

8

12

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.444 OF 1995
Cuttack, this the 21st day of January '97

Kamalpada Ghosh Applicant

Vrs.

Union of India & others Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? *Y*
- 2) Whether it be circulated to all the benches of the ~~NO.~~ Central Administrative Tribunal or not?

N.SAHU
(N.SAHU)
MEMBER(ADMINISTRATIVE)

21.1.97

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.444 OF 1995
Cuttack, this the 21st day of January, 1997

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER(ADMINISTRATIVE)

....

Kamalpada Ghosh,
son of late Thakohari Ghosh,
C/o Nepal Prakash Samanta,
Jagannath Colony,
Sibaji Nagar,
Tulsipur, Cuttack-8

....

Applicant

-versus-

1. Union of India, represented through its Secretary, Railway, Railway Bhavan, New Delhi.
2. Chairman, Railway Board, Railway Bhavan, New Delhi.
3. General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
4. Senior Divisional Engineer, South Eastern Railway, Sambalpur.
5. Divisional Railway Manager, Chakradharpur Division, P.O-Chakradharpur, Dist.Singhbhum West, Bihar.
6. Railway Board Service, through its Chairman, Railway Board, Railway Bhawan, New Delhi.

....

Respondents

For Applicant

-

M/s D.P.Dhalsamant &
N.P.Samant.
Mr.L.Mohapatra

For Respondents

-

O R D E R

N.SAHU, MEMBER (ADMINISTRATIVE) In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the prayer is to direct Respondent No.5 to release the gratuity amount of Rs.44,138/- with interest and the additional amount of Rs.2507/- deducted from the salary of the applicant towards house rent for three months, namely, December 1990, January and February 1991. The applicant was allotted Railway quarter on 25.7.1983 at Chakradharpur while working as I.O.W., Grade-II. He was thereafter transferred to Bandhamunda on promotion as I.O.W., Grade-I on 14.11.1986. He was transferred back to Chakradharpur on 24.7.1988. He was again transferred from Chakradharpur to Bolangir with effect from 26.1.1989. The applicant eventually retired from service on 28.2.1991 from Bolangir as I.O.W., Grade-I. He did not vacate the quarter on his transfer to Bolangir till a few days before his retirement. This quarter was ultimately vacated by him on 12.2.1991.

2. The Railway administration treated the overstay even after transfer from Chakradharpur as unauthorised occupation and levied damage rent with effect from 1.4.1989 and penal rent prior to 1.4.1989. For the period from 26.1.1989 to 31.3.1989, they charged three times the penal rent at 10% of the pay and from 1.4.1989 to 12.2.1991 they charged damage rent at Rs.15/- per sq.metre. They have already deducted from the salary of December 1990 and January and February 1991, Rs.3036/-. They raised a net demand of Rs.16,070.05 recoverable from the DCRG payable to the applicant. It is in this background that this O.A. has been

filed and the relief mentioned above has been prayed for.

3. Sri D.P.Dhalsamant, learned counsel for the applicant, made two important submissions before me on 16.5.1996. He stated that normal rent was deducted from his pay after his transfer from Chakradharpur during his stay at Bolangir. His submission was that having deducted the rent or licence fee in a normal manner, there is no justification to arrive at a finding that the applicant was an unauthorised occupant. The second submission made was that during his stay at Bolangir, he had been transferred to Chakradharpur at least twice by separate orders. In an affidavit filed on 16.11.1996 he stated that on 17.8.1989 the Senior Divisional Personnel Officer, vide his order No.205/89, transferred Sri B.N.Bhagat in place of the applicant without giving a posting order to the applicant. On 13.3.1990 the same authority, vide its order No.65/90, transferred one Sri G.T.Rao in place of the applicant cancelling the earlier posting order of Sri B.N.Bhagat. On 11.10.1990 the Senior Divisional Personnel Officer again passed another order stating that the said Sri G.T.Rao should relieve the applicant. It was further directed that as soon as the handing over is completed, the applicant should report to Senior D.E.N., Chakradharpur, for further posting. Unfortunately, the authorities could not enforce these transfer orders for one reason or another.

