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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION No. 386 OF 1994

Cuttack this the 26th day of November 1994.

Purna Chandra Naik

...

Applicant

Vrs

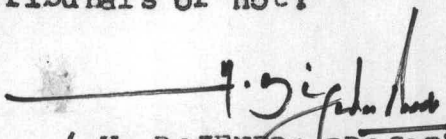
Union of India & Others

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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 No. Central Administrative Tribunals or not?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE).

25 Nov 94

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CENTRAL ADMINISTRATIVE TRIBUNAL
Cuttack Bench, Cuttack.

Original Application No. 386 of 1994

Cuttack this the 25th day of November, 1994.

CORAM:

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

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PURNA CHANDRA NAIK,
aged about 50 years,
son of Budhia Naik,
Safaiwala, A.R.C.,
Charibatia, Cuttack.

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Applicant

By the Advocate

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M/s. C.A. Rao,
S.K. Purohit,
P.K. Sahoo,
S.K. Behera,
Advocates.

Vrs.

1. Union of India represented
by the Cabinet Secretary,
Central Secretariat,
Bikaneer House, Sahajahan
Road, New Delhi.

2. Director, A.R.C.,
Directorate General of Security,
Cabinet Secretariat,
Central Secretariate Building,
East Block-V, R-k Puran, New Delhi.

3. Deputy Director (Admn.)
Aviation Research Centre,
Charibatia, Cuttack

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Respondents

By the Advocate

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Mr. Ashok Mishra, Senior Standing
Counsel (Central).

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ORDER

H. RAJENDRA PRASAD, MEMBER (ADMN.) : Shri Purna Chandra Naik, a Safaiwalla in Aviation Research Centre was posted from Charbatia in Orissa to Sarsawa in U.P. in October, 1990. While he did move out to Sarsawa in compliance with the orders, he failed to vacate the quarters which had been allotted and were under his occupation at Charbatia, nor did he apply for their retention until January, 1991. Even so, the authorities at Charbatia, appreciating his needs and apparently waiving the requirement of a formal representation, suo moto regularised the occupation of quarters on 6. 2. 1991 by permitting him to retain the quarters free of rent for 15 days, at normal rates for the next 1½ months, and on payment of twice the normal rent for 5 months thereafter, upto 30th April, 1991, which also marked the end of the academic session. Roughly a month prior to this the applicant submitted a brief representation requesting that he be allowed to retain the quarters at Charbatia throughout his stay at Sarswa. This was not evidently found possible of acceptance. The applicant complains that the authorities neither communicated any decision in the matter nor did they cancel the allotment.



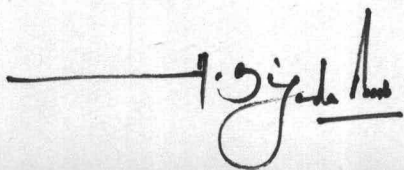
2. The Petitioner was eventually transferred back from Sarsawa to Charbatia in June, 1993. In November, 1993, orders were issued by the Deputy Director, ARC, treating the occupation of the quarter beyond 1st May, 1993, as unauthorised and imposing penal rent till he physically vacated and handed over the quarters. Sometime after his reporting to Charbatia, the Petitioner was in the normal course allotted another quarter which he occupied on 21.1.1994. Thus, the applicant has to pay penal rent @ Rs. 389/- from 1.5.1991 to 20.1.1994.

3. Aggrieved by this decision, Shri Naik filed this application on 17th March. The case came up for admission on 5th July, 1994. While admitting it, this Tribunal stayed recovery of arrears of proposed penal rent. The counter-affidavit was filed on 5th September, 1994.

4. The applicant prays for the quashing of orders No. IV/19672 dated 2nd November, 1994 issued by Deputy Director(Administration), ARC, Charbatia, imposing the penal rent referred to above.

5. The application projects the following grounds in support of the relief prayed for in it :

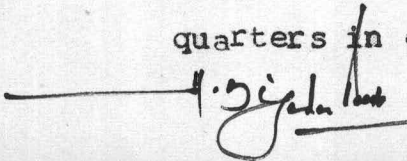
- (i) The allotment of quarter occupied by the applicant was never cancelled by the authorities;



- (ii) the justification of penal rent was "extinguished" when the applicant joined duty at Charbatia on retransfer from Sarsawa;
- (iii) similar penal rent was not imposed on some other similarly - circumstanced colleagues of his; and
- (iv) this Tribunal had set aside similar orders imposing penal rent on some others in identical circumstances.

6. The respondents counter these claims by stating that the request of the applicant for continued and indefinite occupation of quarters was not covered by any rule but was, nevertheless, examined and rejected. The applicant was, moreover, intimated, first by a circular and later by a signal through the authorities at Sarsawa, that the request of all such unauthorised occupants, including that of the applicant, was not acceptable and that they were duly cautioned to vacate the unauthorised occupation forthwith and also warned that damage rent was liable and very likely to be imposed on them.

7. The pleas and arguments of both parties have been noted carefully. Shorn of technicalities and legalisms, the failure of the applicant to vacate the quarters within permissible time-limit is clear enough to see. The Rules require timely vacation of quarters in circumstances even such as the one in this



case. To say that the applicant's continued occupation of quarters was owing to certain 'impressions' or imagined and implied acceptance of his request is, to say the least, unconvincing. It is not possible also to accept the rather astounding statement on behalf of the petitioner that once the applicant rejoined in his old unit on being posted back to it after an interval of nearly three years, 'the cause of action of the Respondents extinguished' automatically. This assertion flies in the face of every rule, all law and defies logic or comprehension.

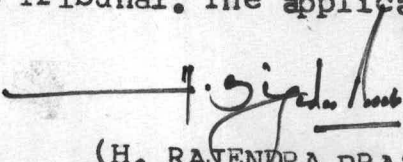
8. The facts, and directions issued in O.A. 382/1991 have been taken note of. I do not propose at present to invoke the findings arrived at, or to replicate those directions, in the instant case.

9. The lapses and failures on the part of the applicant are evident and undeniable. The decision of the respondents for imposing penal rent cannot be faulted when looked at purely in terms of rules. There are some situations nonetheless, which merit sympathetic consideration, an extra measure of sympathy, beyond the cold stipulations of rules. If ever there was a case calling forth sympathetic and compassionate consideration, this surely is one. Two factors which might necessitate or justify such reconsiderations are: firstly, the applicant is a menial functionary (not ordinarily transferable to distant places) with far less

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awareness of regulations and comparatively lesser financial means than other better-placed colleagues; secondly, some of his colleagues have been granted a reprieve - albeit through a judicial direction - in similar circumstances. It would, therefore, be extremely commendable if the authorities could have a look at the case, denovo, with a view to examining whether a lesser penalty, other than the proposed penal rent, - say, for example, levying $1\frac{1}{2}$ times, or if inescapable, twice the normal rent - would serve the purpose equally well. Such a decision might well satisfy the spirit of the rules besides bringing a measure of deserved compassion to a case which concerns a low-paid employee whose performance, with the sole exception of this misdemeanor, does not seem to have been deficient in any respect. It would be far better that such consideration as is clearly merited in this case is extended by the applicant's departmental superiors themselves.

9. The Respondents may now review the case in the light of the observations in the preceding para, and communicate their decision within thirty days of the receipt by them of a copy of this judgment. The applicant shall be free thereafter to agitate his grievance, if any, before this Tribunal. The application is thus disposed of. No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

25 NOV 94