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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 879 OF 1996
Cuttack, this the 30th day of June, 1999

Miss Chhabi Chakrobarty and othersApplicants

Vrs..

Union of India and 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? No.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30.6.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

VS

ORIGINAL APPLICATION NO. 879 OF 1996

Cuttack, this the 30th day of June, 1999

CORAM:

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

.....

1. Miss Chhabi Chakrabarty, aged about 37 years, daughter of Sri Jamini Kanta Chakrabarty
2. Sri Prafulla Kumar Lenka, aged about 41 years, son of Sri Rama Chandra Lenka
3. Sri Manoj Kumar Pattnaik, aged about 35 years, son of Sri Sarat Chandra Pattnaik
4. Sri Satyanarayan Acharya, aged about 34 years, son of Sri Hare Krishna Acharya.
5. Sri Rabi Narayan Sahoo, aged about 36 years son of Sri Basudev Sahoo
6. Sri rindaban Mohapatra, aged about 34 years, son of Sri Krishna Mohan Mohapatra
7. Sri Binod Chandra Mishra, aged 35 years, son of late Jagannath Mishra
8. Miss Sunita Pradhan, aged about 32 years daughter of Sri Sankar Pradhan
9. Sri Ravindra Kumar, aged 30 years, son of late Bhagaban Das

All are at present working as Civilian Educational Instructor, Education Department, INS Chilka-752 037, District-Khurda Applicants

Advocates for applicants-M/s R.B.Mohapatra

N.R.Routray

U.K.Bhatta

S.Sarkar

S.K.Sahoo

S.Patsani

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1. Union of India, represented by its Secretary to Government of India, Ministry of Defence, New Delhi.
2. Flag Officer, Commanding-in-Chief, Headquarters, Eastern Naval Command, At/PO-Vishakhapatnam (AP)
3. Commanding Officer, INS Chilka, At/PO-Chilka, District-Puri.
4. Sri Krishna Rao, OS Gr.II, INS, Chilka, Dist.Puri...

..... Respondents

Advocate for respondents-Mr.S.B.Jena
A.C.G.S.C.

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SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the nine applicants who are working as Civilian Educational Instructors in the Department of Education in INS, Chilka, have prayed for quashing the seniority roster at Annexure-A/1 for allotment of Type-III Quarter as also the decision taken by Commanding Officer, INS, Chilka (Respondent no.3) in his order dated 17.11.1996 at Annexure-A/9. The next prayer is for a direction to respondent no.3 to modify the seniority roster at Annexure-A/1 in the light of the principles decided in the case of Bhagatram Dogra. The next prayer is that if in the meantime any allotment of quarter is made in favour of Sri Krishna Rao, OS Gr.II, INS, Chilka, the same be cancelled. By amending the OA, two further prayers have been added. It has been prayed that respondent no.1 should be directed to take steps to amend para 3(h)(i) of SRO 308 and NB (i) of Government of India, Ministry of Defence as per their letter dated 20.9.1988 in the light of the principles decided in Bhagatram Dogra's case and till the amendment is carried out, Type-III accommodation in favour of Civilian Staff may be allotted taking into account the above decided principles. It has also been prayed that principle of priority date of allotment of Types I to III accommodations as prevailed in view of para 3(h)(i) of SRO 308 and NB (i) of Government of India, Ministry of Defence letter dated 20.9.1988 may be declared as invalid. By way of interim relief it was prayed that pending disposal of the OA, allotment of Type-III quarter in favour of respondent no.4 be stayed and status quo of civilians who have been allotted with quarters prior to the issue of the roster at Annexure-A/1 be maintained.

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2. On 10.12.1996 on the date of admission by way of interim relief it was ordered that status quo as on date shall be maintained till 23.12.1996. The said order was made absolute in order dated 22.1.1997. The interim order was modified after hearing both sides in order dated 15.9.1997 and the respondents were allowed to allot vacant quarters to persons who are on the top of the roster under challenge subject to the condition that such allotment would be subject to the result of the O.A. and this condition should be specifically mentioned in the allotment order. It was also made clear that the status quo order passed earlier in respect of the petitioners will continue. The above modified interim order has continued till date.

