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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 36 OF 1998  
Cuttack, this the 8th day of September 2000

Santosh Kumar Biswal ....

Applicant

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

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 36 OF 1998  
Cuttack, this the 8th day of September, 2000

CORAM:

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

.....  
Santosh Kumar Biswal, aged about 48 years, son of late Banchhanidhi Biswal, working as D.F.O., Kenduleaf Division, Keonjhar, PO& Dist. Keonjhar.... Applicant

Advocates for applicant - M/s V.Narasingh  
L.Samantray

Vrs.

1. Union of India, through Secretary, Ministry of Environment & Forest, Government of India, New Delhi
2. Accountant General (Audit-I), Orissa, P.O-Bhubaneswar, District-Khurda.
3. Joint Director (Headquarters), Office of the Director, Social Forestry Project, Orissa Aranya Bhawan (III R.D.Floor, Chandrasekharpur, Bhubaneswar, District-Khurda) .... Respondents

Advocates for respondents - Mr.U.B.Mohapatra  
ACGSC for R-1&2  
&  
Mr.K.C.Mohanty  
for R-3.

ORDER  
SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has prayed for quashing the order of recovery of Rs.86,700/- at Annexure-A/4.

2. The applicant's case is that he joined as Assistant Conservator of Forests in Orissa Forest Service on 6.3.1974 and was promoted to Indian Forest Service in 1991. On 11.1.1991 he joined as Deputy Director, Social Forestry, Keonjhar, where a Seed Godown was converted into a make-shift house and the applicant stayed in that. In order dated

13.10.1993 he was transferred and posted to Athmallik. But because of the stay order granted by the Tribunal he could not join at Athmallik. The order of his transfer to Athmallik was modified and he was posted as Divisional Forest Officer, Bamra, where he joined on 3.12.1993. From Bamra he was transferred to Deogarh. He was again reposted at Keonjhar on 9.7.1997 in Kenduleaf Division. The applicant made a representation to Principal Chief Conservator of Forests to retain the quarters at Keonjhar till June 1995 and the Principal Chief Conservator of Forests recommended his case to the Director, Social Forestry, but no order was passed on this representation. The applicant vacated the Seed Godown in December 1995. The applicant has stated that during his period of occupation he was paying rent at the rate of Rs.200/- per month as per prescribed rate. But in order dated 19.9.1997 he at Annexure-A/4 he has been asked to pay market rent totalling to Rs.86,700/-. He states that this order has been passed on the basis of objection raised by the Accountant General who has been made a party by the petitioner as respondent no.2. The applicant filed representation at Annexure-A/5 stating that his occupation of the quarters was with concurrence of the concerned authorities and he has paid rent and no opportunity was given to him before asking him to pay the penal rent of Rs.86,700/-. In the context of the above, the applicant has come up in this petition with the prayer referred to earlier.

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3. Respondent no.3, who is Joint Director (Headquarters), in the office of Director, Social Forestry Project has filed counter stating that the Head of Department, Director of Social Forestry has not been made a party even though he is a necessary party. It has been pointed

out by respondent no.3 that the Seed Godown had been converted into a residential quarters and on his joining the applicant occupied the said quarters. It was not that the respondents directed him to occupy the Seed Godown. The applicant was relieved from the post of Deputy Director, Social Forestry on 13.10.1993. Later on the transfer order was modified and he was posted as D.F.O., Bamra and he joined there on 3.12.1993. Thereafter he was transferred to Deogarh Kendu Leaf Division from Bamra Division on 15.9.1995. The applicant joined at Bamra Division on 3.12.1993 and occupied the Government quarters meant for D.F.O. at Bamra from January 1994 till August 1995. Respondent no.3 has denied the averment made by the petitioner that no Government accommodation was available at Bamra. It has been admitted by respondent no.3 that the applicant submitted a representation dated nil to Principal Chief Conservator of Forests to retain the quarters at Keonjhar till 1995. But as the quarters of Keonjhar S.F.P.Division was not under the direct control of Principal Chief Conservator of Forests, he forwarded the representation to Director, Social Forestry on 11.3.1994. The Director, Social Forestry in his letter dated 30.1.1995 requested the Principal Chief Conservator of Forests to direct the applicant to vacate the Government quarters at Keonjhar. He was also asked by the Director, Social Forestry to vacate the quarters on 16.9.1995. Several letters were sent to him to vacate the quarters but the applicant did not do so. Respondent no.3 has pointed out the rule in Orissa Service Code which allows retention of quarters for one month if a Government quarters is available at the new station. It has been stated that the Accountant General in course of audit had pointed out that

Rs.86,700/- is due to be recovered from the applicant. Even prior to that he has been several times asked to vacate the quarters and to pay the outstanding rent but he has not done so. On the above ground, respondent no.3 has opposed the prayer of the applicant.

