IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:CUTTACK BENCH

O.A. Nos. 358/92,359/92,360/92 & 385/92

Cuttack this the 27th day of July, 1995

IN O.A.358/92: Aintho Bhaisal ... Applicant

Versus

Union of India & Others ... Respondents

IN O.A.359/92: Nirakara Prasad Dhar ... Applicant

Versus

Union of India & Others ... Respondents

IN O.A.360/92: Jubaraj Bagarti ... Applicant

Versus

& Union of India & Others ... Respondents

IN O.A.385/92: Narendra Dip ... Applicant

Versus

Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.

2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.

(H.RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

27 Jul 95

CENTRAL ADMINISTRATIVE TRIBUNAL:CUTTACK BENCH

Original Application No.358 of 1992
Original Application No.359 of 1992
Original Application No.360 of 1992
Original Application No.385 of 1992

Cuttack this the 27th day of July, 1995

C O R A M:

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN)

...

IN O.A.358/92: Aintho Bhaisal
Sub Postmaster
Belpahar R.S.
District:Sambalpur ... Applicant

By the Advocate: Shri D.P.Dhalasamant

Versus

1. Union of India represented
through Chief Postmaster General
Orissa Circle
Bhubaneswar-751001 ... Respondent

2. Postmaster General
Sambalpur Region
Sambalpur - 768001

3. Senior Superintendent of Post Offices
Sambalpur Division,
Sambalpur - 768001
... Respondents

By the Advocate: Shri Aswini Kr.Mishra,
Standing Counsel (Central)

IN O.A.359/92: Nirakara Prasad Dhar,
Postal Assistant
Sambalpur H.O. 768001 ... Applicant

By the Advocate:Shri D.P.Dhalasamant

Versus

1. Union of India represented
through Chief Postmaster General
Orissa Circle, Bhubaneswar-751001

2. Postmaster General
Sambalpur Region
Sambalpur - 768 001

3. Estate Officer-cum-A.P.M.G. (W.C.)
Office of the Chief Post-master General,
Orissa, Bhubaneswar-751001

4. Senior Superintendent of Post Offices
Sambalpur Division,
Sambalpur - 768 001

... Respondents

By the Advocate: Shri Aswini Kr.Mishra
Standing Counsel(Central)

IN O.A.360/92: Jubaraj Bagarti
Postal Assistant
Burla S.O.
District:Sambalpur ... Applicant

By the Advocate:Shri D.P.Dhalasamant

Versus

1. Union of India represented
through Chief Post-master General
Orissa Circle,
Bhubaneswar-751 001

2. Senior Superintendent of Post Offices,
Sambalpur Division,
Sambalpur 768 001

... Respondents

By the Advocate: Shri Aswini Kr.Mishra,
Standing Counsel(Central)

IN O.A.385/92: Narendra Dip
Ex-Group 'D' Official
Hirakud SO
Sambalpur - 768001 ... Applicant

By the Advocate:Shri D.P.Dhalasamant

Versus

1. Union of India represented
through Chief Post-master General
Orissa Circle,
Bhubaneswar-751001

2. Estate Officer-cum-A.P.M.G.(W.C.)
Office of the Chief Postmaster General,
Orissa, Bhubaneswar-751001

3. Senior Superintendent of Post Offices
Sambalpur Division,
Sambalpur - 768 001

... Respondents

By the Advocate: Shri Aswini Kr.Mishra,
Standing Counsel(Central)

ORDER

MR.H.RAJENDRA PRASAD, MEMBER(ADMN): Shri Bhainsal, Postal Assistant, Jharsuguda (O.A.358/92) was allotted a residential quarter on 29th August, 1989. He was transferred to Behlapahara S.O. on 31st May, 1991. He continued to be in occupation of the accommodation beyond the permissible duration as per rules. The allotment of accommodation was cancelled on 15th December, 1991. Penal rent @ Rs.45/- per sq.metre was imposed on him from 15th April, 1992, till 16th October, 1992, on which date he vacated the accommodation.

(b) Shri N.P.Dhar, Group D official, Burla Sub Post Office was allotted a residential quarter on 23rd September, 1975. He moved to Sambalpur on promotion on 21st September, 1990. The allotment was cancelled on 16th January, 1991. Penal rent was levied in this case from 1st April, 1991, until 27th August, 1992, on which date he vacated the quarters.

(c) Shri Jubaraj Bagarti, Postman, Hirakud Sub Post Office, was allotted a residential

accommodation on 25th May, 1975. On 16th August, 1991, he moved to Burla Sub Post Office on promotion, but continued to occupy the quarters. The allotment was cancelled on 15th December, 1991. Penal rent was ordered to be recovered from his from 15th April, 1992, to 25th August, 1982, when he ultimately vacated the quarters.