3. The applicants' case is that for the purpose of allotment of quarters amongst civilian staff working under INS, Chilka, a seniority roster in respect of Type-III accommodation was published in General Notice Board. This is at Annexure-A/1. This roster does not indicate the date with reference to which the roster has been drawn up and it is also not signed by any officer. It further appears from the roster list that length of service of all categories/class of employees has been taken into consideration while preparing the roster instead of the earliest date from which the Government servant is continuously drawing emoluments relevant to the particular Type III accommodation. The applicants have stated that the aforesaid manner of fixation of seniority roster for Type-III accommodation relatable to basic pay of Rs.1500/- and above is against the settled principle of law decided by Central Administrative Tribunal, Bombay Bench, in the case of Bhagat Ram Dogra and others v. Collector of Central Excise, 1993(1) SLJ (CAT) 94, the synopsis of which has been published in Swamynews and has

been enclosed at Annexure-A/2. The applicants have stated that allotment of quarters rules contemplate in SR 317-B-2 of Swamy's FR & SR Part-I in which basis of seniority with regard to allotment of quarters has been determined. The amendment/modification in respect of such allotment of quarters in SR 317-B-2 is on account of implementation of recommendation of the Fourth Pay Commission. But in Bhagat Ram Dogra's case it was held that one of the direct consequences of the amendment/modification is that person holding several years seniority in the relevant pay scale of Type III quarters, for instance, may be pushed down vis-a-vis a junior with longer service because of former's later entry into service. This is neither reasonable nor desirable. A natural corollary to the above is that persons who are senior and have not been able to get allotment, continue to remain deprived while some of those persons who had the benefit of lower type of quarter become eligible to higher type quarter only because they have entered into service at an earlier date. The applicants have stated that as a result of adoption of the criterion of total length of service for determining the roster for allotment of quarter, number of junior employees would become eligible for allotment of Type-III quarters. This would frustrate the very object of framing Scheme for allotment of quarters, namely, an equitable distribution thereof between the entitled employees. The applicants have stated that in the present case persons belonging to entirely junior class of service are sought to be given preference to those of a senior class in respect of quarters on the basis of length of total service most of which was rendered in Group-C cadre. This, according to the applicants, violates the principle of equality under the

Constitution. The applicants have stated that only the period of service rendered by the employees after their entry into pay range relevant for Type-III quarters should have been reasonably taken into account. On 2.9.1996 the applicants made a joint representation to respondent no.3 requesting that modification be made in the seniority roster in respect of Type-III accommodation in the light of the decision of the Tribunal in Bhagat Ram Dogra's case. This representation is at Annexure-A/3. As no action was taken on their representation, the applicants approached the Tribunal in OA No.673 of 1996 which was disposed of in order dated 19.9.1996 (Annexure-A/4) with a direction to the present respondent no.3 who was also respondent no.3 in the earlier OA, to dispose of the representation which is at Annexure-A/3 within a period of four weeks from the date of receipt of copy of the order after hearing the applicants. It was also directed that till the representation is disposed of no allotment of quarters should be made in favour of respondent no.4. Respondent no.3 issued a letter dated 21.9.1996 to applicant no.3 calling for his explanation for submitting a joint representation at Annexure-A/3. This letter calling for explanation of applicant no.3 is at Annexure-A/5 and his explanation is at Annexure-A/6. In letter 15.3.1995 Flag Officer, Commanding-in-Chief, Eastern Naval Command, Visakhapatnam (respondent no.2) gave certain clarifications to respondent no.3. This letter is at Annexure-A/7. At Annexure-8 is another clarification from respondent no.2's office to respondent no.3 indicating that no amendment has been received in respect of allotment of accommodation to civilians. Basing on this respondent no.3 in his order dated 17.11.1996 at Annexure-A/9 indicated that after hearing the applicants it has been decided that accommodation

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roster for Type-III accommodation has been prepared strictly as per rules in force and the said roster will not be amended. In the context of the above facts, the applicants have come up in this petition with the prayers referred to earlier.

4. Respondents 1 to 3 in their counter have stated that the representation dated 2.9.1996 at Annexure-A/3 has been disposed of by respondent no.3 as per direction of the Tribunal after hearing the applicants on 26.11.1996 with a decision that accommodation roster for Type-III accommodation has been prepared strictly in accordance with rules in vogue at present on the subject and the said roster cannot be amended. The decision has also been communicated to the applicants vide Annexure-R/1. The respondents have stated that the contention of the petitioners that order of respondent no.3 is contrary to direction of the Tribunal dated 19.9.1996 has been denied. The respondents have stated that any revision in the accommodation rules has to be made by Government of India, Ministry of Housing & Urban Development Department, and it is not open for INS, Chilka to adopt different norms in this regard. The accommodation roster has been drawn up strictly in accordance with rules in force at present and is also followed in all Central Government Departments. Therefore, the petitioners have no locus standi to pray for amendment of the roster. The respondents have also stated that the seniority roster at Annexure-A/1 was signed by the competent authority on 29.8.1996 and was placed in the Notice Board. It is also stated that seniority in the roster has been fixed in accordance with paragraph 3(h)(i) of SRO 308 and NB (I) of Government of India, Ministry of Defence letter dated 20.9.1988 as has been clarified by Headquarters of Eastern Naval Command in their letter dated 15.3.1995 which is at Annexure-A/7. It is also stated that the question of

