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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO.639 OF 1996

Cuttack, this the 30th day of October,1996


Amiya Kumar Maity Applicant

Vrs.

Union of India & others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not? *ys*
- 2) Whether it be circulated to all the Benches
of the Central Administrative Tribunal or not? *No.*


(N.SAHU)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.639 OF 1996

Cuttack, this the 30th October, 1996

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE)

....

Amiya Kumar Maity,
aged about 46 years,
son of late S.K.Maity, Wireman,
CRpF Section, CPWD,
Bhubaneswar

....

Applicant

-versus-

1. Union of India, represented through
Addl.D.I.G.P-cum-Estate Officer,
Group Centre, CRPF,
Bhubaneswar-11.
2. Executive Engineer (Elect),
Bhubaneswar Cent.Elect.Division,
C.P.W.D., Plot No.3A, Unit-8,
Bhubaneswar-12.
3. Assistant Engineer (Elect.),
Bhubaneswar Cent.Elect.Sub-Divn.II,
C.P.W.D., Plot No.3A, Unit-8,
Bhubaneswar-12.
4. P.K.Naru, J.E. (Elect.),
CPWD, CRPF Section, Bhubaneswar-11 ... Respondents

Advocate for Applicant - Mr.F.C.Chhinchani
Advocate for Respondents - Mr.S.C.Samantray

N.SAHU, MEMBER (ADMINISTRATIVE) The applicant is an employee of C.P.W.D.

and posted at Group Centre, C.R.P.F., Bhubaneswar, for electrical

maintenance work for residential and non-residential buildings. The applicant was initially allotted Quarter No.Type-II/2(New) C.R.P.F. by the Estate Officer, Executive Engineer, C.P.W.D. on 29.6.1981. The said quarter belongs to C.R.P.F. and is situated within the C.R.P.F.Campus. By Government Notifications dated 24.10.1978 and 7.1.1984, the Additional D.I.G.-cum-Commandant,CRPF was notified as Estate Officer of C.R.P.F.Campus, Bhubaneswar. On 25.4.1990 the Executive Engineer, C.P.W.D. requested for a change of allotment in favour of the applicant. Accordingly on 30.4.1990 the Estate Officer (Respondent No.1) allotted Quarter No.1 Type II, in favour of the applicant. As things stood thus, there was a written complaint dated 8.3.1996 by Miss Leena that the applicant misbehaved with her. Respondent No.4 lodged this complaint before the Executive Engineer (Respondent No.2) as Miss Leena, the young lady, happens to be his daughter. A copy of the said complaint was also submitted to the Additional D.I.G., C.R.P.F., Group Centre, Bhubaneswar (Respondent No.1). Respondent No.2 appointed on 31.5.1996 an Enquiring Officer, Sri S.Chattopadhyaya, A.E.(Electrical) to enquire into the allegations and the counter allegations. Meanwhile Respondent No.1 issued on 8.5.1996 a "showcause notice for vacation of C.P.W.D. Quarter No.1 Type II, of Group Centre, C.R.P.F.Campus". The applicant was called upon to show cause before 18.5.1996 as to why he would not be evicted or penal rent charged from him. He protested and disputed the allegations, and filed a tentative reply on 13.5.1996. He complained that Respondent No.4, his immediate superior, harassed the applicant as he happened to be the Union leader. By Annexure-5 to the application, the applicant complained to the Executive Engineer, C.P.W.D.(Respondent No.2) to the effect that Respondent No.4 used unparliamentary language

and misbehaved with him. The enquiry by the Executive Engineer is in process.

2. Meanwhile, against the showcause notice of eviction by Respondent No.1, the applicant denied the allegations and said that Respondent No.4 is prejudiced against him because he is a Union leader. He stated that he had been living in the premises for the last 17 years and he alleged that this allegation was foisted against him. Soon after the receipt of the showcause, Respondent No.1 passed the eviction order by Annexure-9 and gave a final notice for vacation of C.P.W.D.Quarter No.1/Type-II of Group Centre, C.R.P.F., Bhubaneswar on the ground that allowing the applicant to stay further in C.R.P.F.Campus would be detrimental to the discipline of the Force because the applicant indulged in indisciplined activities and provoked the C.R.P.F. personnel. A finding was given that the applicant was in unauthorised occupation of the public premises. Besides the complaint of Respondent No.4's daughter, it is alleged that other occupants of Government family quarters alleged that he did not perform his duties of Electrical Section. Respondent No.4, therefore, directed vacation of quarters by 6.9.1996. An ad interim stay was granted on 5.9.1996 for a period of 14 days. Objections against the ad interim stay as well as against the final showcause notice in the case were filed. I have heard Shri P.C.Chhinchani for the applicant and Shri S.C.Samantray, Additional Standing Counsel for the Respondents.

