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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 142 of 1991.

Date of decision: September 17, 1991.

Sushil Kumar Dey ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. G. K. Mohanty,
G. P. Samal,
S. K. Ghose, Advocates.

For the respondents ... Mr. Ashok Mohanty,
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 His Lordship wishes to see the fair copy of the judgment ? Yes.

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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 Annexure-3 and to give a declaration that the respondents are not entitled to realise a sum of Rs.4292/- from the applicant.

2. Shortly stated, the case of the applicant is that he has retired from the post of Mike Operator (Technical Assistant-T2) who was attached to the Office of Paddy-cum-Fish Culture Unit, Central Rice Research Institute, Cuttack with effect from 31.10.1990. Previous to the joining the post of Mike Operator the applicant was working under the same Organisation having been posted at Bhubaneswar and he was allotted Quarters No.12, Type II. He was occupying the said quarters during his incumbency at Bhubaneswar. In June, 1986 the applicant was transferred to Central Rice Research Institute at Cuttack and till July, 1987 the applicant did not vacate the quarters in question and therefore,

penal rent was assessed over the applicant at the rate of Rs.50/- per month from 1st August, 1986 to 31st July, 1987. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the order assessing the penal rent should be sustained because the applicant unauthorisedly occupied the quarters in question and being liable to pay the penal rent, justifiably ^{for} _{by} the order to the above effect was passed which should not be unsettled - rather it should be sustained.

4. I have heard Mr. S. K. Ghose, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing Counsel (Central) at a considerable length. Learned counsel for the applicant vehemently urged before me that the applicant could not vacate the quarters in question because due to the financial constraints which the applicant was facing, he could not clear up the electricity charges and other dues connected with the quarters in question and though he had made strenuous attempts to procure financial assistance, in this regard all his perseverance being unsuccessful, at last the applicant was forced to keep the quarters in question though he had not physically possessed ^{it}. In these circumstances, it is maintained on behalf of the applicant that it would be a great hardship for the applicant to pay Rs.50/- especially in view of the fact that he is a retired government servant drawing paltry amount towards his pension.

5. On the other hand, Mr. Ashok Mohanty urged with vehemence that it was very well open to the applicant to vacate the quarters at the right moment and then clear up his dues gradually with the permission of the appropriate

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authority but financial constraints should not have stood on the way of the applicant to vacate the quarters in question which ultimately had inconvenienced many other Officers who were on the waiting list to occupy the quarters in question. It was therefore submitted by Mr. Ashok Mohanty, learned Standing Counsel (Central) that the case deserves no merit and should be dismissed in limine, especially in view of the fact that the case of the respondents is that the applicant had subleased the quarters in favour of a third party and was collecting rent from the third party deriving illegal financial benefit to himself. Therefore, there is no justification to give him any relief - rather the applicant should be directed to pay Rs. 50/- per month. I have given my anxious consideration to the arguments advanced at the Bar. There is nothing on record to substantiate the contention of learned Standing Counsel (Central) who maintained on the basis of the averments finding place in the pleadings that the applicant had sub-let the quarters in question. Had there been an iota of evidence in this regard I would have felt reluctant to grant any relief to the applicant because of the alleged illegal acts committed by him. In the absence of any proof to the above effect I can not persuade myself to accept the arguments of learned Standing Counsel (Central) to hold that the applicant had sublet the quarters in question.

6. Admittedly, the applicant has retired from Government service and has been solely depending on the paltry amount of pension drawn by him. I feel that it would be a great

hardship on the part of the applicant, at the present moment, to pay Rs.501/- per month for the period of assessment of penal rent. Therefore, I do hereby, reduce the penal rent to Rs.301/- per month to be paid by the applicant for the period from 1.8.1986 to 31.7.1987. It was told to me that the total amount of Rs.4,292/- has already been realised from the applicant from the gratuity money to which the applicant was entitled to. In case, Rs.4,292/- has been realised from the applicant, the departmental authorities should now calculate the amount payable to the applicant as indicated above, and the differential amount should be paid back to the applicant within 90 days from the date of receipt of a copy of this judgment.

7. The next grievance of the applicant was that the applicant has not received the money due to him on account of G.P.F. and gratuity. In paragraph 9 of the counter, it is stated that final payment of G.P.F. amount has been made to the applicant in November, 1990. There is no rejoinder contradicting the statement. It is further maintained in paragraph 9, that the applicant's gratuity money and leave salary dues were sent to him by way of Bank draft on 19.5.1991 after deducting the amount due from the applicant towards the penal rent. Learned counsel for the applicant submitted that the applicant ~~has~~ not received the bank draft. In paragraph 9 of the counter it is only stated that the bank draft was sent to the applicant. Nothing has been stated ^{as to whether} when the applicant has received the bank draft. In case, the G.P.F. amount etc. has already been paid, the applicant must have executed receipt thereof. The concerned officer who has delivered the G.P.F. amount to the applicant and has obtained receipt should

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inform the applicant regarding this fact intimating the date of receipt and furthermore it is directed that Respondents 3 and 4 should calculate the amount now payable by the applicant towards the penal rent and such amount should be deducted from the gratuity and the revised bank draft should be obtained and sent to the applicant by registered post with acknowledgment due to his present address namely village and P.O. Paranga, via-Jagatsinghpur, District-Cuttack as it was told to me that the applicant is unable to move out from his bed due to heart disease. Incase the bank draft has already been delivered to the applicant he must have executed a receipt thereof and the applicant should be informed accordingly. The differential amount, if any, as indicated above should be sent by a bank draft to the above mentioned address by registered post with acknowledgment due.

8. This application is accordingly disposed of leaving the parties to bear their own costs.

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17-9-91
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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
September 17, 1991/Sarangi.

