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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 78 OF 2000.

Cuttack, this the 29th day of January, 2001.

Ladukishore Padhiary. ... Applicant.

-versus-

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 Central Administrative Tribunal, or not? No.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 78 OF 2000.
Cuttack, this the 29th day of January, 2001.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR.G.NARASIMHAM, MEMBER(JUL.).

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Ladukishore Padhiary,
Aged about 47 years, son of
Lambodara Padhiary resident of
Village/Po: Adipur, Dist .Ganjam,
at present Junior Telecom Officer,
Satellite Maintenance, Telephone Bhawan,
Bhubaneswar.

... Applicant.

By the legal practitioner: M/s. B .Rout, S.R.Rout, S.B .Senapati,
B .N.Das, M.R.Rout, G.Mishra,
Advocates.

-versus-

1. Union of India represented through the Secretary,
to Government of India, Ministry of Communications,
Sanchar Bhawan, New Delhi-1.
2. Chairman Telecom Commission, Sanchar Bhawan,
New Delhi-1.
3. Chief General Manager, Telecom Orissa Circle,
At/Po: Kharvelanagar, Bhubaneswar, Dist .Khurda.
4. Telecom District Manager, Dhenkanal,
At/Po/Dist .Dhenkanal .
5. Director, Telecom Maintenance
Eastern Telecom Region, Unit-VIII,
PO: Bhubaneswar, Dist .Khurda.

... 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 has prayed for cancelling the order dated 16-7-1999 at Annexure-7 imposing damage rent on the applicant for the period from 27-6-1998 to 18.5.1999. The second prayer is for a direction to the Telecom District Manager, Respondent No.4 to charge normal rent for the period for which the applicant occupied the quarters No. Type III-L in the telecom Colony, Nalconagar and refund the amount which has already been recovered from the pay of the applicant.

2. Respondents have filed counter opposing the prayers of the applicant and applicant has also filed rejoinder urging some new facts for the first time which have not been taken note of.

3. We have heard Mr. B. Rout, learned counsel for the applicant and Shri D.K. Mallick learned counsel on behalf of Shri A.K. Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records.

4. For the purpose of considering this petition it is not necessary to go into too many facts of this case. The admitted position is that while the applicant was working as J.T.O., Anugul he was in occupation of Qrs. No. III-L-1 in Telecom Colony, Nalconagar, Anugul. He was transferred from that post to the post of J.T.O., Bhubaneswar and was relieved from his post at Anugul on 27.4.1998. It is also admitted position that he applied for leave for sickness of self and remained on leave till 5.11.1998. The leave was sanctioned to him in order dated 21.4.1999 treating the period from 28.4.1999 to 26.7.1998 as commuted leave on medical certificate and also from 27.7.98 to 5.11.98 as E.L. on medical certificate.

SJM

The petitioner joined his new post at Bhubaneswar on 6.11.98. He vacated the quarters at Nalconagar on 19.5.1998. In the impugned order at Annexure-7, he has been charged with damage rent of Rs.31,037/- for the period from 27.6.98 to 18.5.99. From the above recital of undisputed facts off the pleadings of the parties, it is clear that on his relieve from his post at Anugul, the applicant was on sick leave from 27.4.1998 to 5.11.1998. Leave has also been sanctioned to him. As the applicant was on sick leave and leave on medical grounds for his own illness, he was entitled to retain the quarters for the aforesaid period on medical grounds. This has also been laid down in DGP&T instruction dated 6.8.1965-gist of which has been printed at page 206 of Swamy's compilation of FRSR (12th edition). In view of this we have no hesitation in holding that the charging of damage rent for this period is not in accordance with rules and the impugned order is quashed to the above extent.

5. It is also admitted position that the applicant joined his new post at Bhubaneswar on 6.11.1998 and vacated the quarters only on 19.5.1998. He thus retained his quarters at Anugul for a period of six months and eight days. After he has recovered from his sickness under the rules he was entitled to retain the quarters for a period of two months.

J.Som. It is not necessary to refer to the relevant rules in this regard. We note that even though the applicant was relieved from his post at Anugul on 27.4.1998 the appropriate authority has in his impugned order charged market rent only from 27.6.1998 after allowing retention for a period of two months with nominal rent. The same benefit has to be allowed to him under the rules and therefore, from 5.11.98 to 5.1.99,

