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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 79 OF 1995
Cuttack, this the 4th day of June, 1996

Manas Ranjan Nayak Applicant

Vrs.

Union of India & others Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? Yes.
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes.

N.Sahu 6.96.
(N.SAHU)
MEMBER (ADMINISTRATIVE)

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CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 79 OF 1995
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CORAM:

HONOURABLE SHRI N.SAHU, MEMBER(ADMINISTRATIVE)

....

Manas Ranjan Nayak,
s/o Trailokyanath Nayak,
aged about 30 years,
working as Transmission Executive,
Office of the All India Radio,
Jeypore, Dist.Koraput

.....

Applicant

By the Advocates

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M/s Ganeswar Rath,
S.Misra &
R.Ch.Sahoo.

-versus-

1) Union of India, represented by
its Secretary, Information & Broadcasting,
New Delhi.

2) Director General,
All India Radio, Akashbani Bhawan,
New Delhi.

3) Station Director,
All India Radio,
At/P.O.Jeypore, Dist.Koraput ... Respondents

By the Advocate

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Mr.U.B.Mohapatra

Enclosed

O R D E R

N.SAHU, MEMBER(ADMN.)

The applicant prays in this application under Section 19 of the Administrative Tribunals Act for quashing Annexures pertaining to orders: keeping in abeyance O.M.No. JPR-9(1)/93-C/4171 dated 8.4.1993 regarding allotment of Staff Qr.No.8, Type-II of AIR Colony, Jeypore, Crissa, (order dated 12.4.93); directions dated 28/30.9.93 to vacate the quarter within seven days; intimation dated 26.10.1993 that retention of the quarter after cancellation amounts to unauthorised occupation; intimation dated 18.1.1995 of his liability to pay damage rent of Rs.37,140/- after informing him that his representation has been rejected and making him liable for eviction proceedings. The order of recovery under Annexure-14 is stayed by an order of this Tribunal on 7.2.1995 and the stay continues.

2. The undisputed facts are in a brief compass. Three persons, eligible shift duty personnel, applied for allotment of a Type-II Quarter. Amongst the three is the applicant, a transmission executive appointed on 30.8.1991. Last date of application was 8.3.1993 and the applicant applied on 6.3.1993. Rule 8 of the Allotment of Residential Quarter Rules, 1983 which is the bone of contention in this Application reads as under:

"(8) Allottees of quarters in the Shift Duty Pool shall be under obligation to make themselves available for duty at call.



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The Controlling Authority shall notify the number of quarters available for allotment in the Shift Duty Pool on the basis of applications from shift duty staff. The allotment of quarters to these shift duty staff in the Shift Duty Pool will be on the basis of priority dates as among themselves:

Provided at the same time allotment will be made to each category of posts included in the complement of Shift Duty Staff notwithstanding their interse priority."

Though Rule 8 is the bone of contention, it is important to juxtapose this with other relevant rules:

"(9) A person who is allotted a quarter in the Shift Duty Pool may continue to remain in occupation of that quarter even on promotion provided he continues to make himself available for duty at call. The performance of duty at call by the allottees of quarters in the Shift Duty Pool may be reviewed once in six months and even earlier if the Controlling Authority so decides and the allotments of those known to have failed to respond to calls for duty may be cancelled by the Controlling Authority. A notice of 15 days shall be given in such cases before cancellation becomes effective. The decision of the Controlling Authority in such cases shall be final."

(Emphasis supplied)

3. The applicant was allotted a Government quarter to which he is entitled on 8.4.1993. He took possession of the quarter on 11.4.1993 and submitted occupancy report on 12.4.1993 F.N. It is this allotment that was kept in abeyance on 12.4.1993 and later cancelled on 30.9.1993 with the consequences of impugned damage rent and a threat of eviction. Admittedly the applicant is seniormost in the general category amongst the officials who have preferred applications for allotment of quarter by 6.4.1993. It is claimed that the applicant is the seniormost amongst

shift duty personnel and has a justifiable priority claim.

