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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

ORIGINAL APPLICATION NO.576 OF 1993
Cuttack, this the 5th day of June, 1996

Sunit Kumar Limai

....

Applicant

Vrs.

Union of India and others

....

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? *Yes,*
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *Yes,*

Narasimha Sahu
(N.SAHU)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.576 OF 1993
Cuttack, this the 5th day of June, 1996

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE)

.....

Sunit Kumar Limai,
aged about 32 years,
Telephone Office Assistant (TOA),
S/o late Simadri Limai,
(Ex-Telephone Supervisor),
Qrs.No.98, Type-II
Block 12 P&T Colony,
Unit-IV,
Bhubaneswar-751 001

...

Applicant

By the Advocates

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M/s A.R.Dash,
N.Lenka,
B.K.Jee &
N.Das.

-versus-

1. Union of India,
represented by the
Director General,
Department of Telecommunication,
Sanchar Bhavan,
New Delhi.
2. Chief General Manager,
Telecommunication,
Orissa Circle,
Bhubaneswar-751 001.
3. Telecom District Manager,
Bhubaneswar-751 007.
4. Telecom District Engineer,
Bhubaneswar-751 007

....

Respondents

By the Advocate

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Mr.P.N.Mohapatra.

Kechari

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O R D E RN.SAHU, MEMBER(ADMN.)

The only claim in this application is allotment of quarters No.98, Type-II, P&T Colony, Unit-IV, Bhubaneswar, in favour of the applicant, not to recover any penal rent from him, and to quash the orders contained in Annexures 2, 6 and 10 for recovery of penal rent.

2. The facts are in a brief compass. Simadri Limai, father of the applicant died in harness on 25.3.1989 as a Telephone Supervisor, Trunk Exchange, under the Divisional Office (Telecom), Bhubaneswar. He had a wife, a son, the applicant and an insane daughter. He is entitled to Type-III but he resided only in next below Type-II quarters. The insane daughter was required to be continuously treated and looked after by the widow. They were finding it difficult to make up both living and treatment single handedly with the meagre family pension. On 2.2.1990, by Annexure-1, the widow represented for retention of the quarters for some more time. The main ground was that a patient mentally ill and accustomed to a particular atmosphere would make the life of all other members supporting her very difficult. On this if removed from these surroundings. ground a request was made, but the Divisional Officer, Telecom rejected the representation because eight months from the date of death of Sri Simadri Limai already expired. The representation was rejected during March, 1990, under Annexure-2, and the applicant was asked to vacate the quarters immediately. On 31.3.1990, the mother of the applicant died after prolonged suffering. In April 1990, the applicant passed

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matriculation under correspondence course when he was 30 years in age. Annexure-3 dated 10.5.1990 is an application intimating the cause of delay in making the representation for retention of quarters. On 23.7.1990 the applicant submitted an application for compassionate appointment. His claim for compassionate appointment was approved on 3.10.1991. He had undertaken theoretical training from 21.10.1991 to 10.1.1992 and seven days practical training from 25.5.1992 to 1.6.1992. On 8.5.1992 (Annexure-4) family pension was granted to the applicant on behalf of his mentally retarded sister. On 11.12.1992, Annexure-5, the applicant was posted as Telecom Office Assistant in the scale of pay of Rs.975-1660/- Meanwhile by an order dated 30.4.1992 (Annexure-6) there was a direction for recovery of penal rent for overstay and unauthorised occupation in the allotted quarters. He found that by Annexure-6, deduction at the rate of Rs.1,236/- per month was made towards penal rent. On 20.1.1993 he again represented for retention of quarters. On 6.4.1993 he made an appeal to the Grievance Cell against recovery of penal rent and for allotment of quarters. On 10.5.1993 he was transferred to Bhubaneswar. On 23.8.1993 a notice was issued to the applicant to vacate the quarters immediately, failing which he was threatened with eviction proceedings. By an order dated 30.6.1993 he was relieved from Puri and was asked to join at Bhubaneswar Office on transfer. The applicant states that there are cases like Dipika Panda, Snehalata Panda, P.K.Dey who have been allotted the same quarters as were occupied by their father or husband on being given appointment under rehabilitation

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scheme. It is pointed out that the order of approval of appointment on 3.10.1991 (Annexure-R/3) stipulates as a condition that the applicant ought to take care of the family members of the deceased official. It is submitted that the sister of the applicant is still under treatment.

