

6

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.157 OF 1999

Cuttack, this the 17th day of July 2003

Ganga Narayan Mohanty

.....

Applicant

Vrs.

Union of India & Others

Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Yes

Yes


(B.N.SOM)
VICE-CHAIRMAN

X

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.157 OF 1999

Cuttack, this the 17th day of July, 2003

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

**Shri Ganga Narayan Mohanty, aged 61 years S/o Late Kasinath
Mohanty, Vill/Po: Pandiri, Dist: Kendrapara**

By the Advocate(s)

.....Applicant
Mr. P.K. Padhi.

Vrs.

1. Union of India, represented through its Chief Post Master General, Orissa Circle, Bhubaneswar-1
3. Estate Officer-cum-A.P.M.G (Welfare), Office of the C.P.M.G., (Orissa Circle), St/Po: Bhubaneswar, Dist, Khurda-1
4. Sr. Superintendent of Post Offices, Cuttack City Division, At: P.K. Parija Marg, Po: Cuttack, G.P.O., Dist: Cuttack-753001.

Respondent(s)

By the Advocate(s) -

Mr.A.K. Bose, Sr. C.G.S.C

O R D E R

SHRI B.N. SOM, VICE-CHAIRMAN:

Shri Ganga Narayan Mohanty has filed this O.A. challenging the order No. D2-P/Qrs/ChV dt.10.03.1998 and order No.BLDG/17-10/77/Ch.II dt. 01.03.1999 passed by Respondent No. 2 & 1 respectively.

g

2. In short the facts of the cases are that the applicant while working as Deputy Post Master, HSG-II, Cuttack, GPO was transferred as Head Post Master, Kendrapara Head Post Office in HSG-I. He was relieved on 15.01.1996 and went on medical leave up to 29.02.1996. On expiry of his leave, he joined as Head Post Master, Kendrapara Head Post Office on 01.03.1996. He was occupying a postal Department pool quarters under the control of SSP, Cuttack City Division. He retired on 31.03.1996. He continued to occupy the same quarters when his allotment was cancelled by Respondent No.3 vide his order in Annexure-I on the ground that as per Rule SR 317(B)-II the official on transfer to a place outside the station can retain the quarters at the old place for a maximum period of two months "on permission". Respondent No.3 further informed him as follows:-

".....but you have not taken permission from the competent authority to do so nor have vacated the quarters till date".

On that account, he passed an order cancelling the allotment of quarters w.e.f. 16.03.1996. He also informed the applicant that further stay in the above quarters would be treated as unauthorized and damage rent @ Rs.55/- per square meter of the living area would be recovered from him. Thereafter, Respondent No.2 issued an order on 11.4.1996 under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, directing the applicant to show cause as to why an order of eviction should not be made. The applicant replied to the notice and also personally represented the matter before the Respondent No.2. However, the Respondent No.3 vide his order

dt. 03.04.1997 asked him to pay of all the dues including the damage Rent. The applicant cleared all the dues on account of electricity consumption amounting to Rs.10,708.90 and another amount of Rs. 13,065.10 for damage rent. The Respondents had withheld payment of gratuity to the applicant till March, 1998 although he had retired on 31st March, 1996. The applicant had represented several times before the Respondents to refund the damage rent and to give him justice, but Respondent No.1 without considering the genuine grievance of the applicant had rejected his representation and had informed him that the damage rent 'cannot be waived'. Aggrieved by the same decision of Respondent No.1, the applicant has approached this Tribunal with a prayer that the Respondents be "directed to refund the damage rent, allow him normal rent which he had already paid, and return the extra amount realized from him with interest."

3. The Respondents have contested the O.A. by filing a counter. They have submitted in their counter that as per the rules the applicant was entitled to retain quarters at the old station for a maximum period of two months only, which expired on 15.03.1996. They have justified their action of cancelling the allotment of quarters w.e.f. 16.03.1996 and imposition of damage rent by virtue of the order of the Director General Posts dt. 31.07.1995 at Annexure R-3. They have further submitted that the applicant had remained in unauthorized occupation of the quarters from 16.03.1996 to 31.03.1997 and therefore, liable to pay damage rent. They further stated that it was the applicant who had requested them to adjust the damage rent

10

from the DCRG amount payable to him. They have also said that the allotment of quarters in his favour was cancelled as he did not take any permission for retention of quarters and the damage rent was realized after initiating eviction proceedings against him. They have denied that the Respondent No.2 had assured him not to impose any panel rent during the hearing of his case on 10.05.1996. They have further stated that there being no provision for refunding 'damage rent,' his representation to Respondent No.1 was rejected by the said authority on the strength of the Supreme Court Judgement dt. 13.12.1996 in CWP No.585/1994. With this, they have submitted that the applicant is not entitled to get any relief sought by him.

