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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:

Original Application No. 580 of 1994

Cuttack this the 30th day of December, 1994

Pitambar Barik

Applicant

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)

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 580 of 1994

Cuttack this the 30th day of December, 1994

C O R A M:

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

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Sri Pitambar Barik
aged about 51 years,
S/o. Late Chintamani Barik
HSG-II Official,
Balasore HO
BALASORE-756001

...

Applicant

By the Advocate: M/s. P. B. Ramdas
P. V. Balakrishna Rao

Versus

1. Union of India, represented by
Director General (Posts)
Dak Bhawan
NEW DELHI-110001

2. Chief Postmaster General
Orissa Circle
Bhubaneswar-751001

3. Superintendent of Post Offices
Balasore Division
Balasore-756001

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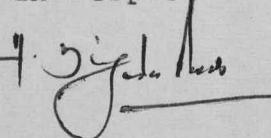
Respondents/

By the Advocate: Mr. Ashok Mishra,
Sr. Standing Counsel (Central)

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O R D E R

MR. H. RAJENDRA PRASAD, MEMBER (ADMN): In this application, Shri Pitambar Barik, H.S.G. II, Postal Assistant, Balasore Head Post Office, challenges the orders issued by Superintendent of Post Offices, Balasore, vide Memos No. D/G-2/Ch. IV dated (a) 31st August, 1994 and (b) 26th September, 1994, (i) cancelling the allotment of quarter No. 5 (Type II) in Balasore Head Post Office Compound to the applicant, and (ii) imposing twice/four times the normal license fee in respect of the same quarter, respectively.



2. The relevant facts are as under :

- i) Shri Pitambar Barik was posted to Balasore Head Post Office in June, 1990, allotted the quarter in question in September, 1990, promoted to HSG-II in June, 1992, but retained in the same office on promotion, posted to Sonhat (Town Sub Post Office in Balasore) on 13th April, 1994, and was relieved from Balasore Head Post Office on 30th April, 1994, with direction to assume charge of his new appointment.
- ii) Shri Barik, instead of taking over the charge of Sonhat Sub Post Office on relief from Balasore Head Post Office, proceeded on leave on Medical Certificate from the very date of his relief, and represented to the Director of Postal Services (HQ), Bhubaneswar on 20th June, 1994, requesting cancellation of his transfer. On 19th July, he was asked by the Superintendent of Post Offices to vacate the quarter allotted to him immediately since the permissible period for its retention on transfer had ended on 30th June, 1994, and also since a post-attached quarter was available in Sonhat Sub Post Office to which he had been posted. The Director turned down the applicant's representation on 2nd August, 1994. On 30th August, he was referred to the Chief District Medical Officer, Balasore, since the applicant had continued to remain on leave, in dribs and drabs of one month each, from 30th April to 28th August, 1994. On 31st August, 1994, Superintendent of Post Offices cancelled the allotment of quarters earlier allotted to the applicant with effect from 19th July, 1994, which is the impugned order (a) in the present case.
- iii) The applicant in the meanwhile, began receiving treatment in the District Headquarters Hospital, Balasore, for Amoebic Hepatitis and Chronic Amoebiosis from 5th September, 1994, as an indoor patient. On 6th September, 1994, he represented again, this time to the Chief Postmaster General, against his transfer. On 7th September, 1994, the Chief District Medical Officer, conveyed the opinion of the Medical Specialist of the District Headquarters Hospital to the effect that the earlier recommendations of leave appeared to be genuine and recommended further leave for a period of 4-6 weeks from 5th September, 1994.
- iv) On 26th September, 1994, Superintendent of Post Offices issued orders imposing enhanced

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rent on the applicant in respect of the quarter under his occupation @ double and four-times the standard licence fee from July and September, 1994, respectively, which is the impugned order (b) in this case.

v) This application was filed on 3rd October, 1994 and came up for admission on 5th October, 1994. The case was admitted and recovery of penal rent was stayed on the same date. The matter could not make progress because the counter affidavit by the respondents was filed only on 7th November and case was listed for hearing and heard on 25th November, 1994.

3. The applicant relies chiefly on Supplementary Rule 317-B-II(xii) which permits an employee to continue to remain in the quarters allotted to him during any leave granted to him on medical grounds. Such being the rule, the applicant argues, it is incorrect to impose enhanced rent on him. He also argues that cancellation of accommodation should have been ordered, not by Superintendent of Post Offices but by 'the Director of Estates.'

