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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 290 OF 1995  
Cuttack, this the 22nd day of March, 2001

Pitambar Pradhan .....Applicant

Vrs.

Union of India and others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reportes or not? Yes
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? No

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN

22-3-2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 290 OF 1995  
Cuttack, this the 23rd day of March, 2001

**CORAM:**

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....  
Pitambar Pradhan, aged about 42 years, son of Chintamani Pradhan, resident of village Singtali, P.O-Paradeep Lock, PS-Paradeep, District-Jagatsinghpur, now working as Sub-Inspector of Telegraphs in the office of the S.D.O., Telegraphs, Paradeep ....Applicant

Advocate for applicant- Mr.J.R.Dash

Vrs.

1. Union of India, represented through the Chief General Manager, Telecom, Bhubaneswar, At/PO-Bhubaneswar, District-Khurda.
2. Telecom District Manager, Cuttack, At/PO-Cantonment Road, District-Cuttack.
3. Divisional Engineer, Telecom (P&A), office of the T.D.M., Cuttack, At/PO-Cantonment Road, District-Cuttack.
4. S.D.O., Telegraph, Paradeep, At/PO-Paradeep, District-Jagatsinghpur.
5. J.T.O-in-Charge, Telecom Quarters, Paradeep, At/PO-Paradeep, District-Jagatsinghpur

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Respondents

Advocate for respondents-

Mr.P.N.Mohapatra,  
ACGSC  
&  
Mr.S.B.Jena  
ACGSC

O R D E R

Som · SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order at Annexure-6 for recovery of penal rent at the rate of Rs.1751/-from the applicant. The second prayer is that the amount already deducted should be

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refunded to the applicant with interest. It is also prayed that the respondents should be directed to pay full salary to the applicant without any deduction.

2. The case of the applicant is that he is working as Sub-Inspector of Telegraphs in the office of S.D.O., Telegraphs, Paradeep and quarter No. II/B-7/31 has been allotted to him in Paradeep Telephone Colony and the applicant has been occupying the quarter with his family. On 17.7.1992 the applicant was issued with the letter at Annexure-1 asking him to intimate the Divisional Engineer, Telecom, Cuttack, if he had shared the accommodation with some other person. It was also indicated that if he had shared the accommodation with any other person, then penal rent would be charged, accommodation allotted to him would be cancelled, and disciplinary action would be taken as per rules. Later on he received letter dated 17.9.1992 at Annexure-2 in which it was mentioned that according to the report of spot enquiry committee it has been found that the applicant has fully sublet the quarter allotted to him at Paradeep. He has also failed to give any reply to the earlier letter dated 17.7.1992. In view of this, the applicant's explanation was called for within ten days of receipt of the letter at Annexure-2. The applicant in his letter dated 26.7.1992 informed the Divisional Engineer, Telecom, Cuttack, that he is remaining in the quarter with his family members. He also denied that he has sublet the quarter to any person. He also stated that no such enquiry had been held at the spot and the report submitted by the spot enquiry committee is without any basis. Thereafter in letter dated 29.1.1993 at Annexure-4 the applicant was informed that as per the report of the enquiry committed it has been ascertained that he had sublet the departmental quarter allotted to him at Paradeep without prior

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permission of the competent authority. He was also informed that even though he was instructed to take permission for sharing the quarter or surrendering the quarter to the Department if not required by him, the applicant failed to carry out the order. Therefore he was charged with penal rent of Rs.1751/- per month to be recovered from 1.9.1993 for such unauthorised subletting. The applicant has stated that as the specific case of the applicant was that he has not sublet the quarter, it was necessary on the part of the authorities to conduct a further enquiry in order to ascertain the position. But without doing that the order at Annexure-4 was issued. Again in letter dated 26.3.1993 (Annexure-5) the applicant was informed that he is charged penal rent of Rs.1751/- per month for unauthorised subletting. In a subsequent letter dated 24.8.1993 (Annexure-6) he was intimated about charging of penal rent of Rs.1751/- and it was indicated that this amount would be deducted from his salary from the month of September 1993. The applicant has stated that till date authorities are deducting Rs.1751/- per month as penal rent from his salary and after this deduction, the amount due to be paid to the applicant is Rs.37/-. Because of this the applicant has not received the said amount. He has filed series of representations and one such representation filed on 15.3.1995 is at Annexure-7. It is further stated that when the applicant was not getting his salary, the authorities transferred him to some other place causing further inconvenience to him. Thereafter on 7.3.1995 the letter at Annexure-8 was issued to him indicating that the applicant is refusing to accept the duty pay drawn in his favour from August 1993 and therefore he was asked to explain why disciplinary action should not be taken against