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violation of principles of natural justice does not arise because quarters are allotted as per seniority in the roster and after the employee reaches the pay scale relevant to the particular type of accommodation. It is further stated that the representation filed by the petitioner was forwarded to the administrative authority, i.e., headquarters of Eastern Naval Command for necessary clarification in letter dated 18.9.1996 at Annexure-R/5. Eastern Naval Command clarified in their letter dated 24.10.1996 at Annexure-R/6 that no amendment to the rules in respect of allotment of accommodation to civilian employees after the judgment of Central Administrative Tribunal, Bombay Bench, has been received and accordingly, the representation of the petitioners has been disposed of in order dated 26.11.1996 at Annexure-A/9. In the context of the above facts, the respondents have opposed the prayers of the applicant.

5. We have heard Shri R.B.Mohapatra, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel and have perused the records. The learned counsel for the petitioner has filed a chronological date-chart as also the relevant rules and the decision in the case of Bhagat Ram Dogra's case which have also been taken note of.

6. The learned counsel for the petitioners has submitted that the seniority roster for allotment of Type-III quarter which is relatable to persons getting pay of Rs.1500/- and above but less than Rs.2800/- per month should be quashed because while drawing up this roster at Annexure-A/1 the respondents have taken into account the total length of service of the employees coming within the above pay range and this, according to the learned counsel for the petitioners, is in violation of the principle of
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law laid down in **Bhagat Ram Dogra's case (supra)**. It has been submitted by the learned counsel for the petitioners that while drawing up the seniority roster the respondents should have taken into account only the period of service rendered by the persons in the relevant pay range between Rs.1500/- and Rs.2800/- instead of the entire length of their service. The respondents have pointed out and to our mind correctly that so long as the relevant allotment rules are not amended, it is not open for respondent no.3 to adopt a different principle than what has been laid down in the allotment rules for preparing seniority roster for allotment of Type-III quarters. It is obvious that so long as the allotment rules are in force the authorities are obliged to follow the allotment rules and therefore, this prayer of the applicants to quash the seniority roster at Annexure-A/1 is held to be without any merit and is rejected. Another prayer of the applicants which is connected with the above submission is that respondent no.3 should draw up fresh seniority roster by taking into account the service of the persons in the relevant pay range of Rs.1500/- to Rs.2800/- and not the entire length of service. This prayer is also rejected because the allotment rules have not been modified and it is not open for respondent no.3 to adopt any other criterion different from what has been laid down in the allotment rules.

7. The third prayer of the applicants is for a direction to Secretary, Ministry of Defence (respondent no.1) to amend paragraph 3(h)(i) of SRO 308 and NB I of Government of India, Ministry of Defence's letter dated 20.9.1988 in the light of the principles decided in **Bhagat Ram Dogra's case**. For considering this prayer the relevant rules and the decision in **Bhagat Ram Dogra's case(supra)** will have to be referred to. It is to be noted at the

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outset that different Ministries of Government of India have formulated different quarter allotment rules. For allotment of residential accommodation, under FR 45 it is open for the Central Government to make such rules. FR 45 inter alia lays down that Central Government may make rules or issue orders laying down the principles governing the allotment to officers serving under its administrative control, for use by them as residences, of such buildings owned or leased by it. Such rules or orders may lay down different principles for observance in different localities or in respect of different classes of residences. From the above it is clear that it is possible to make different rules for allotment or different principles of allotment for different types of quarters under a particular Ministry. In Ministry of Defence the relevant rule is called "Allotment of Residence (Defence Pool Accommodation for Civilians in Defence Service) Rules, 1978". This has been issued on 17.10.1988 and it is provided that this will come into force on the date of their publication in the official gazette which in this case is 28.10.1978. These Rules have been issued under Article 309 of the Constitution by the President of India. Rule 2 deals with definitions. This Rule has been enclosed by the respondents to Annexure-R/4. The applicants have referred to rule 3(h)(i) which is a mistake for Rule 2(h)(i) which defines "priority date". This definition is quoted below:

