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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

Original Application No. 511 of 1993

Dated, Cuttack, the 21st day of September, 1994.

Soumendra Kumar Behera ...

Applicant

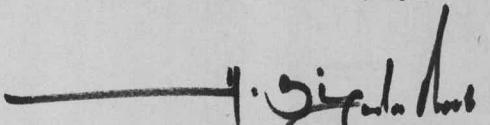
versus

Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the 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)

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CUTTACK BENCH: CUTTACK.

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Dated, Cuttack, the 21st day of September, 1994.

CORAM:

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

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Soumendra Kumar Behera, aged 28 years,
son of late Purna Chandra Behera (Ex- Phone
Inspector, D/o. SDO, Phones-II, Bhubaneswar)
Residence of Qr. No. Type III/8, Microwave Colony,
Bhubaneswar-12 now working as Telecom Office Asst.
in the O/o. Asst. Engineer, In-Charge of Retail Telecom
Store Depot, Satya Nagar, Bhubaneswar-751007.

... Applicant..

By Advocates M/s. S. K. Pattnayak, P. Pradhan,
A. K. Mohanty, B. B. Patnaik.

Versus

1. Union of India, represented through
Director General, Dept. of Telecommunication,
Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecommunication,
Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Telecom Dist. Manager, Bhubaneswar,
At/P.O. Bhubaneswar, Dist-Khurda.
4. Asst. Eng. Incharge of Retail Telecom Store
Depot, Satyanagar, Bhubaneswar.

... Respondents.

By Advocate Shri P. N. Mohapatra,
Addl. Standing Counsel (Central)

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ORDER

H. RAJENDRA PRASAD, MEMBER (ADMN.), Shri Purna Chandra Behera, formerly
Phone Inspector, under S.D.O. Phones-II, Bhubaneswar,
was allotted a Type III quarter in 1985. He passed away
on 14.11.1990. Thereafter, his widow applied for retention
of the said quarter as permissible under the rules.

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She was permitted to retain the [redacted] quarter upto 13.5.1991.

1.1. In the meanwhile, Shri Soumendra Kumar Behera, the son of the deceased Government servant (and the applicant in this case) applied for an appointment on compassionate ground in relaxation of the normal recruitment rules. His request was examined, found acceptable, and orders of appointment were issued on 15.12.1990. He was sent for pre-induction training from 21.10.1991, and finally joined his duties as Telecom Assistant in the Office of the Assistant Engineer Incharge, Retail Telecom Store Depot, Bhubaneswar, on 21.1.1992.

1.2. Nearly a month thereafter the applicant represented to the authorities to allot the quarter, which had earlier been allotted to his father and which was still in the occupation of the family of the deceased Government servant, in his own favour. On 30.4.1992 orders were received from the Telecom District Manager, Bhubaneswar imposing damage rent on the applicant. On 1.6.1992 the applicant represented to the Chief General Manager, Telecommunications, Bhubaneswar, to reconsider the matter, whereupon the latter stayed the recovery of penal rent. However, on 23.8.1993, the applicant was informed of the rejection of his request by the Chief General Manager, Telecommunications, and penal rent was reimposed for recovery on the same date.

2. The present application was filed on 24.9.1993. On 27.9.1993, the application was admitted by this

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 Tribunal and directions were issued not to (a) disturb the applicant from his quarters, and (b) recover penal rent from him until further orders.

2.1. A counter-affidavit seems to have been filed only on 28.1.1994, as seen from the dated signature of the learned counsel for the applicant on the copy which forms a part of record before us. It may be mentioned, in passing, that because of this delay, the case, although listed on 6 different occasions, could not be taken up for hearing. Even after that, the case, even though listed on 12 different dates, could not be heard.

It was finally heard on 9.8.1994.

