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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 38 OF 1998
Cuttack, this the 29th day of September, 1999

Purna Chandra Naik Applicant

Vrs.

Post Master General 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 29.9.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

Purna Chandra Naik, son of late Sadhu Charan Naik,
working as Sub-Post Master, Kumara Post Office,
At-Kuamara, P.O-Kuamara, District-Mayurbhanj....
..... Applicant

Advocate for applicant - Mr.K.C.Satpathy

Vrs.

1. Post Master General, Orissa, Bhubaneswar,
District-Khurda.
2. Superintendent of Post Offices, Mayurbhanj Division,
Baripada, At/PO-Baripada, District-Mayurbhanj
3. Post Master, Baripada, At/PO-Baripada,
District-Mayurbhanj Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J. Som . In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to Superintendent of Post Offices, Mayurbhanj Division, to pay him House Rent Allowance from September 1997 to 5.11.1997 and stop recovery of the amount paid to him from 10.12.1994 to August 1997. He has also prayed for quashing the order dated 3.10.1997 (Annexure-8) issued by respondent no.2 to Post Master, Baripada (respondent no.3) to stop paying

HRA to applicant and to recover HRA paid to him.

2. The applicant's case is that he is presently working as Sub-Post Master, Kuamara S.O., District-Mayurbhanj, from 5.11.1997. The subject matter of this OA relates to his tenure as Sub-Post Master, Shyamakhunta P.O. In memo dated 9.11.1994 of respondent no.2, it was ordered to transfer the office room of Sub-Post Office to the new building of Indrajit Mohanta at Shyamakunta from 1.12.1994. A copy of this memo was given to the applicant and it was indicated that in the new building one room would be used as office and the other room for quarters of Sub-Post Master. The post office could not be shifted on 1.12.1994 and it was later decided that the shifting would take place on 10.12.1994. In office order dated 29.6.1995 issued by respondent no.2 Rs.350/- per month excluding electricity consumption charges for house rent of Shyamakhunta Post Office payable to the house owner Indrajit Mohanta was sanctioned. Before shifting of the post office, the applicant inspected the spot and found that the new building is fit for office room only and there is no residential accommodation for Sub-Post Master. So the applicant wrote on 31.10.1994 to respondent no.2 stating that the new building did not have adequate facilities for Sub-Post Master quarters for which there is only one room and one open verandah. There was no boundary wall, no urinal or latrine. Therefore though the office was shifted to the new building the applicant continued to draw HRA from the date of shifting as there was no accommodation for the Sub-Post Master in the new building. In due course the applicant was transferred from Shyamakhunta to Kuamara as Sub-Post Master and he handed over charge at Shyamakhunta on 5.11.1997 and joined at Kuamara on the same day. Before his transfer

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respondent no.2 issued letter dated 3.10.1997 at Annexure-8 directing the Post Master, Baripada to stop drawal of HRA to the applicant any further and to recover HRA paid to the applicant earlier during his tenure at Shyamakhunta. The applicant filed a series of representations, but without any result. The applicant's case is that in the new building of Indrajit Mohanta at Shyamakhunta there was no accommodation for Sub-Post Master's quarters and therefore payment of HRA to him was quite legal and the amount paid should not have been ordered to be recovered. He has also stated that he is entitled to payment of HRA till his joining at the new place of posting at Kuamara on transfer from Shyamakhunta. In the context of the above facts he has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that earlier Shyamakhunta Post Office was functioning in the rented building of Khageswar Mohanta where there was no provision of quarters for the Sub-Post Master. Under the rules if quarters are not provided to Sub-Post Master, HRA has to be paid and accordingly while the applicant was working as Sub-Post Master, Shyamakhunta, he was allowed HRA while the post office was functioning in the building of Khageswar Mohanta. As that building was found unsuitable it was decided to shift the post office to the new rented building of one Indrajit Mohanta on 1.12.1994. In the memo dated 9.11.1994 at Annexure-R/1 it was ordered that the post office would be shifted to the building of Indrajit Mohanta from 1.12.1994 and the building would be used both for Shyamakhunta Post Office as well as residence of Sub-Post Master and payment of HRA to Sub-Post Master would cease from the date of shifting. Before the shifting the new building was

inspected by Assistant Superintendent of Post Offices, in charge Central Sub-Division, Baripada. But the applicant in his letter dated 3.10.1994 opposed the proposed shifting alleging that the house was unsuitable. His application was sent to Assistant Superintendent of Post Offices in letter dated 16.11.1994 (Annexure-R/3) for enquiry. The Assistant Superintendent of Post Offices in his letter dated 27.11.1994 (Annexure-R/4) reported that the residence portion of the building has two rooms, one 10' x 10' and another 10' x 8', besides kitchen and a long verandah of 23' x 5' along with urinal, latrine and water facility. The report of the applicant dated 3.10.1994 was not found correct. The respondents have stated that the allegation of unsuitability of the building for the quarters was found to be false. The Assistant Superintendent of Post Offices also reported that the applicant has raised the objection only for the purpose of continuing to receive the HRA. In the earlier building there was no electricity, water or latrine. It is further stated that the date of shifting to the new building was changed to 10.12.1994 in memo dated 29.11.1994 (Annexure-R/5), but the applicant without waiting for the date fixed, himself shifted the office on 29.11.1994. It is stated that from the date of shifting of the post office to the new building, the drawal of HRA should have been stopped but the Post Master wrongly drew and disbursed HRA even after the date of shifting and that is why in the impugned order it was ordered that the amount paid to the applicant wrongly should be recovered and no HRA should be paid to him any further. The applicant was relieved from Shyamakhunta on 5.11.1997. But he availed transit period and proceeded on commuted leave and earned leave and joined at Kuamara Post Office on 1.3.1998. On the above grounds, the respondents have opposed the prayers of the applicant.