the applicant will be entitled to retain the quarters with normal rent. We also order accordingly. The remaining controversy in the present case is, therefore for the ~~procedural~~ ^{A.J.Jam} period 6.1.1999 to 18.5.1999. Both the sides have made a large number of averments in their pleadings in support of their respective stand. Considering those averments in so far as they apply to these remaining periods, we find that the first stand of the applicant is that he applied for retention of quarters and his representation for retention of the quarters dated 29.5.1998 was not replied, the applicant was under the bona fide impression that he has been permitted to retain the quarters. Respondents have pointed out that they have not received this representation dated 29.5.1998 as also subsequent representation dated 9.2.1999 (Annexure-5). Applicant has stated in the rejoinder that the representation dated 29.5.1998 was sent by him through Regd. Post and he has also enclosed a copy of the receipt of the Regd. letter. As the applicant has not enclosed receipt or has not made any averment of sending this letter through Regd. Post in his Original Application and as this document has been produced for the first time in his rejoinder, we are not inclined to take any notice of that. In any case, even if it is presumed for argument sake that the applicant did send these two representations at Annexures 3 and 5 merely by sending the representations for retention of quarters he can not presume that he has been granted permission to retain quarters. The Respondents on the other hand have pointed out that it has been informed to the applicant on 3.6.1998 and again on 14.12.1998 asking him to vacate the quarters immediately.

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Applicant in his representation has not denied receipt of these two letters and therefore, it must be presumed that these two letters at Annexure-R/1 series asking him to vacate the quarters has been received by the applicant and therefore, his plea that he was under the bona fide impression that he has been permitted to retain the qrs. must be held to be without any merit and is rejected.

6. Second ground urged by learned counsel for the applicant is that in accordance with Director General of Posts and Telegraphs, circular dated 2.7.1952 gist of which has been printed at page 204 of Swamy's compilation of FRSR (12th edition) even before recovery of enhanced licence fee, it is ~~not~~ necessary to cancel the allotment and in absence of ^{SJm.} such cancellation of allotment ~~permission~~ to retain the quarters is presumed. The context for which the above reference is made is totally untenable to the case of the applicant. In this circular it has been pointed out that recovery of licence fee under FR 45 B is not applicable to the Govt. employees and all Govt. servants under the rule, ^{making power of the President} come under ^{AJm.} FR 45 A and not within the purview of FR 45 B. It is further laid down that it is however open to the Govt. to recover licence in excess of what has been prescribed under FR 45 B under the circumstances enumerated under FR 45 A but before recovering such enhanced licence ~~fee~~, allotment has to be cancelled. In the circular dated 6th August, 1965 earlier referred to by us it is clearly laid down the period for which the allotment subsists and any retention of quarters beyond the period during which allotment subsists has to be taken as unauthorised and no formal cancellation of allotment is

necessary. In applying this circular to the case of the applicant it appears that under clause-A the allotment subsists till the expiry of the concessional period permissible under rules after an officer ceases to be on duty in a relatable office on the same station. Here the applicant was transferred from Anugul to Bhubaneswar and was relieved on 27.4.1998. He was sanctioned leave till 5.11.1998 and he is therefore entitled to keep the quarters at Anugul for a period of another two months. Beyond this period the allotment automatically ceases and it is not necessary to formally cancel the allotment. This contention is therefore accordingly rejected.

7. The next contention of the learned counsel for the applicant is that Respondents in their letter dated 3.5.1999 at Annexure-6 informed him that he has been relieved on 27.4.1998 but he is in occupation of the quarters and he had neither submitted any representation nor taken any permission for retention of quarters and in view of this he had been directed to vacate the quarters immediately. It was also mentioned that if he does not vacate the quarters disciplinary proceedings will be initiated against him along with recovery of necessary damage rent for such unauthorised occupation from 28.4.1998. It has been submitted by Shri Rout that by this letter the Departmental Authorities impliedly allowed him to retain the quarters till 18.5.99 and as he vacated the quarters on 19.5.1999 no damage rent is recoverable from him. We are unable to accept this proposition because in the letter itself it has been mentioned that in case he does not vacate the quarters by 18.5.1999 damage rent will be

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charged from 28.4.1998. This is the date immediately after his relieve and therefore, it can not be said that the Respondents by this letter allowed him to retain the quarters upto 18.5.1999. In view of this, this contention is held to be without any merit.

8. In the result, therefore, we hold that the recovery of damage rent from the applicant for the period from 28.4.1998 till 6.1.1999 is not permissible and is accordingly quashed. Applicant will be required to pay damage rent to be decided as per normal rules. For the period from 6.1.1999 till 18.5.1999 the Respondents are directed to calculate the damage rent within a period of 60 days from the date of receipt of a copy of this order and charge the same to the applicant adjusting the amount which has already been recovered from him either by way of normal rent or by way of penal rent. Till such recalculation is made within the period indicated by us above, the stay of the order of recovery ~~at~~ Annexure-7 shall continue.

9. In the result, therefore, the O.A. is accordingly disposed of. No costs.

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(G.NARASIMHAM)
MEMBER(JUDICIAL)

KNM/CM.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
Q.P.J.