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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 365 of 1992.

Date of decision : December 23, 1992.

B. Sankaraiah

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Applicant.

Versus

Union of India and another ...

Respondents.

For the applicant ...

M/s. C. A. Rao,  
S. K. Purchit, Advocates.

For the respondents ...

Mr. D. N. Misra,  
Standing Counsel (Railways)

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 ? *Ys*
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

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JUDGMENT

K.P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to direct the respondents to forthwith release the retiral benefits accrued in favour of the applicant after deducting the normal rent.

2. Shortly stated, the case of the applicant is that while he was working in the South Eastern Railway and was posted at Raipur, in the year 1981 the applicant was transferred to Bhillai. During his stay at Raipur the applicant had been allotted Government quarters and the applicant was in occupation of the same. The applicant went to Bhillai and joined his post at Bhillai but could not vacate the quarters at Raipur because of his family difficulties. According to the applicant he had made application for retension of the quarters (after his retirement at Bhillai) and no reply having been received, the applicant continued occupation. Suddenly to his utter surprise the applicant got a notice that penal rent and damage rent had been assessed on the applicant and the deduction was being made from the Death-cum-retirement gratuity and the amount on account of entire/death-cum-retirement gratuity payable to the applicant has been withheld. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that the applicant had unauthorisedly occupied the quarters in question and therefore, rightly he was treated as an unauthorised occupant and damage rent

and penal rent was assessed over the applicant and in order to recover the dues of the Government, such recovery was effected from the Death-cum-retirement gratuity. Hence, the case being devoid of merit is liable to be dismissed.

4. I have heard Mr. S. K. Purohit, learned counsel for the applicant and Mr. D. N. Misra, learned Standing Counsel (Railways) for the respondents.

5. Mr. Purohit relied upon a Full Bench judgment of the Central Administrative Tribunal, reported in Full Bench Judgments of Central Administrative Tribunals (1989-1991) at page 287 ( Wazir Chand versus Union of India and others) and submitted that D.C.R.G. cannot be withheld on account of non-payment of damage rent and penal rent. Mr. Purohit also relied upon a Division Bench judgment of Central Administrative Tribunal, Bombay Bench reported in 1992 (3) S.L.J. (CAT) 107 ( Umanath Venkatrao Baindurkar vrs. Union of India and others ). The Division Bench has relied upon the observations of the Full Bench and has come to the conclusion that D.C.R.G. cannot be withheld.

6. During the course of argument Mr. D. N. Misra, learned Standing Counsel (Railways) submitted that there was no necessity of giving any further notice as in Annexure-R/4 the applicant was directed that on being transferred, the applicant should vacate the quarters in question. The applicant was bound to comply with the said order failing which he is liable to pay damage rent and penal rent. According to Mr. Misra, no illegality having been committed by the administrative authority, and the case being devoid of merit should be straightaway dismissed.

7. After giving my anxious consideration to the argument advanced by Mr. S. K. Purchit and Mr. D. N. Misra I am of opinion that a Government servant, at his own risk and on his discretion may disobey the Government orders and once such orders are disobeyed the concerned authority must proceed according to the prescribed <sup>there</sup> Rules. That is no denial to the fact that no notice was issued to the applicant <sup>in</sup> declaring him <sup>an</sup> unauthorised occupant. No notice was issued to the applicant calling upon him to show cause as to why damage rent and penal rent should not be assessed over him. Law is well-settled that once an action is being proposed to be taken against a Government servant which may affect his service prospects, notice on the proposed action must be given to the concerned Government servant failing which principles of natural justice are violated. Hon'ble Mr. Justice R. N. Misra, (as my Lord the Chief Justice then was) speaking for the court, in the case of K. I. Shephard and others vrs. Union of India and others reported in (1987) 4 SCC 431, was pleased to observe as follows:

" On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet."

This view of the Hon'ble Supreme Court was again reaffirmed in ~~case~~ the case of Navjyoti Co-operative

Group Housing Society etc. vrs. Union of India and others, reported in JT 1992(5) SC 621. By enunciating the principles of legitimate expectation, Their Lordships have been pleased to observe that there is some lawful expectations imposed on the particular Government and legitimate expectation demands that notice must be given to the Government Officer who may be affected.

8. Here is a case where heavy amount of damage rent and penal rent has been assessed over the applicant. If notice would have been given to the applicant, he would have certainly submitted his defence and would have submitted whatever he had to say in the matter and this procedure not having been followed, applying the above mentioned principles laid down by Their Lordships of the Supreme Court in the above mentioned cases, I have absolutely no hesitation in my mind to say that principles of natural justice have been violated and hence the order passed by the concerned authority imposing penal rent and damage rent are hereby quashed. The amount realised from the applicant on this count should be returned to the applicant within 60 days from the date of receipt of a copy of this judgment.

9. Next, referring to the judgments reported in Full Bench Judgments (1989-91) and the judgment of the Division Bench referred to above, while concluding the Full Bench <sup>has</sup> summed up the conclusion and have stated as follows:

"Withholding of entire amount of gratuity of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible."

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The question of legality in withholding the gratuity amount and appropriating the same towards the payment of the amount recoverable from the applicant on account of non-payment of damage rent and penal rent, in view of the observations of the Full Bench has now become mere academic and needs no detailed discussion especially in view of the fact that I have already held that the principles of natural justice having been violated, the assessment of damage and penal rent is quashed.

10. Mr. Misra further submitted that in case, the contention put forward on behalf of the respondents is not accepted and the demand for realisation of damage rent and penal rent is quashed, then the applicant should be directed to pay the normal rent and other dues which are payable by the applicant, such as water tax, electric charges etc. I think there is substantial force in the aforesaid contention of Mr. D. N. Misra. The total amount payable by the applicant on this account be calculated and since Mr. Purohit has given his consent on behalf of the applicant to recover the money from the D.C.R.G. amount the total amount due from the applicant on account of normal rent, electric charges, water charges etc. be recovered from the D.C.R.G. amount and this being a consent order the principles laid down by the Hon'ble Judges of the Full Bench, would have no application to this part of the order. It is directed that the judgment be implemented within 60 days from the date of receipt of a copy of this judgment.

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

*K. Gopal* DMB  
..... 23.12.92  
VICE-CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
December 23, 1992/Sarangi.

