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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 511 OF 2000
Cuttack, this the 16th day of November, 2001

Raghunath

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.*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
16.11.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 511 OF 2000
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

.....
Raghunath, aged about 50 years, son of Baidhara, at present working as ECR Grasde-III in the office of Junior Section Engineer, P.W.I., Rupsa, At/PO-Rupsa, District-Balasore....
Applicaasnt

Advocates for applicant - M/s K.P.Mishra
J.K.Khandayatray
S.Dash

Vrs.

1. Union of India, represented through its Divisional Manager, South Eastern Railway, At/PO-Kharagpur, Dist.Midnapore, State-West Bengal.
2. Assistant Engineer, South Eastern Railway, Balasore Division, At/PO-Balasore, District-Balasore.
3. Section Engineer, P.Way, South Eastern Railway, Rupsa, At/PO-Rupsa, Dist.Balasore

..... Respondents

Advocates for respondents - M/s D.N.Mishra
S.K.Panda
S.K.Swain

O R D E R

S JUN. SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the order dated 2.8.2000 (Annexure-3) directing recovery of Rs.11,700/- from the salary of the applicant in easy instalments from the month of August 2000. The second prayer is for a direction to the Assistant Engineer, Balasore Division to allot a suitable quarters to the applicant at Rupsa within a stipulated period.

2. The case of the applicant is that while he was working as Senior Khalasi he was allotted and occupied a Railway quarters No.E/1 Unit-J at Railway

Colony, Balasore. He was promoted to the post of E.C.R., Grade-III and posted under Section Engineer, Permanent Way, Rupsa, where he joined on 2.9.1997. No official accommodation was provided to him at Rupsa in spite of several representations. The applicant has stated that there was no private rental accommodation available at Rupsa and therefore, he was forced to retain the quarters under his occupation at Balasore even after joining at Rupsa. All on a sudden, in the impugned order dated 2.8.2000 an amount of Rs.11,700/- has been ordered to be recovered. After receipt of the order, the applicant submitted representation, but without any favourable result. The applicant has stated that before ordering recovery of the above amount, no showcause notice was issued to him. It is also stated that for his continued occupation of the quarters at Balasore, an amount of Rs.5/- was being deducted from his monthly salary and therefore, the respondents are estopped from charging him higher rent. In the context of the above, the applicant has come up with the prayers referred to earlier.

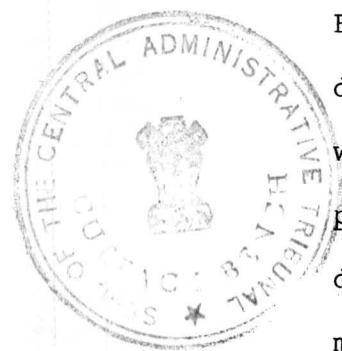
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3. Respondents in their counter have opposed the prayers of the applicant. They have stated that the applicant joined at Rupsa on 2.9.1997. He neither vacated the quarters at Balasore nor did he obtain permission to retain the quarters at Balasore. He made representation for allotment of quarters at Rupsa only on 10.6.1998 and in letter dated 13.6.1998 (Annexure-R/1) he was advised to apply for allotment of quarters at Rupsa on vacation. He was also intimated that he is required to vacate the Railway quarters at



Balasore. He was further advised to obtain permission for retention of the quarters at Balasore. It is further stated that allotment of quarters is considered on the basis of station seniority. A quarter at Rupsa, namely, Quarters No.W/18 Unit-A was vacated on 20.1.2000 and the vacancy was notified. The notice dated 20.1.2000 notifying the vacancy is at Annexure-R/2. The respondents have further stated that the applicant was advised to apply for allotment of the above quarters No.W/18,Unit-A, but he didnot apply. From the letter at Annexure-R/2-1 it appears that the applicant was advised verbally by Section Engineer, Permanent Way, Rupsa, to occupy the above quarters at Rupsa, but he refused to occupy the same. Respondents have stated that as the petitioner did not apply for retention of quarters at Balasore in spite of being advised to do so and as he did not vacate the quarters at Balasore, his occupation was treated as unauthorised and in accordance with provisions in Railway Establishment Serial No.22/98, damage rent was assessed at the rate of Rs.495/- per month. Accordingly, Rs.11,700/- was worked out to be the arrears. The respondents have enclosed a copy of the audit report working out the arrears for 26 months at Rs.11,700/-. This is at Annexure-R/3. The respondents have stated that the action taken by them is strictly in accordance with departmental rules and instructions, and on the above grounds they have opposed the prayers of the applicant. Counter has been served on the other side but no rejoinder has been filed.

J. J. J. M.



4. When the matter was called for hearing the learned counsel for the petitioner and his associates were absent nor was any request made on their behalf for adjournment. In view of this, it is not possible to drag on the matter indefinitely moreso in the absence of any request for adjournment. I have, therefore, perused the pleadings of the parties and have heard Shri D.N.Mishra, the learned Standing Counsel for the respondents.

5. The admitted position is that the applicant was in occupation of a Railway quarters at Balasore while he was working there. He was promoted and posted at Rupsa where he joined on 2.9.1997. He did not vacate the quarters at Balasore nor did he apply for retention of the quarters at Balasore in spite of being advised to do so. He initially filed representation for getting allotment of a quarters at Rupsa. When a quarter fell vacant and he was asked to apply, the petitioner did not apply for allotment of the quarters. He was further advised by the Section Engineer, Permanent Way, Rupsa, to occupy Quarters No.W/18, Unit-A. But he did not occupy the quarters at Rupsa nor did he vacate the quarters at Balasore. It has been averred by the applicant that before charging damage rent, no showcause notice was issued to him. Rules are very clear that for unauthorised retention of quarters, damage rent has to be charged. The applicant must be taken to be aware of the rules and therefore, no showcause notice was required to be given to him. This contention is therefore held to be without any merit. Secondly, the fact that



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Rs.5/- was being deducted from his salary on account of his occupation of the quarters at Balasore would not disentitle the respondents to work out the instructions and charge damage rent on him. This ground for challenging the imposition of damage rent and recovery of Rs.11,700/- is also held to be without any merit. Thus, both the grounds urged by the applicant in support of his prayers are held to be without any merit.

6. It however appears from page 2 of the counter that the respondents have averred that the damage rent has been assed at Rs.495/- per month and Rs.11,700/- as arrears. In support of this, they have enclosed the audit report dated 15.3.2000 at Annexure-R/3. In the audit report the damage rent per month has been assessed at Rs.450/- and accordingly damage rent for 26 months has been worked out at Rs.11,700/-. The respondents, however, have mentioned in the counter that the damage rent has been charged at Rs.495/- per month. This does not appear to be in consonance with the audit report which has fixed the damage rent per month at Rs.450/-. In view of this, I direct the respondents, particularly respondent nos. 2 and 3, that while deducting arrear damage rent, monthly damage rent should be taken as Rs.450/-, as has been worked out by the audit correctly and for further unauthorised occupation of the quarters the damage rent should be deducted at Rs.450/- and not Rs.495/- per month.

7. With the above observation and direction, the O.A. is disposed of. No costs.

SOMNATH SONI
16.11.2001
VICE-CHAIRMAN