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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO:288 OF 1994

Cuttack this the 6th day of March, 1995.

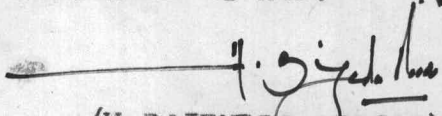
Kishan Lal Sharma ... Applicant

Vrs.

Union of India & 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.

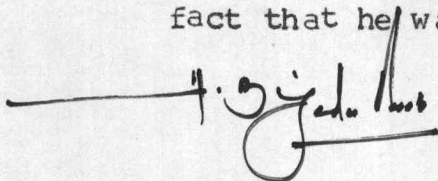

(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

06 MAR 95

ORDER

H. RAJENDRA PRASAD, MEMBER (ADMN.) Shri K.L. Sharma, the applicant, was Deputy Commander Works Engineers (Electrical and Mechanical) under Commander, Works Engineers (Naval Works), Colaba, Bombay, prior to his posting as Staff Officer Grade-II, in the office of the Chief Engineer, Project (Factory), Bolangir, Orissa, which post he joined in July, 1991. While posted at Bombay, the applicant was allotted a Type- V quarter in 1988. The Officer, on his posting to Bolangir, represented to Respondent-2 for retention of accommodation allotted to him in Bombay on the grounds of his child's education, non-availability of married-accommodation at Bolangir, and the critical illness of his wife. He was permitted to retain the quarter upto 6.11.1991 on payment of normal rent, and on double the standard assessed rent from 7.11.1991 to 6.5. 1992. He was cautioned that he should vacate the quarter on or before 6.5.1992 or else face eviction.

Four months prior to the expiry of the permission so accorded, Shri Sharma represented again, in January, 1992, drawing attention to the fact that he was entitled to retain the accommodation

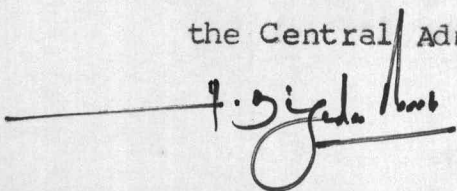


at his previous duty station during his posting at Bolangir in terms of Ministry of Defence Notification No. A/00367/E-II(DP)/3479/D(Q&C)/86 dated 24th September, 1986. The said notification, it is to be noted, permitted retention of accommodation or allotment of an alternative accommodation, to Civilian Employees paid from Defence Service Estimates on their posting to States and Union Territories. Para-2 of the notification reads as under :

"2. Defence Civilian employees posted to the District of Bolangir, State of Orissa, would be permitted to retain accommodation occupied at their previous duty stations on normal rent provided that they satisfy the following conditions :-

- (i) Their children are studying in Higher Classes or in Colleges in Delhi or any place other than Bolangir District.
- (ii) The health of family members or immediate dependents requiring continuous medical attention. This should be supported by certificate from competent medical authority".

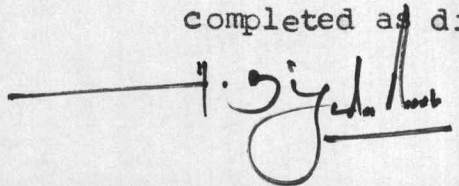
The aforesaid representation was rejected and the applicant told that he shall have to pay damage rent from 7.5.1992 as already intimated to him earlier. Thereupon the officer represented once again drawing attention to the specific provisions of the Ministry of Defence notification already referred to. Finding no immediate response to it, the applicant also approached the Central Administrative Tribunal, Bombay Bench, in



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Original Application No. 1055/92. The Tribunal directed the respondents not to evict the applicant, and to continue to charge/recover only normal rent during the pendency of the case. The quarter was finally vacated by the applicant on 29th April, 1993, and the Bombay Bench of the Tribunal held that licence fee could be recovered for the unauthorised occupation after following due process of law, and further that the respondents shall charge/recover only normal rent until such process is completed. The applicant was also given liberty to approach the Tribunal if he had any grievances thereafter. It was also clarified that the applicant would be free to raise all points/issues, which he had raised before the Tribunal, during the eviction proceedings when those were started. The Chief Engineer (Project) Bolangir, in the meanwhile, also addressed the Station Commander, Bombay, to accord sanction for retention of quarter as applicant's case was duly covered by the Ministry of Defence Notification. Notwithstanding these developments, the respondents proceeded to levy a penal rent of Rs. 46,793/- for alleged unauthorised occupation of the quarter, without apparently initiating any eviction-procedures or following any due processes of law.