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him. The applicant has stated in paragraph 4(r) of his petition that when the fact sought to be ascertained through local enquiry is whether an employee has sublet his quarter or not, prior notice to the employee may not be helpful because after getting such notice no employee, if he has sublet his quarter, would allow the unauthorised occupant to remain in the quarter. But the surprise spot verification should have been made and at that time if the applicant was not present at the spot, the statement of independent witnesses should have been recorded. But even this reasonable approach has not been adopted. The applicant has also stated that if it is found that an employee has sublet his quarter even for a day in a month, then penal rent can be charged for that month. But without further enquiry the penal rent cannot be legally charged for all future time on the basis of an enquiry which if at all conducted was conducted two years ago. It is further submitted that even if it is granted for argument's sake that the applicant has sublet the quarter, the deduction of penal rent at this rate is not permissible and that is why the applicant has come up in this petition with the prayers referred to earlier.

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3. The respondents in their counter have stated that the petitioner was allotted Quarter No. Type-II/B-7/31 at Paradeep and he has sublet the quarter unauthorisedly to an outsider. This was verified by J.T.O. in charge of departmental quarters and the petitioner was asked either to seek permission for sharing the accommodation or to surrender the quarter in letter dated 17.7.1992 (Annexure-1) and again in letter dated 17.9.1992 (Annexure-2), but the applicant did not respond to these official letters. Again one spot enquiry was conducted on 16.1.1993 through a responsible departmental official and

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the report of his enquiry is at Annexure-R/1. Thereafter he was again instructed in letters dated 29.1.1993 and 26.3.1993 which are at Annexures 4 and 5. He was again issued another letter dated 9.7.1993 which is at Annexure-R/2. Finally on 30.8.1993 spot verification was made by J.T.O., Paradeep, in presence of some departmental employees and it was found that an outsider was staying in that quarter. Copy of this report is at Annexure-R/3. Accordingly, penal rent as per Government rules was charged on the applicant with effect from August 1993. Subsequently the applicant was transferred from Paradeep and he joined at Paradeepgarh Exchange with effect from 23.9.1993. As Paradeepgarh is beyond the local limit of Paradeep, the applicant was not entitled to retain the quarter at Paradeep and was due to vacate the quarter after joining his new post at Paradeepgarh. As he has not vacated the quarter till date he is liable to pay penal rent for unauthorised occupation of the quarter at Paradeep. The respondents have stated that in a similar matter in OA No.277 of 1994 (Bijay Kumar Das v. Union of India), which was disposed of in order dated 6.10.1994 (Annexure-R/4) the Tribunal has held that it has no power to waive/reduce or otherwise interfere in the matter unless convincing and acceptable proof of mala fide is alleged or convincingly established. It is stated that in the instant case the applicant has not been able to substantiate the alleged mala fide against him and therefore he is not entitled to the relief claimed. It is also stated that many other employees are waiting to get quarter after it is vacated by the applicant who is unauthorisedly retaining the same. The respondents have further stated that the representation of the applicant has been duly considered by the appropriate

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authority and has been rejected. Referring to the averments made by the applicant in different paragraphs the respondents have stated that during spot enquiry conducted on 16.1.1993 by B.K.Mohanty, A.E.,Phones with the help of K.C.Mohanty,J.T.O., it was found that the applicant has sublet the quarter to one Anil Kumar Srivastav of E.C.Bose Company. Thereafter notices were issued to him and there has been no violation of natural justice. It is furtherstated that in the letter at Annexure-1 six officials including the applicant were issued with notice on 29.1.1993 to surrender the quarters allotted to them or to seek permission from the competent authority for sharing the accommodation or to face disciplinary proceedings or prospect of recovery of penal rent as per rules. While five officials vacated their quarters immediately the applicant continued to sublet his quarter at Paradeep to an outsider without any permission. The respondents have also stated that no letter dated 26.7.1992 at Annexure-3 from the applicant was received by the departmental authorities. This is a concocted letter. The applicant never replied to the notices but made a false averment before the Tribunal. It is also stated that the applicant had let out the quarter with motive of making illegal gain and therefore no mala fide can be attributed to the action taken against him. The respondents have also stated that a Telephone Exchange was instaled at Paradeepgarh. Therefore there was need of posting a technical person having knowledge in lines and wires for day to day maintenance. The applicant being suitable for the work was posted at Paradeepgarh with effect from 23.9.1993 in the interest of service and his transfer has nothing to do with the unauthorised subletting of the quarter. It is also stated that after deduction of the penal rent the applicant is refusing to accept the

balance amount. It is also stated that penal rent has been revised in accordance with the instructions which are at Annexure-R/6 and the penal rent has been rightly fixed. In view of this, the respondents have opposed the prayers of the applicant.

