communication of allotment of type III quarters is absolutely incorrect, if not false. Mr. Rath further contended that under Section 114 of the Evidence Act, presumption arises that all official business has been duly complied and though this presumption is rebuttable, no evidence has been placed before the Bench by the ^{petitioner} respondents to rebut such evidence except the bald denial which amounts to oath against oath. In such circumstances, it was submitted by Mr. Rath that the case being devoid of merit is liable to be dismissed. On the other hand, Mr. Mallik drew my attention to Clause (b) of Rule 7 of the said Rules which runs thus:

"(b) While retaining the existing residence, he shall be charged same rent which he would have had to pay under F.R. 45-A in respect of the residence so allotted or offered (or the rent payable in respect of the residence allotted) or the rent payable in respect of the residence already in his occupation, whichever is higher for a period for which the allotment subsists and the concessional period for further retention."

5. Mr. Mallik emphasised that the word 'subsists' has an important role to play, particularly in this case. According to Mr. Mallik, as ^{found} evolved from Annexure-1 the allotment order is dated 4.7.1989. This allotment order is deemed to have been cancelled on 14.8.1989 as per Annexure-1. Therefore, necessarily, the allotment order does not subsist on or after 14.8.1989. (Emphasis is mine).

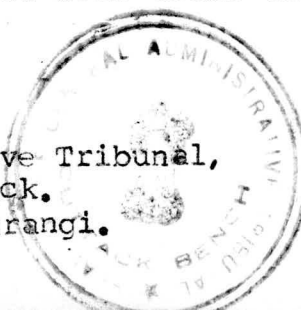
Therefore, Mr. Mallik submitted that without conceding

to the case of the respondents that they are entitled to charge higher rent even though an employee is occupying a lower type of quarters is against all cannons of justice, equity and fair play, yet the concerned authority may realise a rent of higher amount from 4.7.1989 to 13.8.1989 and no further. After giving my anxious consideration to the arguments advanced at the Bar I feel there is substantial force in the contention of Mr. Rath. It is therefore, directed that the higher rent prescribed for a Type III quarters may be realised from the applicant with effect from 4.7.1989 to 13.8.1989 and not thereafter. In case, any amount has been realised from the applicant or or after 14.8.1989 in respect of the rent prescribed for a Type III quarters the same should be refunded to the applicant within 45 days from the date of receipt of a copy of this judgment. Interest to be granted in favour of the applicant as prayed for by him stands rejected.

6. So far as the allotment of a Type III quarters is concerned, there was no dispute presented before me regarding the entitlement of the applicant for a Type III quarters. It is directed that if any Type III quarters at present is vacant, it should be allotted in favour of the applicant or if not available at present, a Type III quarters should be allotted in favour of the applicant in the next available vacancy.

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

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
September 12, 1991/Saranggi.



[Signature]
12/9/91
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VICE-CHAIRMAN