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"(i) "Priority date" of an officer eligible to a type of residence to which he is considered is the earliest date from which he has been continuously drawing emoluments relevant to a particular type or a higher type in a post under the Central Government or Union Territory including the period of foreign service except for periods of leave;

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Provided that in respect of a type B, Type C or Type D residence, the date from which officer has been continuously in service under the Central Government including the periods of foreign service shall be his priority date for that type;

Provided further that where the priority date of two or more officers is the same, seniority among them shall be determined by the amount of emoluments the officer in receipt of higher emoluments taking precedence over the officer in receipt of lower emoluments and where the emoluments are equal, by the length of service but where the date of joining service is the same, by their age or date of birth."

From the above it is clear that for quarters of Types I to IV, which were earlier known as Type B, Type C and Type D, the date from which the officer has been continuously in service under the Central Government including the period of foreign service shall be priority date for that type of residence. For other types of quarters, the priority date would be the earliest date from which the officer is drawing emoluments relevant to a particular type or higher type of residence in a post under Central Government including the period of foreign service except for periods of leave. From the above it is seen that by this definition two norms have been fixed for determining the priority date for different types of quarters. It is not in dispute that under this Rule the priority date for allotment of Type III Quarter is the total length of service under the Central Government. The contention of the learned counsel for the petitioner is that this norm is violative of the principle laid down in **Bhagat Ram Dogra's case (supra)** against which Union of India filed an SLP before the Hon'ble Supreme Court which was dismissed. It is necessary at this stage to note the facts

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in Bhagat Ram Dogra's case (*supra*). In that case eleven Central Excise officers, later on joined by the Central Excise Executive Officers' Union, filed the application regarding allotment/renewal of residential quarters and preparation of waiting/seniority list. Under Rule 317 of SR, Ministry of Finance had formulated a set of rules known as "Department of Revenue & Company Law Allotment Rules, 1964". It was submitted that Deputy Collector(P&V), Central Excise, Bombay, issued a letter dated 18.1.1991 regarding the guidelines for allotment of quarters and these guidelines were challenged for being contrary to the 1964 Rules issued in GSR 1336 dated 8.9.1964. It was urged by the applicants there that under the guidelines issued in letter dated 18.1.1991 the respondents have adopted two different criteria for allotment of residential quarters. For Type I/A, Type II/B and Type-III/C the criterion is the date of appointment in the service, but for Type-IV/D and V/E the criterion remains the date of crossing the particular pay scale in the qualifying grade and emoluments drawn on 1.1.1991. The guideline dated 18.1.1991 was quashed in the above decision by the Single Member of Bombay Bench of the Central Administrative Tribunal in **Bhagat Ram Dogra's case (*supra*)** on two points. The first point was that statutory rules which in that case were 1964 Rules could not have been amended by an executive instruction dated 18.1.1991. The second ground on which the executive instruction dated 18.1.1991 was struck down was that by adopting two norms for different types of quarters, particularly by adopting the norm of total length of service under the Government for Types I/A, II/B and III/C quarters, senior officers will be pushed down below their juniors in the relevant pay scale because of longer

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length of service of junior officers under Central Government. This was held by the Single Member as violative of Article 16 of the Constitution because it defeats the very object of scheme for allotment of quarters, i.e., equitable distribution of quarters of Types I/A, II/B and III/C. We have perused the judgment of the Bombay Bench of the Tribunal in **Bhagat Ram Dogra's case (supra)** very carefully and we feel that considerations which prompted the Tribunal to quash the letter dated 18.1.1991 would not arise in the present case for reasons to be indicated below. Before going into that it must be noted that under FR 45 different Departments are authorised to issue rules for allotment of residential quarters to their employees. FR 45, as we have already noted, also authorises the Government to adopt different norms for allotment of different types of quarters. So long as such different norms are based on reasonable considerations, adoption of different norms for allotment of different types of quarters permitted under FR 45 cannot be taken as discriminatory or violative of the equality clauses of the Constitution. The challenge to the relevant provisions of the 1978 Rules applicable to civilian officials in Defence Service have to be considered in the context of the above. The first ground on which the letter dated 18.1.1991 was struck down in **Bhagat Ram Dogra's case (supra)** was that it was not open for the executive authority to modify the statutory rule through an executive order. This consideration does not apply in the present case because in this case Allotment of Residences (Defence Pool Accommodation for Civilians in Defence Services) Rules, 1978 have been issued by the President under Article 309 of the Constitution and are therefore statutory rules. Rule 2(h)(i) defines "priority

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date", which has been extracted by us earlier and in this definition of "priority date" two different norms have been fixed for different types of quarters. Thus, in this case, there is no executive order which seeks to change any statutory rule and therefore, the first ground on ~~which~~ Bhagat Ram Dogra's case) was decided is absent in the instant case.