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3. The main ground forward by the applicant is that he is entitled to allotment of a quarter as per S.R. 317-B-26 which reads as follows:

" When a Government servant in occupation of General Pool accommodation dies while in service, his/her eligible dependent/near relation may be allotted accommodation on adhoc basis on the following conditions:-

1. The dependent employee should have resided with the deceased officer for at least six months prior to date of death.
2. If the eligible dependent is not employed at the time of death, he/she should get an employment in an eligible office within a period of twelve months from the date of death.
3. The allotment will be one type below the dependent's normal entitlement. The allotment of the same quarter occupied by the deceased officer can be made on fulfilling the condition of ad hoc allotment if the quarter has not been vacated- GIO(2), SR 317-B-26.
4. The concession is not admissible if the deceased employee or the dependent owns a house/plot at the place of posting. "

3.1. The applicant puts forth a grievance that his appointment on compassionate grounds was unduly delayed by the respondents and this delay deprived him of the benefit of rules governing adhoc allotment of quarters. In a somewhat convoluted exposition of rules, the applicant says that, while there is no provision in the relevant rules that a compassionate appointment cannot be delayed beyond one year from the date of application, the Supplementary Rule referred to above stipulates the period of one year as the criterion of eligibility for adhoc allotment of quarters.

3.2. Although the applicant does not state so in clear terms, it is his stand that as a dependent/son of a deceased Government servant, ^{in order} to become eligible for an adhoc allotment of a quarter, ^{is required to secure} an appointment within one year of the demise of its original allottee, a stipulation should also be made that the authorities must issue the appointment order within one year in all cases of appointments on compassionate grounds. The absence of such stipulation in recruitment rules is anomalous vis-a-vis the allotment rules and this has operated to his disadvantage.

4. Another ground taken by the applicant is that some officials, who were earlier appointed similarly on compassionate grounds, had been allotted the quarters originally given to their parent/husband whereas in the present instance he was denied a similar consideration.

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Among other points advanced by him, the applicant contends that he has not been paid any house rent allowance from the date of his appointment and that the penal rent imposed on him is exorbitant. In conclusion he asserts with finality that he is entitled to an adhoc allotment of quarter as requested by him.

5. The applicant therefore, prays for a direction to the respondents to allot him the quarter which is now under his occupation and not to levy penal rent thereon.

6. The respondents in their counter affidavit are at pains to submit that the case of the applicant for compassionate appointment was considered as expeditiously as possible and appointment was offered to him within 14 months from the date of the demise of his father. They explain that the training received by him was not an in-service training, as claimed by the applicant, but pre-induction training. In other words, the respondents state that the applicant came to be borne on the establishment of the Department only on 21.1.1992 and prior to this date, he had no eligibility whatsoever even to apply for any accommodation.

7. The respondents draw attention to para 2(1) &(2) of the relevant S.R. according to which the family of a deceased Government servant may retain the allotted accommodation for an additional 6 months after which the allotment is cancelled or is deemed to be cancelled. The

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same sub-rule stipulates that, after such cancellation, the occupant becomes liable to pay damages equal to market licence fee as may be determined by the authorities. There is also a provision for retention of the quarter by the family for another 6 months on the grounds of serious ill-ness of any member of the family, or if any of the children in the house-hold are to take the final examinations in Schools or colleges. The rent in such cases is, however, double the standard-rent or twice the licence-fee which was being paid by the deceased allottee. Beyond this, the quarters cannot be retained under any circumstances in excess of these two specified 6-monthly periods. There was no application from the family of the deceased for retention of the quarters beyond the first 6 months. Hence they were permitted to retain the quarters only upto 13.5.1991, i.e. for 6 months after the demise of the original allottee.

8. The respondents also invite attention to Order No.2 of the Government of India issued under S.R. 317-B-26 which stipulates that even if the dependent gets an employment in an eligible office after the death of the original allottee, he may apply for an adhoc allotment provided that (i) such an appointment is secured within a period of twelve months after the death of the officer and (ii) the accommodation in occupation of the officer had not been vacated. This is the provision to which the applicant has also drawn attention. The respondents argue that since the

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applicant did not secure an appointment within 12 months of the demise of his father, he was not entitled to any adhoc allotment. They also point out that the quarter was not in lawful occupation of the family but theirs was an unauthorised occupation without any valid sanction or permission. Next, even as per rules the accommodation to be adhoc-allotted to the applicant had to be of a type below than what he was currently occupying. Apart from the rules, even on facts, the applicant would not in any case have been eligible for a Type III quarter on the basis of the pay drawn by him. Thus, considered from any angle, the unauthorised occupation of a non-entitled accommodation by the applicant, beyond permissible limits of retention, cannot be overlooked.