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4. The applicant in his rejoinder has stated that he was on leave from 28.11.1994 to 3.2.1995 on the ground of illness and the office was shifted only on 10.12.1994. He has further stated that the respondents have wrongly mentioned that he himself shifted the office to the new building on 29.11.1994. The letter intimating the shifting which is at Annexure-R/6 has not been signed by him. It is also stated that HRA was disbursed in favour of the applicant from 1994 to August 1997 for about three years before the impugned order of recovery at Annexure-8 was issued. According to the departmental instructions, Shyamakhunta Post Office was to have been inspected every year. Therefore the authorities intentionally overlooked the fact of drawal of HRA for three years and thereafter issued the impugned order stopping the HRA and ordering recovery. The applicant has also pointed out in the rejoinder that in the inspection report at Annexure-5 to the OA it has been clearly mentioned that he did not occupy the residential portion of the new building. The other averments made by the applicant in the rejoinder are repetition of the averments made by him in the OA and it is not necessary to repeat the same.

5. We have heard Shri K.C.Satpathy, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records.

6. It has been submitted by the learned counsel for the petitioner that as the new building did not have minimum accommodation and facilities for post quarters the applicant was not able to shift to the post quarters and he had brought this to the notice of his superior officers. The applicant has stated that in the new building the quarter portion had only one room and

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one verandah without any provision for urinal, latrine and water facility. The petition of the applicant was enquired into by Assistant Superintendent of Post Offices and the Assistant Superintendent of Post Offices has given a report and it has also been mentioned in the counter that the new building had two rooms for the Post Office and two rooms for the quarters of Sub-Post Master with an attached verandah, kitchen, latrine and water facilities. In view of this report it cannot be held that the quarters portion of the new building was not adequate for occupation of the building. This contention of the learned counsel for the petitioner is therefore held to be without any merit and is rejected.

7. The second aspect of the matter is that the respondents have stated that the applicant unilaterally shifted the post office to the new building on 29.11.1994, even though the revised date fixed for shifting was 10.12.1994. The applicant has pointed out that he was on leave from 28.11.1994 to 3.2.1995 and during this period the Sub-Post Master who worked at Shyamakhunta Post Office in the leave vacancy shifted the building. From the report of shifting which is at Annexure-R/6 it is seen that the Sub-Post Master, who shifted the building, was one Mr. Singh and not the present applicant. So it is clear that the post office was shifted to the new building on 29.11.1994 when the applicant was on leave and the shifting was not done by the applicant himself.

8. From the inspection report at Annexure-A/5 it is clear that even after shifting on 29.11.1994 the applicant did not shift to the quarters portion of the new building till he was relieved from Shyamakhunta Post Office on 5.11.1997. The respondents

have stated that prior to shifting of the post office to the new building, the applicant was rightly paid House Rent Allowance because there was no provision for post quarters in the old building of Khageswar Mohanta. Obviously during this period the applicant had occupied rented house for his residence and was getting HRA. In the order at Annexure-A/1 it was clearly mentioned that with effect from shifting of the Post Office to the new building drawal of HRA will cease. But notwithstanding this even after shifting on 29.11.1994 HRA was wrongly drawn and paid to the applicant till August 1997. It is also on record that the applicant did not occupy the post quarters. So the situation was that the applicant was continued in the rented accommodation for his residence and the Department was wrongly paying him the House Rent Allowance. From the inspection report it appears that the new building was situated at an isolated place and there were no buildings nearby. That might be the reason why the applicant did not want to shift to the quarters portion of the new building. While we have held that the applicant's contention that the new building was not suitable for quarters is incorrect and while we also hold that the applicant had no reasonable ground for not shifting to the quarters portion of the new building and while it is also true that in the face of Annexure-A/1 drawal of house rent allowance in favour of the applicant after 29.11.1994 was wrongly done, we do not think that in this case the Department should be allowed to recover the House Rent Allowance wrongly paid to the applicant. This is because the Department has wrongly paid the HRA for a long period of about three years from December 1994 till August 1997 and during this period the applicant has occupied rented accommodation for his residence and paid house rent to the owner for his residence. Thus, by the

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action of the Department the applicant has been encouraged to continue in his private rented accommodation and not to shift to the post quarters. The respondents should have issued direction to the applicant to shift to the post quarters by a certain date and on his refusal further action could have been taken against him. But in the counter the respondents have not made any averment that any order after 29.11.1994 was issued to the applicant to shift to the post quarters. In consideration of the above, while the applicant has been wrongly paid HRA, the amount cannot in law be recovered from him because the respondents by their own action have encouraged him to continue in rented accommodation and pay rent to the house owner whose accommodation he was occupying as his residence. Thus, because of action of the Department, the petitioner has changed his position to his detriment and therefore the amount wrongly paid is not recoverable from the applicant in law. In view of this, we direct that the HRA paid to the applicant from December 1994 to August 1997 is not recoverable. This prayer of the applicant is accordingly allowed. If any of that amount has already been recovered from the applicant, then the respondents should return the same to the applicant within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

9. The next prayer of the applicant is for payment of HRA from September 1997 to 5.11.1997. As we have already held that the HRA was wrongly drawn and paid to him, this prayer is held to be without any merit and is rejected.

10. In the result, therefore, the Original Application is allowed but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)

29.9.99
VICE-CHAIRMAN