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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 455 OF 2000  
Cuttack, this the 19th day of June, 2001

Sri Ganeswar Tripathy ..... 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 Soni*  
(SOMNATH SONI)  
VICE-CHAIRMAN

19.6.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 455 OF 2000  
Cuttack, this the 19th day of June, 2001

CORAM:

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

.....

Sri Ganeswar Tripathy, son of late Chintamani Tripathy,  
Assistant Accounts Officer,  
office of the Dy. Director of Accounts (Postal),  
Cuttack-753 005... Applicant

Advocate for applicant - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through the Director General, Posts, Dak Bhawan, Ashok Road, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar-751 001.
3. Sr. Superintendent of Post Offices, Cuttack City Division, Cuttack-753 001.

...

Respondents

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

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed that the quarters earmarked for Circle transferable category lying vacant should be ordered to be allotted to the applicant and the respondents should be restrained from violating the established rules and procedure. By way of interim relief it was prayed that allotment of the concerned staff quarters should be stayed. The prayer for interim relief was disposed of on the date the application was taken up for admission with a direction that in case the quarter is allotted to a person having all-India transfer liability on or before 23.10.2000, then such allotment shall be subject to

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the result of this O.A. The respondents have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder. On our direction the learned Senior Standing Counsel for the respondents has produced the quarters allotment rules and certain correspondences and we have taken note of the same. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents.

2. The case of the applicant is that according to the Department of Posts' circular dated 18.6.1991 different types of quarters in a particular station have to be set apart for staff having different transfer liabilities like (i) all-India transferable liability, (ii) Circle transfer liability, (iii) Division transferable liability, and (iv) non-transfer liability. The present controversy is about allotment of Type-IV quarters. According to this circular dated 18.6.1991 if there are fifteen Type IV quarters, then 10 have to be set apart for allotment to persons having all-India transfer liability, four for persons with Circle transfer liability, and one for non-transferable staff. The applicant's case is that there are four type-IV quarters under the Senior Superintendent of Post Offices, Cuttack City Division and according to this instruction one quarter out of these has to be allotted to person with Circle transfer liability. The applicant has further stated that he is working as Assistant Accounts Officer in the office of Deputy Director of Accounts (Postal) and he has Circle transfer liability. His pay on 1.4.1999 was Rs.8500/- and on 1.4.2000 was Rs.8700/- and therefore, he is entitled to allotment of

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Type-IV quarters. He has also stated that for allotment of quarters date of entry in the service is relevant and according to this, he is entitled to be allotted with this vacant Type IV quarter. He has filed application in prescribed proforma for allotment of quarters in March 1999 and again filed a representation on 19.1.2000, but the quarter which has fallen vacant sine March 2000 has not been allotted with a view to getting it allotted to an officer of all India transfer liability. He had made further representations on 20.3.2000 but without any favourable result and that is why he has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have pointed out that of the four Type-IV quarters available under respondent no.3, one is earmarked as post-attached quarter for Superintendent of Post Offices, Cuttack City Division. The other two Type-IV quarters are occupied by Executive Engineer, Postal Civil Division and Medical Officer, P&T Dispensary. According to the instructions dated 3.8.1998 (Annexure-R/2) one Type-IV quarter is to be earmarked as post-attached quarter for Senior Superintendent of Post Offices, R.M.S.Northern Division, Cuttack. The disputed quarter was under occupation of the P&T Doctor and on vacation by him this was required to be allotted to Senior Superintendent, R.M.S. who expressed his unwillingness to occupy the quarters. Thereafter respondent no.2, i.e., Chief Post Master General, Orissa Circle (respondent no.2) declared the quarter as a post-attached quarter for the Superintendent of Post Offices, Cuttack South Division. The order of Chief Post

Master General is at Annexure-R/3. They have stated that the quarter was allotted on 21.11.2000 with conditions imposed in the interim order of the Tribunal.

It is further stated that Head of the Circle is empowered to order earmarking of the quarter as post-attached quarter and action taken in this regard is perfectly legal. They have further stated that the contention of the applicant that there are four Type-IV quarters is not correct. It is stated that out of four Type-IV quarters, two have been declared as post-attached quarters and only the remaining two are available under general pool and out of these two quarters, one quarter cannot be set apart for officer with Circle transfer liability, and these two quarters have been rightly allotted to officers with all India transfer liability. It is further stated that the petitioner in his application dated 26.3.1999 (Annexure-R/5) has made a false averment by stating that he is staying in a private rented house of one P.C.Sukla, Bidanasi. But this is totally incorrect in as much as the applicant is staying in a Type-II quarter No.16/11A at 15 Cantonment Road, Cuttack, by sharing the accommodation with one Kamadeb Dash and the allotment order is at Annexure-R/7. The respondents have stated that as the applicant has furnished incorrect information for securing allotment of quarter, under Rule 24 of Rules for Allocation & Allotment of Quarters (extract at Annexure-R/8) he is not entitled to allotment of a quarter. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has