4. Accountant General(Audit-I), Orissa, Bhubaneswar, who is respondent no.2, has filed counter stating that Audit makes an observation suggesting recovery from any person, at the time of audit of an office, it is for the respective office to examine with reference to relevant rules if audit observation is valid or not. The onus of furnishing satisfactory reason or explanation justifying recovery rests with the auditee organisation and not with the audit.

5. We have heard Shri V.Narasingha, the learned counsel for the petitioner; Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for Union of India and Accountant General,Orissa (respondent nos. 1 and 2); and Shri K.C.Mohanty, the learned Government Advocate appearing for respondent no.3. We have also perused the records.

6. Before considering the submissions made by the learned counsel for the petitioner the admitted position with regard to the transfer of the applicant and his joining, etc., has to be noted. The applicant was working as Deputy Director, Social Forestry at Keonjhar from which post he was transferred to Athmallik. The applicant has not stated in his O.A. to which post at Athmallik he was transferred and has also not enclosed the order of transfer. He has stated that because of stay order granted by the Tribunal he could not join at Athmallik. The order of his transfer to Athmallik was

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modified and he was posted as D.F.O., Bamra. Respondent no.3 has pointed out that the applicant was relieved from his post at Keonjhar on 13.10.1993 and he joined at Bamra on 3.12.1993. The fact that the applicant handed over charge of the office of Deputy Director, Social Forestry at Keonjhar on 13.10.1993 has not been denied by the applicant by filing any rejoinder. The fact of his joining at Bamra on 3.12.1993 is admitted by the applicant. Respondent no.3 has submitted that the applicant after joining at Bamra on 3.12.1993, occupied the Government quarters meant for D.F.O., Bamra, from January 1994 till August 1995 when he was transferred to Deogarh where he joined on 15.9.1995. He kept the quarters at Keonjhar in his occupation till December 1995. The averment of respondent no.3 thatafters joining at Bamra in December 1993 the applicant occupied the quarters meant for D.F.O., Bamra has not been denied by the applicant. From this it is clear that from December 1993 the applicant was in occupation of two quarters, the quarters meant for DFO at Bamra and the quarters meant for Deputy Director, Social Forestry at Keonjhar. Respondent no.3 has pointed out Rule 107-A of Orissa Service Code which provides that if Government quarters is available in the new station, then in the old station quarters can be retained for a period of one month from the date of making over charge. Against the above admitted position the submissions made by the learned counsel of both sides have to be considered.

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7. The first point urged by the learned counsel for the petitioner is that the petitioner applied for retention of quarters at Keonjhar, but no orders were passed on this. This has been specifically denied by respondent no.3 who has mentioned in his counter that Director, Social Forestry wrote a series of letters to the applicant to vacate

the quarters. Again this averment has not been denied by the applicant. In view of this, the applicant's contention that in the absence of any order he continued to occupy the quarters at Keonjhar is without any merit. Moreover, by applying for retention of quarters, the applicant does not get a right to continue to remain at quarters at Keonjhar. On this ground also this contention is rejected.

8. The second ground urged by the learned counsel for the petitioner is that before asking him to pay the amount of Rs.86,700/- no showcause notice has been given to him and because of this the principles of natural justice have been violated. In support of his contention the learned counsel for the petitioner has referred to the following decisions:

(i) State of Orissa v. Binapani Dei and others,  
AIR 1967 SC 1269;

(ii) S.L.Kapoor v. Jagmohan and others, AIR 1981  
SC 136;

(iii) Kumari Neelima Mishra v. Dr.H.K.Paintal, AIR  
1990 SC 1402;

(iv) Bhagwan Shukla v. Union of India, AIR 1994 SC  
2480; &

(v) Dr.Sagarika Das v. State of Orissa, 1994(1)  
ATT (OAT) 452.