3. In this O.A. the relief claimed is for quashing Annexures 3 and 9, the showcause notice and the final eviction order, and also there is a prayer for declaring that Respondent No.1 is not competent to pass this order. The ground for this relief is that the applicant is not an employee under the C.R.P.F Establishment but he is under the C.P.W.D. The allotment of the quarter has been done by Annexure-1. Being bound by the service conditions of

the C.P.W.D., Respondent No.1 cannot issue orders under Annexures 3 and 9. It is stated that Annexure-3 has been issued on Respondent No.4's complaint. There is a departmental enquiry pending in this regard. Without awaiting the results of the said enquiry or without conducting an enquiry himself, Respondent No.1 has issued the impugned Annexure-9 on the basis of a private complaint. Annexure-9 has been purportedly passed in exercise of powers conferred under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The impugned order suffers from non-application of mind because the said order did not take into account the procedure established under the Act. This Act mandatorily requires a notice under sub-section(1) and clause (b)(ii) of sub-section(2) of Section 4 thereof. The said notice cannot be held to have been issued under Section 4. It is urged that the applicant cannot be termed as an unauthorised occupant under the Act solely on the grounds mentioned in Annexures 3 and 9. There is no determination that the applicant was an unauthorised occupant and therefore, the eviction order is an arbitrary finding. The other grounds, namely, of applicant's non-performance of duties and complaint by others were not put to him in the initial showcause notice and were utilised against the applicant in the final order of eviction. When the departmental authorities are seized of the matter, Respondent No.1 could not have held the applicant guilty. It is urged that there is an opportunity of personal hearing mandated by the Rules and this was not afforded to him.

4. Learned Additional Standing Counsel, Shri S.C.Samantray based his arguments on the pleadings of the counter-affidavit. It is stated that Respondent No.1 is notified as Estate Officer of the Group Centre, C.R.P.F.Campus and has jurisdiction to issue showcause notice for vacation of the Government residential

quarters. It is stated that there were several complaints of non-performance of duties and his behaviour is detrimental to the harmony and discipline in the campus. "Applicant styles himself as a Union leader and indulges in indisciplined activities and provokes the CRPF personnel". It is stated that the eviction proceedings of Respondent No.1 are separate and independent and have no linkage with the enquiry conducted by Respondent No.2. Since quarters were constructed by the C.R.P.F. for C.F.W.D. employees for maintenance of C.R.P.F. quarters in the C.R.P.F. Campus, such employees automatically come under the jurisdiction of the Estate Officer and are liable to comply with the rules of the allotment policy as well as conform to the discipline of the Armed Force. It is finally stated that the eviction order has been issued under the P.F. Act by the Estate Officer and an appeal lies to the District Judge which is a different forum. It is also stated that the applicant by his application dated 31.5.1996 did not ask for any personal hearing. Respondent No.1 as well as Respondent Nos. 2 and 3 have stated that this Court has no jurisdiction to dispose of an appeal against the eviction order.

5. Shri P.C.Chhinchani, learned counsel for the applicant, states that the doctrine of alternative remedy is a self-imposed limitation on the Court and this Court in exceptional cases where the authority acts in excess of jurisdiction or in contravention of rules of natural justice or commits an error apparent on the face of record, can exercise jurisdiction. After hearing the learned counsel for both sides, it is not necessary to await any further since all the pleadings in the case have come on record. The issues that have been thrown up for consideration are dealt with hereunder.

6. The first aspect to be dealt with is whether this Court has jurisdiction to deal with this Application against the eviction order. This matter is concluded by the Full Bench judgment in the case of Rasila Ram and others v. Union of India & others (O.A. Nos.89/88, 166/87, 1497/88 and 1802/88 - decided on 5.5.1989 by the Principal Bench, Delhi). It is held therein that the applicant can appeal to the District Judge under Section 9 of the P.P.Act. He can also avail the remedy of filing an application before this Court on the ground that his fundamental rights have been affected as he was not given proper opportunity. If the order of eviction is bad in law and has been passed not in accordance with the legal procedure, this Court can be moved and if this Court is seized of the matter, the appellate forum cannot be invoked. On the contrary, if the applicant has chosen to move the appellate forum, he is to wait till the appellate forum decides the appeal. The Full Bench clearly held at para 10: "We, therefore, clearly hold that eviction proceedings against Central Government employees under the P.P.Act fall within the purview of the Central Administrative Tribunal". As eviction is a sequel to cancellation of allotment, it cannot be kept out of purview of service matters. Allotment and cancellation being service matters, the consequent order of eviction and charging penal rent are also service matters. In view of this decision of the Full Bench in Rasila Ram's case (supra), there is no merit in this contention.

7. The learned Additional Standing Counsel has cited the Apex Court's decision AIR 1972 SC 2205 (Hari Singh v. Military Estate Officer) a Full Bench decision, in support of his claim that this Court has no jurisdiction. I am unable to appreciate as to how this Constitution Bench judgment is relevant to this issue. The learned Additional Standing Counsel relied on Section 15 of the

109
P.P.Act barring jurisdiction of Courts. But the Administrative Tribunals Act coming into force in 1985 confers expressly jurisdiction in service matters.

8. The next issue is whether the procedure laid down in the provisions of the P.P.Act has been violated. Section 4 of the P.P.Act applies to a person who is in unauthorised occupation of any public premises. The phrase "unauthorised occupation" has been defined to mean "occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises", after the authority for such occupation has expired, particularly where lease has been terminated or allotment has been cancelled.