denied the right of the Head of the Circle to declare any quarter as post-attached quarter. He has stated that the circular dated 18.6.1991 should have been strictly followed. He has also stated that there is no scope for discretionary allotment over 5% of vacancies occurring in each type of quarters in a year and such discretionary allotment can be made only on medical, security and functional grounds. As regards the averment of the respondents about the applicant furnishing incorrect information, the applicant has stated that besides sharing accommodation with another person as mentioned by the respondents, he also occupies another house on rent in addition and there is no bar for an official to occupy two houses on rent. The applicant has denied the averment of the respondents that two other persons, namely, A.K.Nayak, Assistant Engineer (Civil), Cuttack and D.P.Mahali, HSG-I are also applicants for Type-IV quarters. The applicant has stated that reference by the respondents to the case of S/Shri Nayak and Mahali is irrelevant. The applicant is eligible for allotment of Type -IV quarter in view of his priority date of joining the post as also his basic pay. On the above grounds, the applicant has reiterated his prayer in the rejoinder.

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5. From the above recital of pleadings of the parties it appears that the disputed quarter has been declared as a post-attached quarter by respondent no.2 for Senior Superintendent of Post Offices, Cuttack South Division. The applicant has questioned the power and authority of respondent no.2 to declare the quarter as post-attached quarter for Senior Superintendent of

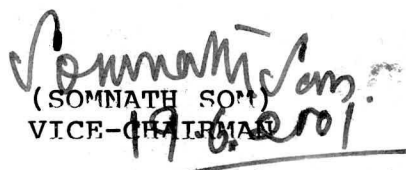
Post Offices, Cuttack South Division. He has stated that according to the circular at Annexure-1, out of four quarters, one quarter should have been set apart for allotment to Circle transfer liability staff and respondent no.2 has no power to declare a quarter as post-attached quarter in violation of the instructions at Annexure-1. We have considered the above submissions carefully and we are unable to agree with this for the reason that the circular at Annexure-1 is merely an executive instruction whereas declaring a quarter as post-attached quarter is done under statutory rule. SR 311 inter alia provides that competent authority may allot a building owned by Government to a post specified in the order of allotment for use as residence by an incumbent of the post. Thus, declaration of quarter as post-attached quarter is done under SR 311 by the competent authority and delegation of power to issue orders under SR 311 provides that such declaration can be made by made by the Department of Government of India, Administrator of a Union Territory and Head of Department or any other officer who has been delegated with the powers under SR 311. This is printed at Appendix IV, pages 426 and 427 of Swamy's Compilation of FRSR (12th Edition). From this it is clear that Chief Post Master General, who is the Head of Department, has the statutory power to declare a quarter as post-attached quarter and this power cannot be taken away by issuing of executive instruction as at Annexure-1. Moreover, it is also to be noted that prior to vacation of the disputed quarter in March 2000, the Chief Post Master General in the memo to his order dated

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3.8.1998 had directed respondent no.3 to provide a vacant Type-III or Type-IV quarter as post-attached quarter for Senior Superintendent, R.M.S., Cuttack North Division. Thus, the order to declare this quarter as a post-attached quarter for an officer with all India transfer liability was in existence in August 1998. Secondly, the disputed quarter was also in possession of an officer with all-India transfer liability, i.e., Doctor in P&T Dispensary before he vacated it in March 2000. In view of this, we hold that no illegality has been committed by respondent nos. 2 and 3 in declaring the disputed quarter as a post-attached quarter for Superintendent of Post Offices, Cuttack South Division. In view of our above conclusion it is not necessary for us to go into the question whether the applicant has disentitled himself from allotment of quarter by furnishing incorrect information in his application. We must, however, note that we are not prepared to accept the contention of the applicant that he is sharing accommodation with one postal employee by virtue of the order at Annexure-R/7 and at the same time is having a rented accommodation as mentioned by him in his application dated 23.6.1999. The contention of the respondents in this regard does not appear to be without merit or foundation. But in view of our discussions above, we do not intend to go further into the matter.

6. In the result, therefore, the Original Application is rejected but without any order as to costs.

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

  
(SOMNATH SOM)  
VICE-CHAIRMAN

CAT/CB/19-6-2001/AN/PS