4. In reply to these submissions, the Respondents stated that the applicant could have retained the Railway quarter for a period of two months on request on payment of normal rent or upto the end of the academic session on production of necessary certificate from the school or the college authorities. This request has not been made. Sri L.Mohapatra, learned counsel for the Respondents, mentioned that the allotment order automatically stands cancelled on expiry of the permitted period and recovery of rent beyond the permissible period should be made at the damage rent charges as prescribed in the Railway Board's letter No.F(X)1-86/11/9 dated 1.4.1989. The basic stand of the Respondents is that the applicant retained the Railway quarter at Chakradharpur after transfer from Chakradharpur without even seeking permission for retention. Because of the bifurcation of the Chakradharpur Division and creation of a separate Sambalpur Division, there occurred some delay for payment of gratuity. in processing of his case. As I.O.W, Grade-I, the applicant was handling stores. The Respondents expected to receive 'No Demand Certificate' for the period he worked at Bolangir. Respondent No.4, the Senior Divisional Engineer, S.E.Railway, Sambalpur, was supposed to issue this 'No Demand Certificate'. It is admitted that after determining the sum of Rs.16,070/-, calculated as above, the applicant is entitled to the payment of interest at the rate prescribed by the Railway Board Estt.Sl.No.277/85 which stipulates 7% per annum beyond

three months and upto one year, and 10% per annum beyond one year.

5. Sri Dhalsamant, learned counsel for the applicant stated that on 6.9.1990 the applicant addressed a letter to the Senior Divisional Engineer (Co-ordination), S.E.Railway, justifying his retention of the quarter at Chakradharpur. This was received by the office of the Divisional Railway Manager, Sambalpur, and the D.E.N., Sambalpur on 7.9.1990. Sri Dhalsamant also placed before me the decision of the Supreme Court, (1994) 28 ATC 516 (R.Kapur v. Director of Inspection (Painting and Publication), Income Tax and another). The facts of that case are that gratuity was withheld for not vacating Government accommodation and for not paying damages levied under the Rules for overstay. The Supreme Court held that the right of such a retired employee to gratuity is not dependent on his vacating the Government accommodation. The Supreme Court enhanced the interest payable from 10% awarded by the Tribunal to 18% per annum. However, they stated that this is without prejudice to the Respondents' right to recover the damages under FR 48-A.

6. On behalf of Sri L.Mohapatra, Sri B.K.Nayak submitted a letter dated 23.12.1996 from the Senior Divisional Personnel Officer, S.E.Railway, Chakradharpur, to the effect that normal house rent was deducted while the applicant worked at Bolangir on the basis of L.P.C. It was only at a later date the Respondents realised that the applicant failed to vacate the quarter without seeking permission.

14

7. There are a large number of decisions by now to the effect that if an incumbent overstayed beyond the permissible period, the Department has every right to treat the period as unauthorised occupation and deduct damage rent therefor. But there are three significant facts in this O.A. which required the Respondents to apply their mind before making the recovery. The three significant facts are: (i) Deduction of the normal licence fee which is positive evidence of the Respondents legitimising the stay beyond the permissible period on transfer; (ii) The applicant did apply for retention of quarter in his own inimmitable style by a letter dated 6.9.1990. This letter was delayed, but still the Respondents should have replied to the applicant promptly that the retention of the quarter was not permissible and the overstay would be treated as unauthorised occupation. The Respondents did not react to this letter dated 6.9.1990; and (iii) The applicant expected to be back at Chakradharpur because of the three orders of transfer attempting to send him back which ultimately aborted for reasons best known to the Respondents, but this created a legitimate expectation in his mind to go back to his old place in the last leg of his service. This is a reasonable explanation for not pursuing his efforts to obtain permission for retention of the quarter.

8. It is true the applicant should have filed his petition for retention of the quarter not on 7.9.1990 but within two months from the date of his relief from Chakradharpur. There was a delay of six months in filing this extension petition, but as I said above, the direction to charge normal

rent consistently for the entire period of twenty-two months is inconsistent with the declaration that the applicant was an unauthorised occupant. This is more so because the Respondents wanted the applicant to be back at Chakradharpur. The facts compel me to draw the conclusion that by their conduct they treated the applicant as a person continuing in the quarter with their knowledge and unexpressed consent. There is, therefore, no justification to treat any part of the period of stay at Chakradharpur as unauthorised.

9. In view of the above, there is absolutely no justification for the Respondents to treat the applicant as an unauthorised occupant of the premises at Chakradharpur and thereby deprive him of his legitimate dues. The Respondents shall calculate the interest at the rate of 18% per annum as mandated by the Supreme Court with effect from the period beyond three months after the date of his retirement. On 16.5.1996 I directed that the balance amount of gratuity payable without interest should be immediately made over to the applicant, and I am told at the Bar that as per the orders of this Court, the undisputed amount was made over. It is only on the disputed portion, the Respondents shall calculate interest at 18% per annum after excluding three months after the date of retirement till the date of payment. Interest on the undisputed portion shall be paid till the date of payment. These payments shall be made within a period of two months from the date of receipt of copy of this order.

The Application is allowed.

Devaraj Sahu
(N.SAHU) 21.1.97
MEMBER (ADMINISTRATIVE)

Nayak, P.S.