3. The Respondents themselves narrated the sequence of events giving rise to delay in passing orders of appointment. There cannot be a more convincing factual defence of the applicant's case than Para 3A of the counter affidavit which runs as under:

"....The applicant passed High School Certificate examination held in April'90 and was placed in Third division. The Board of Secondary Education, Orissa issued the provisional certificate-cum-mark sheet on 30.6.90, the copy of which is enclosed as Annexure-R/1. The applicant submitted an application on 23.7.90 i.e. after one year of the death of his father to the Resp.No.3 (enclosed as Annexure-R2) along with some documents for his compassionate appointment. But he did not submit all documents and information on 23.7.90. The applicant submitted income certificate and information about PLI/LIC policy on 17.10.90. The Resp.No.3 forwarded the documents, application & other particulars on 30.11.90 to the Respondent No.2 for consideration of compassionate employment. The said employment is decided in consideration of hardship, financial distress, number of dependants, assets and liabilities as well as the earning members of the family etc. So, the Resp.No.2 appointed an investigating officer to go into the details of the case and submit his report with remarks justifying compassionate appointment or not for consideration of Circle High Power Committee. The said Committee does not sit for considering individual case. When some cases are ready, the High Power Committee sits and decides all cases at a time. The said Committee met on 13.9.91 and approved the employment of the applicant in the cadre of Group-C as Telecom Office Assistant in the Telecom District, Bhubaneswar under Respondent No.3 subject to certain conditions in relaxation of normal Recruitment Rules of Telecom Office Assistant vide letter dated 3.10.91(Annexure-R-3). Undergoing the Induction training is a pre-condition before employment. Successful completion of the

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said training is binding and compulsory. The candidates are given training in Code Books and typewriting. Thereafter one week practical job training in the office is given. He was sent for training to Circle Telecom Training Centre, Bhubaneswar from 21.10.91 to 13.1.92. On successful completion of training in the training centre, he was ordered to undergo one week job training from 14.1.92 to 20.1.92 in the O/o the SDOT, Puri vide letter dtd. 8.1.92 (copy enclosed as Annexure-R4). But the applicant did not join the job practical training at Puri after completion of induction training in the CTTC, Bhubaneswar. He joined the job training on 25.5.92 and appointed as Telecom Office Assistant on 2.6.92 in the O/o Sub-Divisional Officer (Telegraphs), Puri."

The reasons for rejection of allotment of quarters are:

"C. The applicant applied for compassionate appointment on 23.7.90 (Annexure-R-2) after one year of the death of his father. He got employment on 2.6.92. So the applicant is not entitled to ad hoc allotment of govt. accommodation as provided under para 3(b) of Govt. of India's order (2) below SR 317-B-26 (Annexure-R5).

D.The occupation is illegal and unauthorised. The concession period for ad hoc allotment of the Qtrs is one year from the date of death of the employee as provided in Annexure-R5.

E. That the applicant could not secure the employment within one year from the date of death of his father (i.e. 25.3.89). The applicant has prayed that the aforesaid quarters be allotted from the date of his application. He has not stated the date. He applied in prescribed form on 21.1.93 which was rejected by the Respondent No.2 in view of the facts stated in para 3(A), 3(B) & 3(C) above as well as availability of employees senior to him according to date of entry into the service waiting for allotment of quarters years together."