4. I have heard Mr. P.K. Padhi, Ld. Counsel for the petitioner and Mr. A.K. Bose Ld. Senior Standing Counsel. I have also perused the records placed before us.

5. In this O.A. the applicant has made two-fold prayers. Firstly, the Tribunal should quash recovery of damage rent for occupation of staff quarters and, secondly, direct the Respondents to allow him retention of quarters from 16.03.1996 to 31.03.1997 on normal rent. The Postal Department, as it reveals from the facts placed before me by both the parties, are regulating the allotment of quarters, their retention on happening of any events, like retirement/death / transfer/ retention/dismissal /relief/study leave, etc, and other connected matters, like imposition of damage for any unauthorized occupation of accommodation by adopting the provisions of SR-317-B-II and executive orders issued by the Director of Estates, New

23

Delhi, Ministry of Urban Development, from time to time in this regard. Regarding retention of postal pool quarters after retirement, whereas the retention period prescribed under SR-317-B-II is 4 months and for transfer to a new station two months, the said retention period in both the cases has been further enhanced by the Director General, Posts by virtue of his letter No. 4-33/92-building dt. 21.05.1993. In that letter it has been stated that on the expiry of "the admissible period of retention of the quarters at normal rent in case of retirement and transfer, further retention of the quarters under special circumstances, such as, children's education, serious illness, etc., the CPMG/ PMG" may allow retention of quarters for another maximum period of four months on retirement and six months on transfer on payment of license fee in advance at twice the normal fee as chargeable under the rules." If this rule was applied in the case of this applicant, he could have retained his quarters in Cuttack under, SSP City Division, paying normal license fee in the first instance, for four months because of retirement. After that, if he had special reasons/ circumstances to retain the quarters, he could have approached the competent authority for consideration and could have retained the quarters for another 4 months. He has alleged in the O.A. that he had asked for retention of quarters but was denied consideration. On the other hand, the Respondents in their counter have repeatedly drawn my notice to the fact that the allotment of quarters in his favour was cancelled, because he never sought permission from the competent authority for retention. The applicant in his rejoinder has stated that he had represented to

Respondent No.3 on 01.03.1996 to retain the quarters. He has given copies of two letters as Annexure- 11 & 12 in proof of his statement that he had sought permission to retain the quarters. These two letters, however, do not bear any acknowledgement by the Office of Respondent No.3. It is also not clear as to on which dates these two letters were written by the applicant. From the above facts of the case, it would appear that there was huge gap in communication between the applicant and the Respondent No.3 in this regard.

6. The Ld. Counsel for the applicant drawing my notice to the judgement of Patna Bench in O.A. No.608/94 dt. 6.6.96 of this Tribunal, submitted that the Respondents under law had no jurisdiction to impose damage on the applicant. It had to be done under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short, "Act"). In this case, as I see from the records, the Estate Officer under the Act, as admitted by both the sides, issued notice to the applicant under the relevant Section 4 of the Act, and only one hearing tookplace on 10.05.1996, the proceedings of which have been found faulty by the Ld. Counsel for the applicant on the following grounds.

(i) The Estate Officer did not declare the hearing as closed on 10.05.1996, nor did he supply a copy of his order to the applicant for further action; &

(ii) the applicant did not receive any order from the Estate Officer imposing recovery of damage rent on him for his occupation of departmental

13

quarters. It was the Respondent No.3 who vide Annexure-6 called upon the applicant to pay Rs.13, 065.10 towards 'damage rent'. In that letter there was no reference as to the authority which had imposed the damage.

