

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 100 of 1992

Date of Decision: 13.10.1992

Hemendranath Dash

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s.B.M.Patnaik
P.K.Choudhury
S.Mohanty,
Advocates

For the respondents

Mr. P. N. Mohapatra,
Addl. Standing Counsel
(Central Government)

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C O R A M

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

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? NO
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes

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JUDGMENT

J/13

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act,1985, the petitioner prays to quash the impugned order passed by OP No.2 on 29.7.1991, contained in Annexure-3 in regard to the allotment of quarter to OP Nos. 3 and 4 as at Sl.No. 6 and 11 in the said allotment order and to quash the impugned order dated 1.10.1991 contained in Annexure-7 directing recovery of damage rent and to give a declaration that the petitioner is entitled to a quarter in Unit-IV or at Satya Nagar and to quash the order passed by the Chief General Manager, Telecommunications, Bhubaneswar contained in Annexure-15 for directing recovery of damage rent from 1.2.1992 onwards and a further direction to the opposite parties to refund the damage rent recovered as per statement in paragraph-4.29.

2. Shortly stated the case of the petitioner is that he is an Assistant Director in the Tele-Communication Department posted at Bhubaneswar. The competent authority allotted a quarter for occupation of the petitioner in Satya Nagar (Bhubaneswar) on temporary basis, and thereafter on regular basis a quarter has been allotted to the petitioner in Vani Vihar. The petitioner not having moved to Vani Vihar quarter and not having vacated the quarter occupied by him at Satya Nagar, damage rent was assessed over the petitioner which is under challenge. Hence this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that the petitioner had been given a quarter in Satya Nagar which was his choice as 2nd preference in the list. This allotment was made temporarily because of the difficulties of the petitioner and therefore the quarter having been allotted

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to him at Vani Vihar, he should have moved out to that quarter without any resentment. Non-vacation of the quarter at Satya Nagar entitles the competent authority to assess damage rent over the petitioner which was rightly done and should not be quashed. In a crux it is maintained that the case is devoid of merit and is liable to be dismissed.

4. I have heard Mr. B. M. Patnaik, learned Senior Counsel appearing for the petitioner and Mr. P. N. Mohapatra, learned Additional Standing Counsel appearing for the opposite parties

5. During the course of arguments advanced by Mr. Patnaik, it appears to me that the only grievance of the petitioner is in regard to occupation of a quarter at Vani Vihar, because petitioner's wife is seriously suffering from ~~Cardiac~~ ^{Medical} trouble and the Court can take judicial notice of the fact that there is no hospital or private clinic to give immediate attention to ~~cardiac~~ ^{Medical} patients at Vani Vihar. The Cardiologists stationed at Bhubaneswar, normally function in Unit-IV Hospital or as Private Doctors in different clinics confining themselves in Unit-I, II and III, which is far off from Vani Vihar. This is the main point of argument advanced by Mr. Patnaik that occupation of a Quarters at Vani Vihar will deprive the petitioner from giving any proper treatment to his wife if emergency so demands. On the other hand it was strenuously urged by Mr. P. N. Mohapatra, learned Addl. Standing Counsel that it will take a person about 15 minutes to drive ^{Headquarter} drive to the Hospital from Vani Vihar and furthermore the petitioner having once expressed in Annexure-12 that he will occupy a private rented quarters, it is no longer open to the petitioner to remain in the Satya Nagar quarters

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Op. 15

as an unauthorised occupant. Furthermore Mr. Mohapatra relying on the averments finding place in Paragraph-6 of the counter submitted that the petitioner and his wife had visited the quarters at Vani Vihar and had inspected the same and thereafter they had expressed their willingness to occupy the said quarters. In these circumstances a liberal view should not be taken in favour of the petitioner - rather the impugned order should be sustained.

6. I have given my anxious consideration to the arguments advanced at the Bar.

7. My attention was invited to Annexure-16 which is a certificate granted by the Cardiologist in favour Mrs. Sudha Rani Dash, wife of Mr. H. N. Dash. Therein it is stated that Mrs. Sudharani Dash is suffering from chronic rhumatic heart disease and also other complications. The fact that Mrs. Dash is a cardiac patient was not disputed before me. In the circumstances stated above I have no iota of doubt in my mind to hold that Mrs. Dash is a cardiac patient suffering from cardiac trouble and needs constant medical attention. True it is Mr. and Mrs. Dash might have visited the Vani Vihar quarters and they might have agreed to occupy the same. But one does not know the sudden changes which occur to a cardiological patient, health of the which would be detrimental to the patient. Therefore according to circumstances prevalent then, the petitioner and his wife might have changed their mind and would have insisted to remain in the Satya Nagar Quarters. So far as the contention of Mr. Mohapatra is concerned that the petitioner vide Annexure-12 had expressed his willingness to remain in a private rented quarters, I am of opinion that being disgusted, the petitioner must have expressed

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for the treatment of his wife

his intention to occupy the private rented quarters/which needs to be given as 1st preference by every husband. Therefore in my opinion the petitioner out of disgust must have expressed his intention to occupy a private rented quarter which undisputedly carries very heavy rent to be paid. No must have been found person would ever like to pay more and this is necessary just for the treatment of his wife, and therefore the petitioner must have expressed that he would occupy a private rented quarter.

8. However, after hearing arguments advanced by counsel for both sides, I am of opinion that the administration would not suffer in any way if the petitioner is allowed to continue in the occupation of the said quarter in Satya Nagar which is in his possession. Therefore I direct that the petitioner be allowed to continue in the said quarter at Satya Nagar.

9. So far as assessment of damage rent is concerned, since I have ordered continuance of occupation of the quarter at Satya Nagar, his occupation is legalised and therefore the petitioner is to pay only the usual rent which is payable by every occupant. Damage rent assessed over the petitioner is hereby quashed and the petitioner is directed to pay usual rent which is paid in respect of the said quarter.

10. Next grievance of the petitioner is assessment of damage rent over him for unauthorisedly occupying the quarter at Cuttack from 26.5.1991 to 30.6.1991. Mr. Patnaik relying on Annexure-2 contended that once the competent authority has permitted the petitioner to continue in the quarter till 30.6.1991, and in the said letter there being no condition that such permission is accorded subject to payment

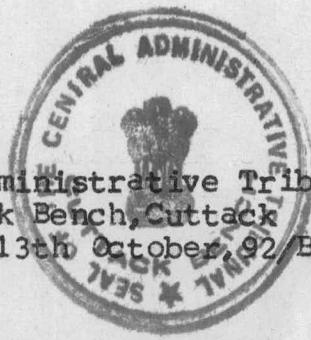
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of damage rent, normal rent should be charged from the petitioner. I have carefully gone through the contents of Annexure-2 dated 10.5.1991 in which it has been specifically stated that the Chief General Manager, Telecommunication, Orissa is pleased to permit the petitioner for further extension of stay at Cuttack till 30.6.1991 under usual conditions. (emphasis is mine). Nothing has been stated in regard to payment of damage rent. On the contrary it is stated that the petitioner will occupy on usual condition which eventually means normal standard rent. Therefore the damage rent assessed over the petitioner for the period from 25.5.1991 to 30.6.1991 is hereby quashed.

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

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 13th October, 92/BKSahoo



Leg. Secy. S.P.
13/10/92
VICE-CHAIRMAN