4. I have carefully considered the submissions of the applicant and the submissions canvassed on behalf of the Respondents in the counter. The relevant rules are as under:

"3. CONCESSION OF ALLOTMENT OF QUARTERS TO DEPENDANT-ON RETIREMENT OF ALLOTTEE. When a Government servant in occupation of Government residence retires from service,

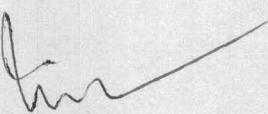
his/her son, unmarried daughter or married daughter (if he does not have any son or in case where the married daughter is the only person who is prepared to maintain the parent and the sons are not in a position to do so, e.g., minor sons), or spouse may be allotted Government residential quarters on ad hoc basis, if the proposed allottee satisfies the following conditions:

1. Should be a Government servant eligible for allotment of Government residence.
2. Should apply to the competent authority in the prescribed form along with an affidavit from the retired Government servant.
3. Should have been residing with the retiring employee continuously for the last three years or more immediately preceding the date of retirement, and should not have drawn HRA for that period if employed in the same station and residing with the retiring employee in the same Government accommodation.
4. If appointed or transferred to the station within three years, the date on which so appointed or transferred will be the crucial date for enforcing condition 3 above.
5. Concession not available if dependant secures employment after the date of retirement of the employee but during the period of re-employment.
6. The retiring employee or any member of his family should not own a house in the place of posting of the dependant.
7. All dues/outstandings pertaining to the premises occupied by the retiring employee should have been completely cleared.

The allotment will be one type below the dependant's entitlement, but not higher than the type occupied by the retiring employee, except in special circumstances.

This concession would not be available to an eligible dependant, if any other dependant (Member of the family) is already in occupation of Government accommodation.

This concession of ad hoc allotment is not available to temporary employees of ICMR, ICAR,



CSIR, CRRI and CBI and P.Organisations, on retirement of their parent/spouse - GIO(1) SR 317-B-26.

4. CONCESSION OF ALLOTMENT OF QUARTERS TO DEPENDANT - ON DEATH OF ALLOTTEE.

When a Government servant in occupation of Government residence dies while in service, his/her eligible dependant (near relation) may be allotted Government accommodation on ad hoc basis on the following conditions:

1. The dependant employee should have resided with the deceased officer for at least six months prior to date of death.
2. If the eligible dependant 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 dependant's normal entitlement. The allotment of the same quarter occupied by the deceased officer can be made on fulfilling the conditions of ad hoc allotment if the quarter has not been vacated.
4. The concession is not admissible if the deceased employee or the dependant owns a house/plot at the place of posting - GIO(3) SR 317-B-26."

The applicant submitted his application on 23.7.1990 and was appointed on 3.10.1991. The entire purpose for compassionate appointment is to relieve the penurious family in distress by providing immediate succour and to permit the applicant to look after the family by giving him a job under the rehabilitation scheme.

How can we blame the applicant? Let me assume that the crucial date is 17.10.1990 when he furnished all information about his assets and liabilities, though the respondents could have secured this information from the official records. Inquiries



for gathering information from the applicant and for corroboration could have been completed within a month to enable the Respondents to confer on the applicant the job which they took more than one year. This delay is unexplained. The Supreme Court mandates immediate succour so that there will be real and meaningful compassion. Even the Respondents would agree that the applicant's sufferings are deeply nightmarish and would go down as a poem in pity. One can see from the extract cited above that the Respondent employer was moved from the beginning with a sense of concern for the condition of the family, though he was ultimately declared indigent after an elaborate inquiry. The point, I repeat and emphasize is that the same finding could have been arrived at within a month. The case of the applicant does not become less severe and less urgent simply because the Circle High Power Committee took its own time to sit and declare the applicant as deserving of compassionate appointment. I therefore hold that for purposes of allowing the applicant the benefits of compassionate appointment, the date should be 17.10.1990 - when he furnished all the documents; one more month for inquiries and appointment. To stretch it further, the appointment should have been given by 30.11.1990.

