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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 324 OF 2000.
Cuttack, this the 1st day of February, 2002.

GULAB CHAND MEENA. APPLICANT.

VRS.

UNION OF INDIA & 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 Tribunal or not? No,

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
1, 2, 2002

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 324 OF 2000
Cuttack, this the 1st day of February, 2002.

G O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER(JUDL.).

..

GULAB CHAND MEENA, Aged about 39 years,
S/o. Sri Tulsiram Meena, At/vill./Po: Nanawta,
PS: Mohatpur, Dist. Bargarh, Rajasthan, at present
Asst. Controller of Mines, I.B.M., Bhubaneswar.

:Applicant.

By legal practitioner: M/s. D. R. Patnaik, S. K. Rout, M. K. Khuntia,
D. N. Patnaik, N. S. Panda, A. Routray,
Advocates.

- Versus -

Controller General, Indian Bureau of Mines,
Ministry of Mines and Minerals, Deptt. of Mines,
Nagpur.

2. Authorised Officer, Indian Bureau of Mines,
Manhpur, Industrial Area, Ajmer.

: Respondents.

By legal practitioner : Mr. A. K. Bose, Senior Standing Counsel.

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O R D E R

MR. SOMNATH SOM, VICE- CHAIRMAN:

In this Original Application, the applicant who is working as Assistant Controller of Mines under Controller General of India, Mines, Res. No. 1 has prayed for quashing the order dated 23.6.2000 at Annexure-5 ordering recovery of Rs. 27, 585/- from the applicant. His second prayer is for a declaration that the order at Annexure-5 is unconstitutional.

2. The case of applicant is that while he was working as Assistant Controller of Mines in the Regional Office of Indian Bureau of Mines, Ajmer, he was occupying a quarters allotted to him at Ajmer. In order dated 4.5.99, he was transferred from Ajmer and posted at Bhubaneswar Regional Office. Applicant was relieved from Ajmer Regional Office on 20.9.1999 and joined at Bhubaneswar Regional Office on 21.10.99. Applicant has stated that Bhubaneswar town was badly affected by the Super Cyclone. It is further stated that he was transferred during mid-academic session and half yearly examination of his children was fixed in the month of December, 1999 and Annual examination in April, 2000. For the aforesaid reason, he requested the Controller General, Indian Bureau of Mines, Respondent No.1 to retain the quarters at Ajmer till the completion of the examination of his children in his representation dated 6.12.1999.

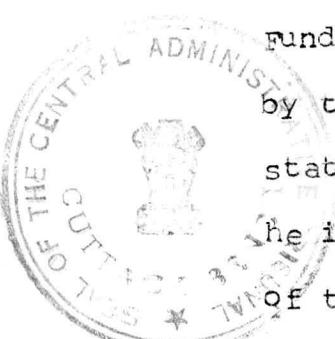
Applicant has further stated that in accordance with the rules, he was allowed to keep the quarters for two months from the date of ~~realisation~~ ^{relief on} ~~of~~ payment of normal license fee. ^{^ 3 Jom} Applicant's case is that he was allowed to retain the quarters till the examination of his children was over and accordingly, he deposited doubled the license fee in respect of the said quarters. By order dated 25.12.2000 at Annexure-3 he was directed to vacate the quarters within 60 days from the date of receipt of the letter at annexure-3. Applicant has stated that prior to receipt of the letter, he had requested Respondent No.1 to allow him to retain the quarters at the rate of double licence fee till June, 2000. Applicant has further stated that he vacated the quarters on



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21.6.2000 and in the impugned order dated 28.6.2000, a sum of Rs.27,585/- was ordered to be recovered from the salary at the rate of Rs.4363/- per month. In the context of the above fact, the applicant has come up with the prayers referred to earlier. In his Original Application, the Applicant has urged various grounds in support of his prayer. These will be referred to while considering the submissions made by learned counsel for both sides.