4. The Respondents, in their counter-affidavit state that :

- a) the applicant was posted out of Balasore Head Post Office after he had worked in it for four years, having not been disturbed even on promotion in 1992;
- b) he was posted to an office which
 - was in the same town at a distance of only 4 kms. from Balasore Head Post Office, and
 - had a post-attached quarter ready for occupation;
- c) the rules permit retention of quarters for only two months after relief from a post on transfer to another, on normal rent;
 - for another six months on payment of double the licence fee, with the approval of the competent authority, provided he makes a proper representation in this regard and seeks permission to so occupy the quarters.

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The applicant never made any representation nor sought any permission from the authorities.

- d) the applicant totally disregarded and failed to respond in any manner to the letter issued by Superintendent of Post Offices on 19th July, 1994, asking him to vacate the quarters;
- e) in view of the continuing silence and disinclination of the applicant to vacate the quarters, there was no other alternative except to proceed further under the rules by levying an enhanced rent/licence fee on him;
- f) the applicant, now in a higher pay-range than when he was allotted it, is thus occupying a quarter below his entitlement, thereby depriving some other entitled colleague from entitled allotment;
- g) while the applicant is unauthorisedly in occupation of a below-the-entitlement quarter, the department continues to pay rent in respect of a rent-free, post-attached quarter in the office to which he has been posted and where he has not joined for seven months even after all his representations for cancellation of his transfer have been rejected by higher authorities.

5. The reliefs sought by the applicant in this case are limited to the aspect of only the penal rent, and his entire reliance is on one provision in the Supplementary Rules. In fact it was urged on his behalf that the applicability of the said Supplementary Rule to the case is the only issue, to the exclusion of all other aspects. A careful scrutiny of all facts and urgings points to the following :

1. 24th June

A. The posting of the applicant to an office at a short distance in the same town cannot be held to be iniquitous in any way.

B. The applicant's failure to apply to the competent authority for retention of quarters beyond the first two, and subsequently for the next six months, remains unexplained. Similarly unexplained is his failure to respond to the letter of 19th July from the Superintendent of Post Offices calling upon him to vacate the quarters forthwith.

C. The continued occupation of a quarter which is below his entitlement, without proper permission or approval of competent authorities, was incorrect specially when, during the same time, the applicant, despite his reported sickness, was submitting lengthy representations to the same authorities against his transfer.

5. Supplementary Rule 317-B-11(2). XII does indeed allow the retention, by an allottee, of a quarter during the period of leave spent by him on medical grounds. However, in placing his entire reliance on this rule, the applicant has lost sight of Sub-rule(3) under the same rule. As a result, his claim has come to rest on an inadequate understanding of the rules. The actual position is explained below:
SR 317-B-11(2) rules as under :

A residence allotted to an officer made subject to sub rule (3)B retained on the happening of any of the events specified in Col.(1) of the table below for the period specified in the corresponding entry in Col.(2) thereof, provided that the residence is required for the bonafide use of the officer or members of his family.

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events	permissible period for <u>retention of the residence.</u>
(XII). Leave on medical grounds.	For full period of leave .

*3(A). Where an officer is on medical leave without pay and allowances , he may retain his residence by virtue of the concession under item (XII) of the table below sub rule (2), provided he remits the licence fee for such residence in cash every month and where he fails to remit such licence fee for more than two months, the allotment shall stand cancelled."

In the instant case, the applicant was on medical leave, but not without pay and allowances, nor did he remit the licence fee for the quarter in cash. Thus the concession under item (XII) of the table below sub rule (2) is not applicable in this case.

6. This being the clear position of rules, I am unable to intercede on behalf of the applicant with a view to provide him any relief. Moreover, the overall circumstances of the case, specially those mentioned ~~in~~ against A, B, and C of para 4 make it difficult to intercede on his behalf. There is no merit in the case and the same is dis-allowed.

7. Thus, the original application is disposed of

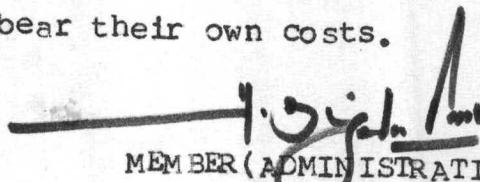
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leaving the parties to bear their own costs.

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MEMBER (ADMINISTRATIVE)

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