Respondents state that Sri S.B.Gomango, a Technician also submitted his application for the quarter on 8.4.1993. But his application was at the diary stage and could not be considered. Respondents referred to proviso to Rule 8 of S.R.317:

"...allotment will be made to each category of posts included in the complement of Shift Duty Staff notwithstanding their interse priority".

As the application of Sri Gomango could not be considered, this quarter was allotted to the applicant as a Transmission Executive. The allotment was kept in abeyance. In spite of the applicant's representation that he had taken possession of the quarter, he was asked to vacate vide orders dated 28.9.1993 and 30.9.1993. According to the averments of the Respondents, three applications were received. The Allotment Committee considered the case of the applicant as the seniormost amongst the shift duty staff and the quarter was allotted to him. The condition that 'he should be prepared to vacate the quarter at a day's notice if such necessity arises' is not in accordance with the allotment rules. The allotment rules provide clear guidelines, (i) for allotment, and (ii) for eviction. The Rule quoted above stipulates that because of the peculiar exigencies of service and to facilitate immediate compliance and presence to duty at call, the shift duty staff are allotted as a separate category quarters. They can continue to stay in those quarters as long as they abide by the calls of their office and there is no complaint about their compliance or attendance whenever called. This stipulation that they should vacate

the quarter at a day's notice is unnecessary, uncalled for and absolutely arbitrary. The same clause is struck down as not in accordance with the rules or does not flow from the rights of allotment or the duties of the allottee. Such a clause will in future be deemed not to exist as a condition of allotment.

4. At page 4 of the counter affidavit, it is stated :

"Though Shri M.R.Nayak (applicant) was senior-most in the priority list, since there was no Technician available at that time in the Quarters and the application of Shri Gomango was not considered along with others, Shri Nayak, Transmission Executive (applicant) has got the allotment of quarter inadvertently, against the above proviso of the rule."

In my view, the decision to allot the quarter to the applicant is complete and final. The subsequent order issued by some other authority superseding the earlier order is not a valid order. There is no right of review because (i) a competent body decided the allotment, (ii) the applicant has been allotted on the merits of the case, (iii) it does not appear to be founded on any incorrect view, (iv) the proceeding in which the judgment was given was not opposed to natural justice, (v) this judgment was not obtained by fraud, and (vi) there is no breach of any other law. In this case the application of Shri Gomango was not considered by the competent authority. If it was at the diary stage, it was not the applicant's fault.

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The decision to allot the quarter was based on the clear enunciation of rules. It is possible that the proviso could not be applied because there was no application before the Committee. It is not an order which was passed on an erroneous application of law or by fraudulent representation of facts or by a mistake. It was a conscious decision taken by a competent authority and therefore, no review is possible. Having allotted the quarter and on facts, the applicant having taken possession and submitted report in this regard, it is totally unfair on the part of the Respondents to stay that order without giving the applicant an opportunity of being heard. The judicial review of an administrative action is only possible on the ground of unfairness. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. In this case there should have been a reasonable opportunity to the applicant before staying the order of allotment and directing him to vacate. The fault was not that of the applicant. The fault was entirely that of the Respondents. According to me, it is debatable whether Shri Gomango could have obtained the allotment or if he had not been given the allotment, it would have been an unfair act. The Allotment Committee acted on the applications before them. It is not known as to why Shri Gomango's application was not before them. That was something which the office will have to explain. Probably Shri Gomango delayed in sending

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the application. But having given an allotment, it was not open to the Respondents to arbitrarily stay and later cancel that allotment without even giving an opportunity of being heard to the applicant. It is an arbitrary exercise of power and therefore, is liable to be quashed. In view of the above, I have no other alternative except to quash the order of abeyance, the order of cancellation, and the order of recovery of damage rent. I further direct that the applicant shall continue in the quarter till he is found to have violated Rule 9 quoted above.

The application is allowed. Parties will bear their own costs.

Nayak, P.S.
(N.SAHU) 4.6.96.
MEMBER (ADMINISTRATIVE)

A.Nayak, P.S.