3. Respondents in their counter have opposed the prayers of applicant. They have stated that for allotment and occupation of Govt. quarters under Indian Bureau of Mines (Allotment of Bureau of Mines Residence) Rules, 1993 has been promulgated, in pursuance of Rule 45 of the fundamental Rules. A copy of these rules have been annexed by the Respondents as Annexure-A to their show cause. It is stated that under these rules after transfer of an officer, he is authorised to retain the quarters only for a period of two months on payment of usual rate. Beyond this period, the allotment of quarters would be automatically deemed to have been cancelled and after such deemed cancellation if the quarters is still kept under occupation by the employee concerned, then market rate has to be charged. It has been further averred by the Respondents that applicant joined at Bhubaneswar on 21.10.1999 and Super Cyclone occurred on 29.10.1999 and applicant's joining at Bhubaneswar was prior to the occurrence of the Super Cyclone. Respondents have further averred that the applicant was not transferred during mid-academic session. Transfer order was issued to him in May, 1999 and he joined on 21.10.1999 after the academic session was over.



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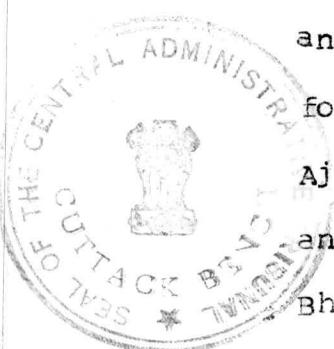
On the above and other grounds urged by the Respondents in their counter which will be referred to while considering the prayers of applicant. Respondents have opposed the prayers of applicant.

4. No rejoinder has been filed.

5. We have heard Shri D. R. Patnaik, learned counsel for the applicant and Shri Anup Kumar Bose, Learned Sr. Standing Counsel appearing for the Respondents and have also perused the pleadings.

6. The first point urged by learned counsel for the applicant is that because of super Cyclone on 29.10.1999 the applicant had difficulty in finding out ranted accommodation at Bhubaneswar. This contention is without any merit because it is admitted by the learned counsel for the applicant that on his vacating the quarters at Ajmer on 21.6.2000 he was allotted a quarters at Bhubaneswar and at no ~~time~~ ^{time} ~~time~~ he occupied a ranted accommodation at Bhubaneswar. Therefore, the plea of difficulty in locating ranted accommodation at Bhubaneswar can not be accepted.

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 The second contention of learned counsel for the applicant is that in letter dated 25.4.2000 at Annexure-3, authorised officer of the Indian Bureau of Mines informed the Deputy Controller of Mines, who was incharge of the Regional Office of the Organisation at Bhubaneswar that applicant's prayer for retention of the quarters at Ajmer after his relieve till April, 2000 can not be considered as some officers eligible are in the waiting list for allotment of Ty;e-IV quarters. In this letter, the applicant was directed to vacate the quarters within sixty days from the date of



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receipt of this letter. At Annexure-2 is another letter from the Controller of Mines, to the Authorised Officer, Indian Bureau of Mines, Ajmer intimating that the applicant is entitled to occupy the quarters for a period of two months and therefore, his request to retain the quarters beyond two months can not be entertained and this was also informed to the applicant immediately. In case he has retained the quarters beyond the above period it should be considered as deemed cancellation and the matter should be dealt with under Rule-23 of the IMM(AOR) Rules, 1993.

Authorised Officer was also directed to take action ~~action~~ ^{SJW} for recovery of the over stayal beyond period of two months.

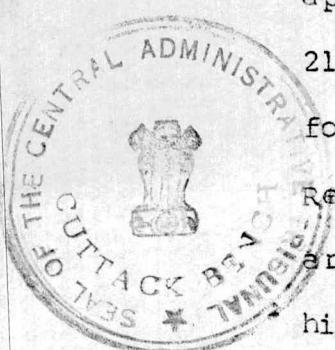
It was further ordered that for calculation of twice the standard licence fee as well as market ~~rent~~ of the quarters occupied by the applicant at Ajmer, CPWD should be contacted. In the context of these two letters, it has been submitted by learned counsel for the applicant that as he has been asked to vacate the quarters within 60 days from the date of receipt of letter at annexure-3, till expiry of sixty days his occupation of the quarters must be deemed to have been permitted by the Departmental authorities.

