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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.295 OF 1996  
Cuttack, this the 19<sup>th</sup> day November, 1997

Shri Karunakar Naik .... Applicant.

vrs.

Union of India and othrs ... 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? No .

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
19/11/97

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.295 OF 1996  
Cuttack, this the 19th day of November, 1997

**CORAM:**

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN**

.....  
Shri Karunakar Naik, ex-Driver,  
Grade-I of Heavy Water Plant, Talcher,  
at present at village-Khalpal, P.O-Sarang,  
Via-Talcher,  
District-Angul        ....        Applicant.

Vrs.

1. Union of India, represented by the Secretary, Department of Atomic Energy, Central Secretariat, At/PO-New Delhi.
2. Chief Executive, Heavy Water Board, Vikram Sarabhai Bhswa, 5th Floor, Anusaktinagar, Bombay-94.
3. General Manager, Heavy Water Project, Talcher, At/PO-Vikrampur, Dist.Angul..... .... Respondents

Advocates for applicant - M/s S.K.Rath &  
B.K.Parida.

Advocate for respondents - Mr. Ashok Mohanty

## ORDER

SOMNATH SOM, VICECHAIRMAN

In this application under Section 10 of

Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 16.3.1995 at Annexure-6 charging Rs.19,408/- towards rent and damage rent for non-vacation of quarter by the applicant after his retirement. There is also a prayer for quashing the order

dated 14.2.1996 at Annexure-9 paying gratuity of Rs.6,358.00 out of the total payable amount of Rs.19,175.00 after deducting recoverable amount of Rs.12,817.00. The applicant has also prayed for payment of balance amount of gratuity with 18% interest per annum from 19.3.1993 till 14.2.1996 after deducting house rent as per usual market rate. There is also a prayer for calculating the length of service of the applicant by taking into account his military service and for a direction to the respondents to recalculate the revised pension within a stipulated period.

2. The applicant was appointed as a Driver on 29.10.1976 in Heavy Water Project, Talcher. On 19.3.1993 at the age of 51 years and six months as per the report of the Medical Board, he was retired on invalidation pension because of some ailment in his eyes. The applicant was in possession of a Government quarter and his children were studying at Talcher. He applied for compassionate appointment to be given to his son Prakash Kumar Naik, but no compassionate appointment was given to his son. His retirement dues were also not released in time and on these grounds and because of his personal and family difficulties, he continued to occupy the Government quarter from 20.3.1993 till 18.2.1995 when he vacated the quarter. After his retirement, he was allowed to retain the quarter for four

*Commut Jm.  
19.11.97*

months till 19.7.1993 on normal rent and another six months till 19.1.1994 at double the rent. Thereafter from 20.1.1994 till 31.10.1994 he was charged damage rent at the rate of Rs.1,039/- per month amounting to Rs.9753.19 and revised damage rent at the rate of Rs.1169/- per month from 1.11.1994 to 18.2.1995 totalling to Rs.4,258.50. The applicant's claim is that he had to retire suddenly on invalidation pension when he had many years of service left. His son was not provided with compassionate appointment. His children were studying at Talcher and his terminal benefits were also not given to him intime. All these forced him to retain the quarter after his retirement on 19.3.1993 till 18.2.1995 and only the standard rent should be charged for this and not the damage rent and the revised damage rent. Because of the above, he has come up with the aforesaid prayer regarding damage rent. His second prayer relates to accounting of his military service towards pension. According to the applicant, he joined as an infantry soldier on 29.5.1956 when he was a minor and his actual service was counted from 29.11.1958. He was discharged from military service on 23.7.1972. The respondents have been pleased to approve the said military service towards pensionary benefits and in order dated 12.5.1992 (Annexure-10) his military service from 1.7.1958 to 23.7.1972 has been counted

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towards pensionary benefits subject to the condition that service gratuity of Rs.2954.40 received by him would be recovered from him in ten instalments. The case of the applicant is that accordingly the service gratuity has been recovered from him. But while calculating his pension, the total length of pensionable service has been wrongly worked out as 29 years, 5 months and 2 days, whereas according to him it should be 30 years, 4 months and 18 days. Accordingly he has come up with the second prayer for recalculating his pensionable service and pension.

3. Respondents in their counter have pointed out that the applicant, who was an ex-serviceman, joined Heavy Water Project, Talcher, on 29.10.1976 as Driver, Grade-I and continued till 22.10.1992 when he made an application stating that he was suffering from eye disease. He was referred to the Eye Specialist in the local hospital who certified that he was not fit to carry on the duties of a Driver. He was referred further to B.A.R.C. Hospital which also certified, after examining the applicant, that he was unfit to continue in service as a Driver. Accordingly, he was retired on invalidation pension on 19.3.1993. According to the respondents, after retirement Government quarter can be retained for four months on payment of normal licence fee and thereafter for another six months on payment of double the normal licence fee. Beyond that damage rent has to be charged and accordingly damage rent was charged to the

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applicant who vacated the quarter only on 18.2.1995.