9. The position of rules is clear enough, leaving no room for ambiguity. An application should have been made for allotment either under the normal rules for allotment of quarters after securing employment or for an adhoc allotment within one year after the demise of the original allottee. Neither of these two contingencies is satisfied by the present applicant. The unauthorised retention of accommodation, not covered by any rule, permission, or sanction, cannot be appreciated. There is in fact no basis, either of the rules or of actual pay drawn, for any expectation to be entertained by the applicant that he would automatically be allotted the same quarter which was allotted to his father after the latter's demise. That being so, it is not understood why he should have unlawfully continued to occupy a quarter which

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was neither allotted to him, nor, for which he was entitled, either in terms of ^{rules or the} pay drawn by him. This action cannot, therefore, be lightly glossed over. In doing so he was not merely violating rules and defying the lawful orders of his official superiors but also depriving an eligible colleague of a proper allotment of quarters.

10. One final aspect which remains to be considered relates to the question raised by the applicant about the two sets of rules governing compassionate appointments and ad hoc allotment of quarters. The rules governing ad hoc allotment of accommodation and compassionate appointments are distinct, separate and unrelated to one another. It would be idle to argue that a compassionate appointment must, under all circumstances, be offered to an applicant ^{only} because he had applied for an ad-hoc allotment of accommodation, or that such appointment should be offered within one year of the death of his father. The respondents have explained that, whereas it takes nearly upto two years for an appointment to be offered to a candidate under normal recruitment rules, the compassionate appointment in the present case was offered within 14 months of the death of the applicant's father. Even if the applicant had been appointed within one year he would still be found ineligible to continue in the same quarter simply because his continued occupation of the quarter beyond 13.5.1991 was itself unauthorised. It is important to state this because the rule speaks of continued occupancy of the quarters by the family of the deceased. This could only mean authorised

occupancy and cannot be taken to cover unauthorised retention of accommodation.

11. As regards the ad hoc allotment of accommodation to some others, as mentioned by the applicant, it is explained that Kumari Deepika Panda, Snehalata Panda, Sarvashree P.C. Nayak and P.K.Ray, had been given accommodation in their own right and as per their eligibility and rules.

12. In the light of the preceding discussion, I am unable to hold that the applicant is in any way entitled to the reliefs prayed for by him. It is, therefore, not found possible to quash the orders contained in Telecom District Manager, Bhubaneswar, Memo No.H-7/Type II/90-91/180 dated 23.8.1993 and No.H-7/Type-II/90-91/178 dated 23.8.1993, nor to direct the respondents to allot quarter No.8, Type III, Unit -8, Bhubaneswar, in favour of the applicant, as prayed for by him. Instead, he is directed to comply with the orders of vacation of the said quarter within a period of 15 days from today.

13. As regards the levy of penal rent, the respondents are free to reconsider the matter, and exercise such clemency as may be feasible, if they have any discretion in the matter. Thereafter, any decision conveyed by the respondents shall be binding on the applicant. It is however, also directed that if any penal rent is eventually found inescapable and decided to be levied, the same shall not cover the period from 27.9.1993 onwards, since the official has stayed in the quarter from that date on the strength of the orders passed by this Tribunal; during this period he shall pay only the

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normal rent, provided that he complies with the direction to vacate the quarter within 15 days, as indicated above. Additionally, the respondents may like to examine the aspect of the applicant's eligibility for HRA ~~as per his~~ ~~eligibility~~ under the rules, after he vacates the quarter now under his occupation.

14. Thus, the O.A. is disposed of accordingly.

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(H. RAJENDRA PRASAD)

MEMBER (ADMINISTRATIVE)

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