4. On the date of admission of this OA on 31.5.1995 it was directed that no further deduction would be made from the salary of the petitioner until disposal of the OA. This interim order has continued till date.

5. We have heard the learned counsel for the parties and have perused the records. The learned counsel for the petitioner has filed written note of submission which has also been taken note of.

6. The main ground urged by the applicant in support of his prayers is that the applicant had not sublet his quarters. But the departmental authorities without conducting any spot enquiry have wrongly come to the finding that he has sublet his quarters when the applicant has been staying in that quarters with his family. The respondents have pointed out that in letter dated 17.7.1992 the applicant was asked to intimate the office if he is sharing the accommodation with some other person and if so, he should apply for permission before 31.7.1992. But the applicant did not respond to this letter dated 17.7.1992. It has been submitted by the learned counsel for the petitioner and has been mentioned in his written note of submission that this letter was of a general nature and as the applicant had not sublet his quarters he did not feel it necessary to reply to this letter as for him no such permission was required to be taken. In the letter dated

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17.9.1992 at Annexure-2 it was specifically put to the applicant that as per report of the spot enquiry committee it has been found that he had sublet the departmental quarter and in spite of the notice dated 17.7.1992 he had failed to submit his declaration. In view of this in the letter at Annexure-2 his explanation was called for within ten days. The applicant has enclosed his representation dated 26.7.1992 at Annexure-3 to the departmental authorities denying the fact that he has sublet his quarter. The respondents have stated that the applicant never submitted this representation dated 26.7.1992 and this is a concocted document brought up for the first time in this OA before the Tribunal. We are inclined to accept the stand of the Department in this regard because of the following reasons. This representation at Annexure-3 is dated 26.7.1992. That is to say, this, according to the applicant, was submitted after getting the letter dated 17.7.1992. If he had actually submitted a representation dated 26.7.1992 after getting the notice dated 17.7.1992 it is not understood as to how the applicant has taken a stand in page 2 of the written submission and also during the hearing that he did not respond to Annexure-1 as there was no occasion for him to seek permission because he was staying in the quarter with his family and also because Annexure-1 is a general letter issued to all requiring those who were sharing accommodation to seek permission. Because of the above clear discrepancy between date of Annexure-3 and the stand taken by the applicant, it is clear that the applicant did not submit the representation dated 26.7.1992 at Annexure-3. This is also borne out by the fact that in the letter dated 17.9.1992 at Annexure-2 the applicant was specifically informed that according to

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the spot enquiry it has been found that he has sublet the quarter and notwithstanding the earlier notice dated 17.7.1992 he has not sought for permission for sharing accommodation. It is also clear from the letter dated 26.7.1992 at Annexure-3 that this is a concocted document because in this representation at Annexure-3 purportedly written by the applicant on 26.7.1992 he has mentioned that he has received the respondents' letter dated 17.9.1992 which has been issued one and half months later than 26.7.1992. Obviously, therefore, it is clear that even after getting the notices dated 17.7.1992 and 17.9.1992 the applicant did not respond at all. Another letter was issued to him on 29.1.1993 at Annexure-4 and again another one on 26.3.1993 at Annexure-5. To these also the applicant did not respond. From Annexure-R/2 filed by the respondents it is seen that on 9.7.1993 notice was issued to the applicant and three others to explain why disciplinary proceeding should not be initiated against them along with deduction of penal rent from the salary. Thereafter the applicant filed petition which is at Annexure-R/3. This was received in the office of Sub-Divisional Officer, Telegraphs, Paradeep, under whom the applicant was working, on 27.8.1993. From the letter itself it appears that this letter was written by the applicant after getting the letter dated 9.7.1993. On this letter the Sub-Divisional Officer, Telegraphs, directed J.T.O., D.Mohanty, to submit his report and on the letter itself there is a report that the quarter was inspected and verified and it was found that the applicant was not staying in the quarter and was not available in the quarter on 30.8.1993 at 1830 hours. It is mentioned that the person who is staying in the quarter is one Anil Kumar Srivastav. Two other persons who, according to the respondents' counter, are departmental employees have signed this report as witnesses. From the