According to the respondents, the calculation of rent for occupation of quarter has been done strictly in accordance with rules and there is no illegality involved. On the question of counting of military service, the respondents have stated that the date of birth of the applicant is 1.7.1941 and he joined army service on 29.5.1956 and continued in the military service upto 23.7.1972. Service rendered to Government before attaining the age of majority at 18 years used to be called Boy Service and according to Rule 19 of Central Civil Services (Pension)Rules, 1972, his military service can be counted towards his pensionable service in the subsequent civil employment only from the date he rendered military service after attaining majority.

Accordingly, his military service from 1.7.1959 to 23.7.1972 has been duly taken into account for calculating his pension. The respondents have, therefore, submitted that there is no case for adding further to his pensionable service and for recalculating his pension.

4. I have heard the learned lawyer for the applicant and the learned Senior Standing Counsel appearing on behalf of the respondents, and have also perused the records.

*Sanjay J M  
19.11.97*

5. Taking up the second prayer of the applicant first, I have calculated the dates and I find that the respondents have correctly worked out his pensionable service taking into account his military service after attaining majority on 1.7.1959. The claim of the applicant that by properly counting his military service, his pensionable service will stand increased and he will be entitled to higher pension is without any merit and is rejected.

6. The second aspect of the matter is the question of payment of damage rent. It is submitted by the learned lawyer for the applicant that the quarter occupied by the applicant was at Talcher. But while calculating the damage rent and revised damage rent, damage rent payable for occupation of quarter of that type in Bombay, which is a high priced area has been taken into account and this, according to the applicant, has worked unfairly and against him. It has been further submitted that he was unable to vacate the quarter as his terminal benefits were not paid to him. I find from the pleadings of the parties that the applicant submitted his pension papers only on 29.5.1993 and thereafter the respondents have been prompt in paying his terminal benefits except the gratuity, a major portion of which was adjusted against the damage rent and other rents

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payable by him and in the process, the residual amount of gratuity was paid to him after he vacated the quarter. Non-payment of pensionary benefits cannot be a ground for not vacating the quarter and this contention must fail. As regards the other contention that the rate of rent which is chargeable to such a quarter at Bombay has been charged, the damage rent chargeable to a quarter is dependent upon the plinth area of the quarter and the respondents cannot be said to have wrongly calculated the damage rent. The contention of the applicant that he should be charged standard rent for his entire occupation of the quarter till 18.2.1995 is without any merit and is rejected. Having said this, however, it requires to be stated that this prima facie appears to be a hard case. The applicant is an ex-serviceman and had worked as an infantry soldier. He had to take retirement prematurely on invalidation pension from the service of the respondents. His retirement unlike retirement on superannuation was not an event which could be foreseen. For these reasons, there is a strong case for reconsideration of the decision of charging damage rent and revised damage rent on him for the period from 20.1.1994 to 31.10.1994 and from 1.11.1994 to 18.2.1995 respectively. But this is a matter which does not fall within the ambit of the Tribunal. The Tribunal must administer the Rule even if

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19.11.97*

this may work out to the disadvantage of an individual. But it is always open for the departmental authorities to take a sympathetic view and charge at a lesser rate. As a matter of fact, in many cases charging of damage rent to persons occupying quarters at Delhi has been waived under orders of Government of India in Urban Development Department. There is, therefore, a case for such consideration to be shown to the applicant. In view of this, it is ordered that the applicant should file a representation to the departmental authorities praying for charging him with double the rent or standard rent for the period from 20.1.1994 to 18.2.1995. The departmental authorities should consult their Finance Wing and if necessary, move the Department of Urban Development for charging standard rent to him for this period instead of damage rent and revised damage rent, as has been done. It is made clear that it is entirely for the departmental authorities and the integrated finance to take a view in the matter and the applicant will have to abide by their decision in this regard. I have no doubt that the authorities, who would consider his representation would take into account the countervailing circumstances in this case referred to by me earlier. The departmental authorities should take a view within a period of 120 (one hundred and twenty) days from the date of receipt of the representation

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and intimate the result of their consideration to the applicant.

7. In the result, therefore, the application is disposed of in terms of the observation and direction given in paragraph 5 and 6 of this order. No costs.

Somnath Som,  
(SOMNATH SOM)  
19.11.97  
VICE-CHAIRMAN

AN/PS