7. The learned Counsel for the applicant has further stated that the law in this regard has been laid down by the Apex Court that damage for unauthorized retention of quarters cannot be levied by an authority other than the Estate Officer under the Act. It has also been held by the Full Bench of this Tribunal in the case of Wazir Chand on the ratio of the Apex Court judgement, referred to earlier, that only rent for the period of overstay may be deducted from an allottee against the DCRG amount available with the employer. This decision of the Full Bench is also supported by the decision of the Apex Court in the case of Union of India Vs. Shivcharan (1992 Vol.19 ATC 129).

8. I agree with the submissions made by the Ld. Counsel for the applicant in this matter. Under Section 7 of the Act and Rule 8 of the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971 (in short, "Rules 1971"), power has been vested with the Estate Officer for recovery of rent and damage in respect of the public premises and detailed procedure has been laid down in this regard. The parameters of assessment of damages by the Estate Officer have been laid down under Rule 8 of the Rules, 1971. From the perusal of the records of the case, I find that the Estate Officer did not follow the procedure laid down under Rule 8. He also did not issue any notice in Form F, as prescribed under sub-section (3) of Section 7 of the Act, read


with sub-section (2) of Section 7 thereof, nor did he issue any order under sub-section (2) of Section 7 of the said Act in Form G, as prescribed under Schedule II of the Act. It is already a settled point of law that the parameters of recovery of rent and damage having been issued through the Government instructions, the question of levying damage is only to be settled through the proceedings under the Act. This was the decision of this Tribunal, Patna Bench, in OA No.608 of 1994, based on the ratio of the judgment of the Apex Court in the case of *Union of India v. Shivcharan (supra)*, (1992) 19 ATC 129). In view of the above law position, the Estate Officer having not passed any order under the Act, the order of recovery of damage for occupation of staff quarters passed by Respondent No.3 (Annexure 6) was without jurisdiction and hence bad in law. I, therefore, quash the said order at Annexure 6, being issued without authority. The Respondents are, however, at liberty to initiate fresh proceedings under the Act for recovery of dues on account of overstayal, if any, from the applicant, as Government dues. While doing so, the Respondents should consider the representations made by the applicant to the Estate Officer, at Annexure 3, and to Respondent No.1, at Annexures 8 and 9. It has been alleged by the applicant that he was denied the benefit of retention of quarters on retirement of Government servant, a facility allowed to be enjoyed by all retiring Government servants. In this connection, my attention has been drawn to Director General, Posts, letter dated 21.5.1993. By virtue of this letter, the Department had offered certain facilities, regarding retention of staff quarters for the welfare of the families

of the retiring Government servants. These instructions are supposed to be implemented appropriately to create necessary social satisfaction, which is the aim of issuing such instructions. It was, therefore, incumbent on the part of the Respondents to create adequate awareness about these facilities amongst the members of the staff so that the Department could achieve its welfare objectives. But, in this case, I find that Respondent No.3 was mechanically enforcing the law and was in a hurry to issue order of cancellation of allotment of quarters, without following the due procedure. He had no time to listen to any request or any entreat from the applicant. Had the Respondents been discerning about the objectives sought to be achieved through the executive instructions issued for allotment and retention of quarters by postal employees, the grievance of the applicant would have been settled long time back, without creating bitterness all around. Thus, the executives at the field level have failed to deliver justice to one of their employees who at the evening of his life cried for a little sympathy and help. I feel it is a fit case where Tribunal must intervene to secure justice and fairplay to both the parties. The applicant should be given the benefit of the retirement privileges to which he was entitled by virtue of Director General, Posts's instructions dated 21.5.1993 and the Respondents should be allowed to realize from the applicant damage for the period of his overstay beyond the privilege period.

9. In view of my aforesaid decision, I see no application of the Apex Court judgment in CWP 385 of 1994 in this case. In any case, there is no waiver of rent involved in this case.

10. Having regard to all these facts and circumstances of the case, I direct the Respondents to hear the applicant's grievance, allow him the benefit of retention of quarters after retirement on payment of rent as prescribed by the Director General, Posts and refer the matter to the Estate Officer to assess and realize from him damages for retention of the quarters beyond the period allowable under the rules framed in this regard. This exercise should be completed within a period of 90 (ninety) days from the receipt of this order.

No costs.


(B.N.SOM)
VICE-CHAIRMAN

kh