8. The second more important aspect is the submission of the learned counsel for the petitioners that fixing of two different norms for deciding the priority date for different types of quarters is violative of the equality clauses of the Constitution. We have already noted that under FR 45 it is open for the Government to adopt different norms for allotment of different types of quarters. In that connection it has to be seen whether adopting two different norms under the 1978 Rules applicable to civilian employees working in Defence Services is discriminatory or not. The considerations which weighed with the Bombay Bench in Bhagat Ram Dogra's case(*supra*) are that by adopting the total length of service under the Central Government as the norm for fixing priority date for allotment of certain types of quarters, the senior officers in the pay range will go below the officers who are junior to them in the same pay range because of the longer period of service put in by the junior officers under the Central Government. This to our mind by itself would not be discriminatory. An example will make the position clear. An officer may be in the pay scale below Rs.1500/- per month for a number of years and may be entitled to be allotted to a smaller type of quarter. Before his turn comes for allotment of a quarter smaller than Type-III, his pay is increased and he enters the pay range of Rs.1500/- to Rs.2800/-. By adopting the

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priority date as the date of entry in the particular pay range, such an officer will start at the bottom of the seniority roster of officers for allotment of Type-III quarter and his period of waiting for a number of years for allotment of a quarter smaller than Type-III will be wiped out as it were and would not be taken into account. The Tribunal in Bhagat Ram Dogra's case (supra) has taken an example where such a junior officer might be in occupation of a smaller type of quarter than Type-III and once he enters the pay range from Rs.1500/- to Rs.2800/- if his priority date is fixed on the basis of length of his total service under the Central Government then he will steal a march over officers who are in the relevant pay range of Rs.1500/- to Rs.2800/- from dates much prior to the date of entry of that officer in that pay range. Thereby that junior officer would be entitled to leave the smaller type of quarter and come to a Type-III quarter on the basis of his higher position in the seniority roster on being allotted a Type III quarter whereas those who have been in the relevant pay range of Rs.1500/- to Rs.2800/- from dates prior to entry of the junior officer in that grade would be going without quarters. This is a theoretical situation which in actual practice is unlikely to happen because it is well known that in the Central Government many officers occupy quarters smaller than the ones to which they are entitled. An officer who is in the pay range of Rs.1500/- to Rs.2800/- and is entitled to a Type-III quarter will also have a priority for quarters smaller than Type-III and if he is so inclined, would be entitled to get a quarter smaller than Type-III. In any case, it is for the departmental authorities to take into account the objective situation prevailing in a particular Department, and the the number of officers in different pay ranges, /number of

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quarters of different types available, and to make the rules. If a Rule has continued for a number of years, as in this case from 1978, and has not been challenged or set aside merely on the ground of theoritical considerations or alleged discrimination, the Rule cannot be declared ultravires. In **Bhagat Ram Dogra's case (supra)** the 1964 Rules were upheld and the executive order by which the statutory rule was sought to be amended was struck down. In the instant case, statutory rule itself provides for two different norms for fixing priority date for different types of quarters and this has apparently been in force from 1978. Therefore, we are not inclined to strike down the definition of "priority date" as provided in the 1978 Rules. In view of our above conclusions, the last prayer of the applicants for a direction to respondent no.1 to change the 1978 Rules in the light of the decision in **Bhagat Ram Dogra's case (supra)** is held to be without any merit. The respondents have pointed out in their counter that this principle of adoption of different norms for fixing priority date for different types of quarters is also in force in all Departments of Government of India as also in the Central Pool Accommodation allotted by the Ministry of Housing & Urban Development. In view of this, the prayer of the applicants for a direction to respondent no.1 to amend the rule is rejected.

9. In the result, the Original Application is held to be without any merit and is dismissed but under the circumstances without any order as to costs. The interim order granted as mentioned earlier also stands vacated.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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VICE-CHAIRMAN
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