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above recital of facts it is clear that the applicant remained silent even after getting a large number of notices. Had he not sublet his quarter and had he remained in the quarter with his family, he would have, after getting the notice, immediately written to the departmental authorities disputing the allegation of subletting. Any reasonable person would have done that. When ultimately after getting the notice dated 9.7.1993 he stated that he is staying in that quarter, immediately a spot enquiry was made. The applicant has rightly pointed out that for such a spot enquiry giving of notice to him would be meaningless because any such person in such a situation after getting the notice would have occupied the quarter himself and shifted the unauthorised occupant, if any, of the quarter. The applicant has stated that even in such case of surprise spot enquiry, help of independent witnesses could have been taken. In the instant case we find that two of the departmental employees have signed this report at Annexure-R/3 as witnesses to the spot verification. As the quarter is inside the Telephone Colony it was only natural that some other officers who might have been available in the locality have appeared as witnesses. The applicant has not brought any allegation against the witnesses nor has he made any averment as to why those witnesses should be a party to a report against him stating that he has sublet the quarter and one Anil Kumar Srivastav was occupying the quarter at the time of spot verification. This spot verification has been done on 30.8.1993 after getting the letter of the applicant at Annexure-R/3 denying that he has sublet the quarter. As we have already noted that prior to this letter the petitioner did not respond to any of the notices to him. From this it is clear that as soon as the applicant sent this letter at Annexure-R/3 denying that he

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has sublet the quarter the matter was promptly enquired into by spot verification on 30.8.1993 and it was found that the applicant has sublet the quarter to one Anil Kumar Srivastav. In view of this spot verification report and in view of the fact that the penal rent has been charged from the salary of August 1993 payable in September 1993, the earlier spot verification reports are not relevant because penal rent has been charged only from August 1993 after this enquiry. In view of this, it is clear that it has been established after spot verification that the applicant has sublet his quarter. The charging of penal rent therefore cannot be faulted.

7. The second aspect of the matter is that the applicant was transferred from Paradeep to Paradeepgarh where he joined on 23.9.1993. The respondents have stated that Paradeepgarh is outside the local limits of Paradeep and therefore after joining at Paradeepgarh the applicant should have vacated his quarter. It has been submitted by the learned counsel for the petitioner that the post to which the applicant was holding at Paradeep ~~had~~ and the post to which he was transferred at Paradeepgarh were under the same Sub-Divisional Officer, Telegraphs, Paradeep. But that will not make any change in the situation because the applicant has not denied the averment of the respondents that Paradeepgarh is outside the local limits of Paradeep. After transfer, the applicant could have retained the quarter for a period of two months after obtaining permission. But there is no averment that he asked for permission to retain the quarter. Had he been occupying the quarter at Paradeep with his family, then on transfer he would have asked for retention of the quarter. But he has not done so and therefore, occupation of the quarter by him after his transfer to Paradeepgarh is unauthorised even if

it is taken that he was occupying the quarter himself with his family. Therefore, charging of penal rent from October onwards after his joining at Paradeepgarh is also legal.

8. To put it in another way the charging of penal rent for the month of August 1993 is because of his subletting of quarter and charging of penal rent from September 1993 onwards is for the dual reason of his subletting the quarter and not getting the quarter vacated. In view of the above, we hold that the respondents have taken the correct step by charging penal rent on the applicant. It is to be noted that the respondents have mentioned in their counter which was filed on 22.11.1995 that till that date the applicant has not vacated the quarter. Even if we accept for the argument's sake the applicant's plea that he was occupying the quarter at Paradeep with his family while he was posted at Paradeep, there is no reason why he did not vacate the quarter after he was transferred from Paradeep to Paradeepgarh.

9. The next point made by the applicant is that the basis of charging of penal rent is wrong. The respondents have enclosed the relevant circular at Annexure-R/6 from which it is seen that in order dated 1.4.1991 issued by the Director of Estates and circulated by the Deputy Director General (SP), Department of Telecommunications, the damage rent for different types of quarters A to D, i.e., Type I to Type IV, has been revised to Rs.45/- per sq.mt. per month. The applicant was allotted Type II quarter and therefore, the respondents have obviously adopted this rate in assessing the penal rent. The applicant has made no averment about the plinth area of the quarter and that going by this rate of Rs.45/- per sq.mt. the damage rent does not come to Rs.1751/- per month. In view of this, it is not possible to accept the applicant's contention that the penal rent has been wrongly calculated.

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10. In consideration of all the above, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. The Original Application is, therefore, held to be without any merit and is rejected but, under the circumstances, without any order as to costs. The stay order granted earlier stands vacated.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
22.3.2001  
VICE-CHAIRMAN

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