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Central Administrative Tribunal,
Cuttack Bench, Cuttack.

Original Application No.434 of 1991

Date of decision: May 26, 1992

Shri Krushna **Chandra** Mohapatra .. Petitioner
-Versus-
Union of India and others .. Opp. Parties

For the Petitioner .. M/s. M.M.Basu, B.Patra, J.K.Mohapatra
D.K.Chakraborty, Advocates.

For the Opp. Parties .. Mr.P.N.Mohapatra, Addl.St.Counsel,
(Central).

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

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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 wish to see the fair copy of the judgment? Yes.

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GRAM:

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

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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 order passed by Opposite Party No.2 contained in Annexure-14 and to direct the Opposite Parties to sanction the advance taken by the Petitioner from private sources to build his house at Nayapali, Bhubaneswar.

2. Shortly stated the case of the petitioner is that he is working as a clerk in the Telecommunication Civil Division attached to the office of the Executive Engineer, Civil Division Bhubaneswar. Admittedly, the Petitioner had been allotted a

5

Government lease Plot at Nayapali within Bhubaneswar. Petitioner has constructed a house thereon with the financial aid & assistance received from Capital Urban House Building Co-operative Society Limited functioning in Bhubaneswar. After completion of the house in question, the Petitioner made an application to the concerned Ministry of the Central Government praying for grant of house building advance to the tune of Rs. 72,000/- for repayment of the loan incurred by him from the aforesaid institution. After certain correspondence having been made with the Petitioner, the competent authority rejected the prayer of the petitioner and hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the Office Memorandum issued by the Ministry of Urban Development dated 7th September, 1990 contained in Annexure-R/1 creates a bar for accepting the request of the above nature made by the Petitioner because he had not made an application to the Government for giving him House Building Advance, on the date on which he has made such an application to the above mentioned institution, and therefore, in view of the directive issued by the Government, the competent authority had no other option but to reject the prayer of the Petitioner and therefore the case being devoid of merit is liable to be dismissed.

4. I have heard Mr. M.M. Basu learned Counsel appearing for the Petitioner and Mr. P.N. Mohapatra learned Additional Standing Counsel for the Central Government.

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5. At the out set it may mention^{ed} that there was a serious dispute presented before me regarding the amount of advance obtained by the Petitioner from the above mentioned institution . Mr. Basu learned Counsel appearing for the Petitioner submitted that the House Building Advance payable to the institution by the Petitioner is Rs. 72,000/- whereas it was submitted by Mr. P.N. Mohapatra , learned Standing Counsel appearing for the Central Government that the Petitioner had taken a House Building Advance of Rs. 60,000/- only from the said institution. However, these are the matters of record, which can be determined by the concerned departmental authority if at all a decree is ~~xx~~ ~~xx~~ passed in favour of the petitioner.

6. Mr. Basu submitted that on a ~~penusa-1~~ of Annexure-1 dated 17th April, 1989, it would be clear from paragraph 3 that the Government servants can utilise the amount of House Building Advance for the purpose of repayment of other loans taken from non-Government source to build a house or acquire a flat which runs thus:

" These representations have been carefully considered. Government have now decided that Government servants can utilise the amount of house building advance for purpose of repayment of other loans taken from non-Government source to build a house or acquire a flat. The concession will be available even where the construction has commenced".

The important line in this paragraph is "The concession will be available even where the construction has commenced". In my opinion, it includes the period of commencement till completion but Mr. Mohapatra learned Standing Counsel invited my attention to Annexure-R/1 which is an office memorandum dated September 7, 1990 issued by the Ministry of Urban Development answering

certain queries by way of clarification. Therein it is stated as follows:

"House building advance for repayment of loans is admissible only to those Government servants who before raising the loan from non-Govt. sources applied for house building advance but could not be sanctioned the ~~same~~ ^{same} due to paucity of funds".

Mr. Mohapatra submitted that directive given by way of clarification by the Government should not be ~~lightly~~ ^{lightly} brushed aside, ~~On~~ ^{On} the contrary those directives have to be strictly ~~adhered~~ ^{adhered} to and therefore, the departmental authorities have no other ^{but} option ~~to~~ to reject the prayer of the petitioner since the petitioner had not applied before raising the loan from the aforesaid institution. Therefore, it was contended by Mr. Mohapatra that the case is devoid of merit and should be dismissed.

7. I have given my anxious consideration to the arguments advanced at the bar. If the case of the Petitioner would have been ~~duly~~ ^{duly} considered soon after he made the application for house building advance i.e. on 10th August, 1989 then by virtue of the matters contained in paragraph 3 of the memorandum dated 17th April, 1989 contained in Annexure-1 ~~would have been~~ ^{would have been} ~~operated and~~ ^{operated and} the Petitioner would have been entitled to the advanced ~~as~~ ^{as} prayed for but the subsequent clarification dated 7th September, 1990 will have no application to the applications pending prior to 7th September, 1990. Law is well settled that retrospective effect of a particular rule or directive of the Government cannot be worked out to the disadvantage of a particular employee. It ~~has~~ ^{is} always ~~always~~ ^{be} prospective. ~~effect~~. That apart, in my opinion, this is a very technical interpretation of the intention of the Government ~~on~~ ^{on} fold

in Annexure-1. In my opinion, the Government in order to help its employees by relieving them from payment of higher interest to private institution, have laid down ^{the} directives contained in Annexure-1. In my opinion, this whole some intention of the Government should not be made to be frustrated on technical ground as envisaged in Annexure-R/1. Here is a poorly paid clerk who has been paying very high interest to the aforesaid institution. One does not lack in experience as to how a Government Officer manages his family ~~and~~ to ^{make} ~~meet~~ ^{his both ends to} with immense difficulties especially when he has taken a decision to build a house for his own shelter and about which he had no other alternative keeping in view the paucity of Government quarters at Bhubaneswar and high rent payable to private owners. Therefore, in my opinion, in order to uphold the wholesome intention of the Government contained in Annexure-1, the concerned authority should not travel on technical grounds to deprive the petitioner of the House Building Advance which would be ^a great relief to him by way of paying lesser interest to the Government. Considering ^{all} all these ^{aspects} arguments, I would direct that this technical interpretation of the Government ^{directive} be waived and the amount applied for by the petitioner in his application filed in August, 1989 be paid directly to the above mentioned institution within 90 days from the date of receipt of a copy of the judgment under intimation to the petitioner from whose pay the amount should be recovered by monthly instalments as has been fixed by the Government according to rules.

8. Before I part with this case I must say that Mr. Basu submitted that the applicant ~~has~~ to return/pay Rs. 1 l

(approximately) to the abovementioned institution which includes principal and interest. Therefore, Mr. Basu submitted that the Government should be directed to pay Rs. 1 lakh (Rupees One lakh) to the institution by reconsidering the matter. In that connection Mr. Basu invited my attention to paragraph 4 (II) of the Annexure-1 which runs thus:

"should ensure that the house building advance sanctioned is limited to the amount of loan still due to be paid by the government servant".

9. On this point, I do not feel inclined to give any positive direction because on the date of application, the petitioner had ^{not} prayed for a loan of Rs. 1 lakh. However, I have no objection if the Government favourably considers the prayer of the Petitioner (if representation is made to the above effect to the competent authority by the Petitioner) keeping in view the matters quoted above.

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

Central Administrative Tribunal,
Cuttack Bench, Cuttack, Odisha
26.5.1992.



[Signature]
26.5.92
Vice-Chairman