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we are not inclined to accept this contention because Rule-12 of the Allotment Rules specifically provide that in case of transfer, a person can retain the quarters only for a period of two months. There is also provision to extend the period of two months during the period the concerned officer is on medical leave and also by the period of joining time. Applicant was relieved on 20.9.1999 and the damage

rent has been charged from him from 21.12.1999 i.e. beyond the

period of two months of his relieve. So presumably the period of joining time etc. has been taken note of within the period from 20.9.99 till 21.12.1999. As the Rules specifically provide for retention of quarters for a period of two months and not more, it can not be accepted that the Departmental Authorities gave him permission to retain the quarters till expiry of the 60 days from the date of receipt of the letter at Annexure-3. Moreover, had such permission been given, it can only be given by written order and no such order has been produced by the applicant. This contention is accordingly rejected.

7. The next contention of the learned counsel for the applicant is that all through during this period till 21.06.2000, applicant has been paying twice the licence fee for the retention of the quarters at Ajmer and as the Respondents have recovered licence fee twice the rate they are estopped from charging the market rate which is much higher level than twice the market licence fee. This contention is also without any merit because rules provide that beyond the period of two months licence fee at market rate should be charged. It further appears from the pleadings that pending determination of market fee by the CPWD twice the licence fee was taken from the applicant. At page 2 of the show cause it has been specifically mentioned that pending calculation of the licence fee authorised officer vide his letter dated 11.4.2000 decided to recover the twice licence fee. Thus, it is clear that recovery of twice the licence fee is pending determination of the market rate by the CPWD and therefore, by recovering the twice the licence fee, the Departmental authorised are not estopped from proceeding further.



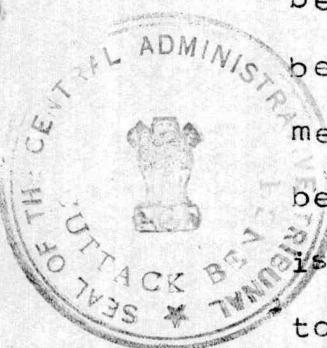
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in accordance with rules in recovering the licence fee.

In view of this, this contention is also held to be without any merit and is rejected.

8. The third contention of the learned counsel for the applicant is that under the proviso to Rule 23 of the rules, Controller General has the power to allow a person to retain the quarters allotted to him for the period specified in Rule-11 by taking from him twice the market fee. It is submitted by learned counsel for the applicant that even though this proviso speaks of charging twice the licence fee for retention of the quarters beyond the period of two months for such period as has been mentioned in Rule-11, in Rule-11 no such period is mentioned. We are also unable to accept this contention because in Rule-11 it has been provided that in case there is no officer from the Indian Bureau of Mines, waiting to be allotted with a quarters, such quarters of Indian Bureau of Mines can be allotted to the officers of any other Deptt. of Central Govt. for such period till there is no applicant from ^{officer of} Indian Bureau of Mines. From this, it is clear that the period referred to in Rule-11 is the period during which there are quarters vacant /surplus of the requirement of the officers of the Bureau of Mines. From the pleadings it is admitted that while the officer was in possession of the quarters at Ajmer, there are other officers of Bureau of Mines waiting to be allotted the Type-IV quarters which was under occupation of applicant and therefore, the proviso to Rule 23 is not attracted in this case.

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9. In the light of our above discussions, we hold that the applicant is not entitled to the reliefs claimed by him in this Original Application.

10. It goes without saying that while recovering the amount ordered in Annexure-5, the amount already deducted from the applicant towards the twice licence fee should be adjusted and only the rest amount should be recovered.

11. With the above observations, the Original Application is disposed of. Order of stay granted earlier is vacated.

No costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY) 01.02.2002
MEMBER(JUDICIAL)

Somnath Soma
(SOMNATH SOMA) 01.02.2002
VICE-CHAIRMAN

KNM/CM.