2. The present application is made on the ground that no procedures were either ever initiated or completed as directed by the Bombay Bench of the Tribunal

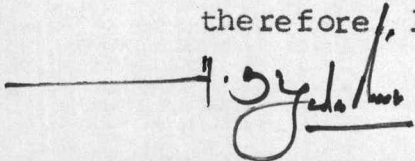


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consequently,
 nor he was, ^A afforded any opportunity to place his pleas before any duly constituted authority. One other specific grievance is that the impugned orders are in contravention of the concession extended by the Ministry of Defence in their notification already referred to.

3. The Respondents in their counter-affidavit are silent about ~~the~~ many aspects of this case. Importantly, there is no whisper in their counter as to whether any procedures or processes of law or eviction-proceedings were ever initiated against the applicant as directed by the Bombay Bench of the Tribunal. Instead, the only stand taken by them is that the applicant had originally applied for ~~the~~ retention of the quarter in Bombay on the ground only of his child's education and had been duly permitted to retain the accommodation upto the end of the academic year, as envisaged by rules. They contend that the applicant could after all give ^{one} only 'choice' and was not free to 'alter' his options from time to time, as he had attempted to do, by taking recourse to the notification of the Ministry of Defence later on.

4. The respondents maintain that the occupation of the said accommodation by the applicant after 7.5. 1992 was clearly unauthorised and that he is, therefore, liable to pay the damage rent levied on him.

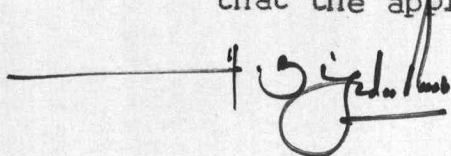


5. The contentions and arguments of both parties have been noted and examined carefully with reference to the record placed before me. There are aspects to this case which require comment. Firstly the retention of quarter at the previous duty station by officers posted to Bolangir District of Orissa State has been duly permitted by the Government of India. These orders were issued prior to the applicant's posting to Bolangir from Bombay. These orders were in force then as now and no further orders have been issued superceding the earlier concession which is still extant.

Secondly, the present applicant satisfies the twin-conditions stipulated in para-2 of the said notification. No dispute was presented before me regarding this aspect of the case.

Thirdly, no eviction proceedings seem to have been initiated against the applicant despite the specific direction of the Bombay Bench of the Tribunal. The applicant had, thus, no opportunity to defend his claim or to place any fact before any authority competent to adjudicate the issue.

Fourthly, the contention of the respondents that the applicant had represented for the retention

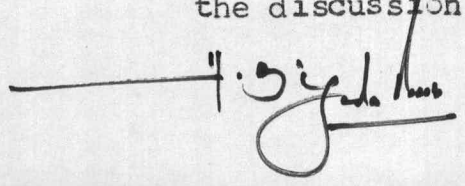


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of quarters allotted to him solely on the ground of his child's education is found to incorrect on facts. Annexure-1 to the application, which is the representation of the officer for retention of the said quarters, clearly mentions his wife's critical illness (including three heart-surgeries undergone by her), and the fact that no married- accommodation was available for allotment to him at Bolangir, besides his child's education. The arguments of the respondents on this score are, therefore, unacceptable as they are contrary to facts on record.

Fifthly, it is not clear as to what is meant by 'change of choice' when the applicant had already furnished detailed reasons in support of his request for retention of accommodation allotted to him, and which was duly permitted by the respondents, in the first instance. If the Officer subsequently drew their attention to orders issued by the Ministry of Defence which are fully applicable to his case, it is not understood how this can be regarded as 'change of choice'. In any case, the orders of the Government of India are binding on all concerned and the respondents cannot ignore them or take any decision in violation of such orders.

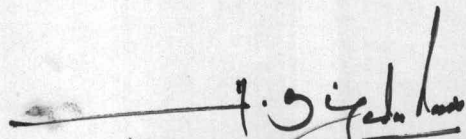
6. Under the circumstances and in the light of the discussion in the preceding paras, it has to be



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held that the arguments of the respondents are lacking in merit or acceptability. The orders contained in Annexure-9 to the application vide Chief Engineer (Project) Factory, Ordnance Factory, Badmal, Bolangir, Letter No.11146/Bol/13/EIP dated 3.1.1994 are hereby quashed. No recovery of any damage rent or any amount other than the rent envisaged or permitted by rules should be affected against the applicant.

7. The application is allowed and disposed of thus. No costs.


 (H. RAJENDRA PRASAD)
 MEMBER (ADMINISTRATIVE)
 06 MAR 95

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