9. The third issue that has cropped up is this: the applicant's alleged act of misbehaviour and non-performance of duties are matters of indiscipline and misconduct for which he shall be proceeded against only by the disciplinary authority, i.e. the C.P.W.D. The C.P.W.D. has already initiated the enquiry and before the conclusion of this enquiry, no findings prejudicial to the applicant can be drawn. What Respondent No.1 has done is precisely this. He has not conducted an enquiry and he has not awaited the results of the enquiry of Respondent No.2.

10. The purpose of the P.P.Act is to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters. This Act comes into force only after a person is determined as an unauthorised occupant. It does not come into force before a person's allotment is cancelled. The cancellation of an allotment can be done on the basis of any violation of the terms of allotment. The conditions of allotment in the allotment letter at Annexure-1 ^{which} speak of payment of rent, keeping up of the quarter in good condition, and that there should

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be no damage to the quarters. Respondent No.1, no doubt, quoted the allotment policy of the D.D.(Admn.), Directorate General, C.R.P.F., New Delhi, letter No.A.II-2/75-Admn-3(Vol.3) dated 24.4.1981.

The question at issue is that this showcause notice should have logically ended in a further proceeding of cancellation of allotment and then proceedings under the P.P.Act should have commenced.

11. Respondent No.1 while initiating the showcause notice at Annexure-3 has not considered the mandatory provisions of Section 4 of the P.P.Act,1971. Section 4 requires that the Estate Officer should come to an opinion "that any person is in unauthorised occupation of any public premises". This opinion must be a reasonable one based on the facts of the case. There is no justification for coming to a conclusion of unauthorised occupation before the cancellation of the lease or determination of the lease. For cancellation or determination of a lease, either the lease should have ended or its continuance should have been stopped by the order of a competent authority. The proper procedure for Respondent No.1 or the competent authority should be to issue a showcause notice first to cancel the lease. It is only after hearing the applicant that the lease can be cancelled. After the lease is cancelled reasonable time should be given for vacation. If the occupant does not vacate the premises within the stipulated time, then there should be a finding recorded that he is an unauthorised occupant of the public premises. It is thereafter that the provisions of the P.P.Act,1971 shall come into force. Indiscipline can certainly be a ground for determining the lease, but then the record shows that the complaint is under enquiry. Even Respondent No.1 cannot pass an ex parte order against the applicant without a proper finding on his part on this aspect or without awaiting the finding of the

Executive Engineer who is seized with the disciplinary proceeding in this behalf. About other grounds, a showcause notice should be issued to the applicant about the complaints or about dereliction of his duties or about his conduct which is not in conformity with the discipline of the C.R.P.F. and then there should be an order determining the lease and declaring the applicant as an unauthorised occupant after adequate time is given for vacating the premises. Before the P.P. Act is put into action, the terms of Section 4 have to be mandatorily complied with. The Estate Officer is mandated to issue a notice in writing to show cause why an order of eviction should not be made. I am extracting sub-section (2) of Section 4 which is as under:

- "(2) The notice shall -
 - (a) specify the grounds on which the order of eviction is proposed to be made; and
 - (b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,-
 - (i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof, and
 - (ii) to appeal before the Estate Officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired."

It is only after complying with this procedure that Respondent No.1 can exercise his powers under Section 5. It is quite clear to me that this procedure has totally been bypassed.

12. In view of the above discussions, the following conclusions are drawn:

- (1) This Court has jurisdiction to hear this O.A. in view of the Full Bench decision in Rasila Ram's case (supra);

- (2) Annexures 3 and 9 are two different proceedings;
- (3) Annexure 3 has not been taken to its logical conclusion;
- (4) There is no order of cancellation of allotment because of violation of policy guidelines;
- (5) There should have been a showcause notice u/s.4 of the P.P.Act. Without such a showcause notice, the order under Annexure 9 is bad in law;
- (6) The showcause notice in Annexure-3 is not a showcause notice u/s.4. The format of the showcause notice has been defined in the Act and such parameters are not complied with;
- (7) Either the Respondent No.1 should conduct his own enquiry and come to a finding that the policy guidelines have been violated or he should await the conclusion of enquiry of Respondent No.2. If Respondent No.2 exonerates the applicant of the charges and the allegations are found by him to be baseless, Respondent No.1 will have to face an embarrassing situation.

Thus, I have no other alternative except to hold that Annexure-9 is not in accordance with law and deserves to be quashed and is accordingly quashed.

13. The Application is allowed. No costs. This order should not convey an impression that alleged indiscipline on the part of the applicant has gone off and he would not be affected. Respondent No.1 can terminate the lease on the ground of indiscipline if that is a condition for valid tenure of allotment and can declare the applicant to be an unauthorised occupant, provided he does not vacate the premises within a reasonable period. But in doing so, he should follow the procedure laid down under law. It would be most appropriate if Respondent No.1 acts in concert with the Executive Engineer who has already commenced the proceedings.

Handwritten signature
(N.SAHU)
MEMBER (ADMINISTRATIVE)

Nayak, P.S.