5. Learned counsel for the Respondents, Shri P.N.Mohapatra has drawn my attention to a decision of this Tribunal in O.A.No.511 of 1993 rendered on 21.9.1994 in the case of Soumendra Kumar Behera v. Union of India and others. It is claimed that the facts in this case also related to retention of quarters after the death of the employee. There was a delay of fourteen months in the applicant getting employment. It is submitted that the levy of penal rent was upheld by this Tribunal. In another decision in

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 O.A.No.512 of 1993 rendered on 8.9.1994 in the case of Saroja Kumar 10
Mallik v. Union of India and others the point related to allotment of quarters under the applicant's occupation and desisting from collecting penal rent. It is stated that the applicant is entitled to allotment of quarters now under his occupation since it was allotted to his father originally and as the rules provide for the same. That was also a case where the Respondents were found slow in granting him an appointment in the Department on compassionate grounds. The decisions cited appear to be similar, but the decision in each case depends on the facts of that case. There was no adjudication in those cases whether the delay in ordering compassionate appointment could have been avoided or shortened as per the law laid down by the Supreme Court. Supreme Court decision in Phoolvati's case (AIR 1991 SC 469) was not cited. Finally, it was not placed before the Hon'ble C.A.T. Bench that the order of compassionate appointment will become unworkable if quarters are not allotted. Paragraph 5 of the order of appointment, Annexure-R3 dated 3.10.1991 states as under:

"A declaration should also be taken and kept in record to the effect that he should take care of the family members of the deceased official failing which his services will be terminated. The required age relaxation in this case has also been granted by the High Power Committee for appointment of Shri Sumit Kumar Limai."

How can the applicant take care of the family, particularly a mentally retarded sister, if the quarters are not allotted to him along with the job?

6. The law now is well settled that the only ground which will justify compassionate appointment is the penurious condition of the family of the deceased employee. But once such a condition is satisfied, there can be no reason for delay in conferring an appointment. The following are the leading cases on the subject:

- (1) Phoolvati v.Union of India (AIR 1991 SC 469)
- (2) Sushma Gosain (AIR 1989 SC 1976)
- (3) Phoolkumari Case(Jaipur Bench) (1992(23)ATC 548)
- (4) Harbans Singh Sethi v.Rent Controller and Eviction Officer,Nainital (AIR 1966 Allahabad 621)
- (5) A.Raghukumar v.Postmaster-General(Welfare), A.P.Circle and another (1993 (23)ATC 33)
- (6) Krishnakumar (Ernakulam) (1992(21) ATC 142)

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There are two tests, (a) "immediate need of assistance" when there is no other earning member in the family, and (b) "distress test" when there is an earning member of the family must be satisfied before compassionate appointment can be granted. When the tests are satisfied, Department should take expeditious decision and if there is no post, even a supernumerary post may be created. In Phoolvati's case (supra) it is held that when the compassionate appointment is validly ordered, the Court may also order regularisation of allotment of Government quarters in favour of dependants of the deceased Government employee. As I held above, there was no justification to delay the case for about a year after all the material was gathered to decide about the financial status of the applicant, and this should have been decided within a month's time. As the delay occurred entirely on account of the Respondents, the applicant should not be penalised for retention of the quarters. In Phoolvati's case (supra) the Supreme Court held that a compassionate appointment also calls for regularisation of allotment of quarters. The very purpose of compassionate appointment is service to the dependants and giving them financial assistance in terms of need. In the case of the applicant, the concession of allotment of quarters to a dependant on the death of the allottee is satisfied. The applicant resided with the deceased employee for the last six months. It is inferred that he does not own a house or plot at the place of posting. If the applicant was not employed at the time of death, he should have got an employment in an eligible office within a period of twelve months from the date of death. As I stated above, his father died on

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25.3.1989 and the applicant got the appointment on 3.10.1991.

As the delay is entirely attributable to the Respondents, penal rent should not have been charged after 1.12.1990. In the facts and circumstances of the case, I direct the following:

- (1) Penal rent should be charged only from 1.4.1990 to 30.11.1990 as per appropriate rates.
- (2) The charging of penal rent from 1.12.1990 onwards is hereby quashed.
- (3) In view of the decision of the Apex Court in Phoolvati's case (supra) and in view of para 5 of the appointment order dated 3.10.1991, the Respondents are duty bound to allot the quarters applied for. They shall accordingly consider the applicant's application (if the existing application is already negatived) to be filed within a week of the receipt of a copy of this order and allot to him the existing quarters retained by the family.

The application is disposed of in the above manner.

No costs.

Transcribed by
(N.SAHU) 5/6/96
MEMBER (ADMINISTRATIVE)

A.Nayak, P.S.