(d) Shri Narendra Kumar Dip, Group D Official, Hirakud Sub Post Office, was allotted a quarter in 1972. He retired on medical invalidation on 2nd August, 1989. The allotment was cancelled on 31st January, 1990, and eventually vacated the quarter on 15th September, 1992. He was ordered to pay penal rent from 1st February, 1990, @ Rs.45/- per sq.metre onwards to the date of the vacation of quarters.

2. The applicants challenge the imposition of penal rent on them and pray for the quashing of the relevent orders issued by the Senior Superintendent of Post Offices, Sambalpur Division in all these cases.

All these cases were admitted on 3rd August, 1992, except O.A. 385/92, which was admitted on 12th August,1992. The recovery of penal rent was stayed by this Tribunal in all the cases on the condition that the applicants vacate the quarters by 25th August, 1992, - except in O.A.385/92 where the date of vacation was fixed for 15th September, 1992. The applicants in Original Application Nos. 358 and 385 of 1992 exceeded the date

of vacation of the quarters, as indicated and fixed by the Tribunal.

The applicants contend that the rules regarding recovery of penal rent from the unauthorised occupants of the department have been incorrectly adopted and imposed on them in all these cases inasmuch as the rates of recovery indicated by the authorities in all these cases are applicable in the case of the general pool accommodation in Delhi.

3. The respondents have given the details of unauthorised occupation of the quarters allotted to the applicants despite repeated notices to vacate them. In all these cases, respondent 2 has relied on instructions issued by the D.G.Posts, New Delhi, letter No.5-1/88 Bldg. dated 9.5.1991, communicated by Respondent 2, vide his letter No.Bldg./6/Gen.5/ Chapt.4 dated 19.8.1991. The instructions of the D.G. Posts refer to Ministry of Urban Housing, Directorate of Estates O.M. No.18011/8/89/Pol.III dated 1.4.1991 which was in partial modification of their memo dated 27.8.1987. The 1987 instructions prescribed a damage rent of Rs.20 per sq.mtr. of living area in respect of Type A to D (I to IV) and raised to Rs.40/- per sq.mt. in April, 1991. The instructions of 1987 were in respect of the General Pool Accommodation in Delhi. It was mentioned therein that similar damage-rent could be worked out in consultation with the C.P.W.D. in other stations with general pool accommodation, and

that the rates so assessed were be adopted at these stations. It was also laid down that in respect of departmental accommodation, where no general pool accommodation is available, suitable unit-rates should be worked out by the C.P.W.D. This being the situation, the levy of Rs.45/- in respect of the quarters in Sambalpur district seems to be excessive and not covered by the instructions of the Ministry. Moreover, the Directorate of Estates had revised the penal rent from Rs.21 to 45 only in respect of quarters of Type 'B' (V) and above, whereas Rs.45/- has been adopted by the respondents in this case in respect of Type I and II quarters. That the applicants were in unauthorised occupation of quarters allotted to them beyond permissible limits of time is clear enough. That they disregarded all notices from Respondent 3 to vacate the quarters is also equally evident. In fact, the unauthorised retention of accommodation may well amount to indiscipline, and may also betray a conduct which is unbecoming of a Government servant. The authorities would have been free and within rights to have initiated suitable action against them on this score. When, however, any decision is taken which has adverse financial implications, the same has to be scrutinised against the relevant extant rules and the justification of such a decision has to be

tested against regulations.

The decision to impose Rs.45/- per sq.ft. by way of penal rent is not justified inasmuch as :-

(a) Rs.45/- was decided to be imposed on Type V quarters and above;

(b) the rate was in respect of general pool quarters;

(c) the penal rent so imposed are applicable to Delhi;

(d) separate assessment had to be done (even) for the Departmental pool in consultation with CPWD in respect of places other than Delhi;

(e) if the CPWD infrastructure is un available at any station, the rates of penal-rent could be got calculated in consultation with the state authorities, or be atleast be on par with the rates applicable under the rules of the local Government, if such rates have already been fixed by the State Government.

4. The decisions in the present applications do not satisfy the requirement of rules and also the instructions of the concerned ministry and cannot be upheld. The orders imposing penal rent in these four cases are therefore quashed. It is clarified that the respondents are free to have the penal rent assessed by the C.P.W.D. If such a course is not found feasible, they have the liberty to get the same assessed by the State P.W.D. authorities, or to adopt the rates which may be already in vogue under the State Government. In the alternative, they could also examine and decide whether the

recovery of twice, or thrice, the standard rent, as considered appropriate and permissible, will be justified or adequate as per the normal rules of the Department and the relevant FR/SR, and if such levy is considered sufficient to meet the purposes of these cases fairly and adequately. A copy of this order may be sent to S/Shri Balachandra and A.Ghosh-Dastidar, Chief Post Master General and Post Master General, Orissa Circle & Sambalpur Regions, respectively, and the Director of Postal Serfices, Berhampur Region, to enable them to initiate necessacry action to meet the requirement of similar situations on the lines suggested that may arise hereafter.

Thus all the Original Applications are disposed of. No costs.

(H.RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)
27 JUL 95

B.K.Sahoo//