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We have gone through these cases. Binapani Dei's case (supra) related to change of date of birth where an enquiry was made but the petitioner was not given a copy of the report of the inquiring officer. The Hon'ble Supreme Court held in that case that even administrative order which involves civil consequences has to be passed consistent with the rules of

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natural justice. S.L.Kapoor's case (supra) related to supersession of New Delhi Municipal Committee and facts of this case are no way relevant to the present controversy before us. Kumari Neelima Mishra's case (supra) related to appointment to the post of Reader in Psychology and the facts of that case are widely different from the facts of the case before us. Bhagwan Shukla's case (supra) related to reduction of basic pay with retrospective effect. The Hon'ble Supreme Court held in that case that employee should have been given opportunity to show cause. Dr.Sagarika Das's case (supra) relates to retention of Government quarters on transfer. In that case she retained her quarters at Bhubaneswar even after her transfer to Cuttack. She left the quarters at Bhubaneswar after she got Government accommodation at Cuttack. In the instant case the applicant occupied the Government quarters at Bamra shortly after his joining there and therefore Dr.Sagarika Das's case (supra) which was decided by Single Bench of Orissa Administrative Tribunal is clearly distinguishable. As regards the point that no showcause notice was issued to the applicant, we find that this contention is absolutely without any merit. The decisions cited by the learned counsel for the petitioner do not go to support the above stand. It is no doubt true that before an order adverse to the interest of a person is passed, he should be given an opportunity to show cause. But this opportunity cannot be stretched too far as has been urged by the learned counsel for the petitioner. An example will make this position clear. The Rules provide that a person availing of TA advance must submit his TA Bill within one month of completing the journey, failing which the advance will be recoverable in one instalment from his pay. Similarly there may be cases of overpayment in a TA Bill. It cannot be argued that even in

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such cases the process of showcause will have to be gone through before the person concerned is asked to refund the advance or the overpayment amount. In the present case the Rules are very clear. The applicant had retained the quarters without any authority beyond one month from handing over charge even after he had occupied a Government quarters in his new station. Therefore, he cannot simply claim that before ordering recovery on the basis of audit report a showcause notice should have been issued to him. Accepting the above proposition will be carrying the principles of natural justice to absurd and unworkable limits. This contention is therefore rejected.

9. It is also to be noted that against the order impugned by the applicant in this petition he has filed no representation to Government of Orissa or no appeal to Government of India, and on this ground alone the application is liable to be rejected as not being maintainable.

10. In this case the applicant has been asked to pay the above amount as market rent from December 1993 to December 1995 as also the standard license fee for November 1993. The applicant has not stated that for November 1993 he has paid the standard license fee of Rs.200/- for occupation of the quarters at Keonjhar. At Annexure-A/3 he has enclosed a list showing deduction of Rs.200/- from his salary from April 1994 to December 1995. This statement has been made out by him and signed by him. Respondent no.3 has pointed out and this has not been denied by the applicant that the applicant after joining at Bamra was in occupation of the quarters meant for D.F.O, Bamra. On the other hand, the applicant has stated in paragraph 4(iv) of the petition that there was no accommodation available for him at Bamra. In view of this, it is not clear whether the amounts shown at Annexure-A/3 relate

to the occupation of quarters at Bamra and later on at Deogarh from December 1995 and therefore, it cannot be held that while working at Bamra and Deogarh he continued to pay the rent at Rs.200/- for occupation of the quarters at Keonjhar. In any case if he has paid this amount in connection with occupation of the quarters at Keonjhar, then naturally the amount has to be deducted from the total amount of Rs.86,700/- sought to be recovered from him. But this is a matter which he should take up with the Director, Social Forestry.

11. In the result, therefore, we find that the application is without any merit and the same is rejected. The stay granted in order dated 16.1.1998 stands vacated.

12. Before parting with the case, we have to take note of the fact that the applicant has made a deliberately false statement in his OA that there was no accommodation available at Bamra. The learned counsel for the petitioner also strenuously urged in his submission, no doubt on instruction from his client, that no order on his representation for retention of quarters was communicated to him. On both these points the applicant is clearly in the wrong. Thirdly, the applicant has frivolously and without any cause impleaded the Accountant General (Audit-I), Orissa, as a respondent in this case. It is the duty of the Accountant General to raise objections and it is for the office in respect of which the objection is raised, to accept the audit objection or justify their action in respect of which objection has been raised by the audit. In this case, apparently the Directorate of Social Forestry has accepted the audit objection. The Accountant General (Audit-I) has been frivolously arraigned as a respondent in this case. In consideration of the above, we award cost of Rs.1000/- (Rupees

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one thousand) against the applicant to be paid by him to Accountant General (Audit-I), Orissa (respondent no.2). The Secretary to Government of Orissa, Forest & Environment Department, to whom a copy of this order should be forwarded is directed to recover Rs.1000/- (Rupees one thousand) from the applicant and pay the amount to the Accountant General(Audit-I), Orissa, Bhubaneswar, within a period of ninety days from the date of receipt of copy of this order.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN

September 8, 2000/AN/PS