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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 398 OF 1991.

Date of decision: January 21, 1992.

Binod Kumar Mishra Applicant

-Versus-

Chief General Manager, Telcom and others: Respondents

For the applicant : Mr. N. N. Satpathy, Advocate.

For the respondents : Mr. P. N. Mohapatra,
Addl. Standing Counsel.

C O R A M:

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

1. Whether local papers may be allowed to see the judgment? Yes.
 2. To be referred to the reporters or not? No
 3. Whether His 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, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the orders contained in Annexures-IV, V and VII.

2. Shortly stated the case of the Petitioner is that at present he is working as Divisional Engineer attached to the Office of the Telecom District Manager stationed at Bhubaneswar. The Petitioner was allotted a Government quarters at Bhubaneswar bearing No. 5, Type-4, Microwave Colony, Bhubaneswar for a period of two months only from the date of occupation purely on temporary basis. Later the Petitioner has been allotted another quarters on regular basis which is said to be type 4/8 in the CTTC compound Bhubaneswar and the allotment of the quarters bearing No.5, type-4 has been cancelled vide Annexure-4 dated 29.7.1991. The next grievance of the Petitioner is in regard to the notice issued to him contained in Annexure-7 proposing to assess damages for unauthorised occupation of the said quarters which would amount

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to Rs. 2,739/- per month with effect from 8th October, 1991. This order is sought to be quashed. Hence this application has been filed with the ~~pr.~~ aforesaid prayer.

3. In their counter, the Opposite Parties maintain that the quarters bearing No.5 type 4 allotted to the Petitioner being on temporary basis, he is bound to vacate the same and occupy the quarters allotted to him under Annexure-4 as both the quarters are of similar type and according to the eligibility of the present Petitioner. In these circumstances, it is maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed..

4. I have heard Mr. N.N.Satpathy, learned Counsel appearing for the Petitioner and Mr.P.N. Mohapatra learned Standing Counsel for the Central Government at some length. Mr. Mohapatra contended that according to Rules, it was the duty of the Petitioner, to make an application to the Competent Authority for allotting quarters No.5 on regular basis and it should have been left to the discretion of the competent authority to pass necessary orders and in absence of such an application, the quarters allotment committee took a decision for allotment of

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quarters on regular basis to the Petitioner as contained in Annexure-4 read with Annexure-R/1. Of course, Mr. Mohapatra is perfectly justified in his submission that the Petitioner should have complied ^{with} the rules and should have made an application to the above effect but I feel this is a very technical objection because both the quarters are of same type and both the quarters are according to the eligibility of the present Petitioner. The concerned authority should take into consideration the unnecessary expenses that the petitioner has to bear towards the charges on account of transportation of his luggages from one quarters to other. That apart, it was told to me that the fresh allottee of the quarters occupied by the Petitioner at present, has since been transferred to Cuttack and perhaps I think he would be given a quarters at Cuttack and /or his quarters at Bhubaneswar would stand cancelled. In the circumstances stated above, appropriate directions could have been issued by this Bench but I would not like to transgress upon the discretion of the higher authority of the Petitioner and therefore, I would comment to the higher authority of the Petitioner who is incharge of allotment of quarters to reconsider the entire matter and think of ~~any~~ allotment of

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quarters now under occupation in favour of the Petitioner dispensing with the technical objection raised by Mr. Mohapatra, learned Standing Counsel.

5. As regards, unauthorised occupation, I am of opinion, that the Petitioner is not continuing in the said quarters as an unauthorised occupant but he was pursuing his remedy to continue occupation of the said quarters and not to shift to another quarters which would make him to incur some unnecessary expenses. The Petitioner had no malafide intention. Therefore, the notice dated 11th October, 1991 contained in Annexure-7 is hereby quashed.

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

K. Mohanty
21.1.92
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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
21.1.92.