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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 558 of 1993

Date of Decision: 18.8.1994

Narasingh Sahu

Applicant (s)

Versus

Union of India & Others

Respondent (s)

(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)


(D. P. HIREMATH)
VICE-CHAIRMAN

18 Aug 94.

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 558 of 1993

Cuttack, this the 17th day of 1994

C O R A M:

THE HONOURABLE MR. JUSTICE D.P. HIREMATH, VICE-CHAIRMAN
AND

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

Naras Singh Sahu
S/o. Sri Bhagaban Sahu,
presently working as
Superintendent of Post
Offices, Balasore Division,
Balasore

Applicant/s

By Advocate Shri S.B. Jena

vs.

1. Union of India, represented by its
Secretary, Department of Posts,
Dak Bhavan, New Delhi
2. Chief Post-master General, Orissa
Circle, At/PO: Bhubaneswar
Dist: Khurda
3. Director of Postal Services (H.Qrs)
O/o the CPMG, Orissa Circle,
Bhubaneswar-751001

Respondent/s

By Advocate Shri Ashok Mishra,
Sr. Standing Counsel (Central)

O R D E R

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D.P. HIREMATH, V.C.: Petitioner, herein has challenged the order of
Respondent 2, i.e. Chief Post-master General, Orissa Circle,
Bhubaneswar, directing him to refund the House Rent
Allowance, received by him during the occupation of a
part of Divisional Office building at Balasore during
the period from 3.8.1992 to 24.7.1993. It is the case of
the petitioner that he was paying Rs. 60/- per month to
the portion of building measuring 80 sq.ft. having
occupied by him with the permission of his superior

authority. It is not denied that even his predecessors were occupying the said premises, but with the prior permission of Respondent 2. Petitioner's contention is that he sought permission from Respondent 2 and occupied the premises. It appears that service union people represented the 2nd respondent in June, 1993 that a portion of the same building was leaking and that the petitioner should no longer continue to occupy the premises in his possession. Thereafter the petitioner was directed to vacate the premises as per order reflected in Annexure-2 which he did. By that time he had received H.R.A. of Rs.2406/-, admissible to him under the rules. Because he was occupying a portion of the building taken on rent by the postal department he was asked to refund the H.R.A. so received.

2. Though it is contended in the written statement filed by the respondents that the petitioner was occupying premises without prior permission, in our view looking to the conduct of the respondents through out the period of occupation of the premises for more than a year it is too late in the day to contend occupation was without prior permission. It is undisputed as has already been pointed out that his predecessors in that office were occupying the same premises as no other home was perhaps secured on rent. Suffice it to note that the petitioner was asked to vacate only in view of the complaint made by the service union about the leakage in roof of the building and the part occupied by the petitioner could be utilised

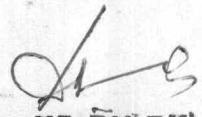
for the Divisional Office purpose. In our view therefore, from the admitted facts, it emerges that the petitioner was occupying a portion of the building without any objection till he was asked to vacate on a payment of Rs.60/- per month as rent. If this be the position which emerges from the contention of the parties on record, the only point that remains to be considered is whether the petitioner is liable to refund house rent allowance received.

3. It is the contention of the petitioner that whatever be the rent that he pays, he is entitled to H.R.A. For instance, even if he is residing in his own house, he is entitled to receive H.R.A. permissible under the rules. In the instant case it is not the premises procured by the department to use as official residence of its employee. The petitioner was paying rent of Rs.60 per month as admitted by the respondents. It may be at the worst subletting also. If this be the position, mere fact of paying only Rs.60/- does not disentitle the petitioner to get H.R.A. which is permissible under the rules. That being so we find sufficient force in the contention of the applicant that he is not disentitled to H.R.A. and accordingly we allow his application, and direct the respondents not to insist on the refund of H.R.A. from the petitioner. No order as to costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//

18 AUG 94


(D.P. HIREMATH)
VICE-CHAIRMAN