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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.06 OF 2001
Cuttack this the 2nd day of Oct 2007

Md. Iqubal

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 the Principal Bench of the Central Administrative Tribunal or not? *Yes* *See*

(N.D.RAGHAVAN)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.06 OF 2001

Cuttack this the 3rd day of Oct, 2007

CORAM:

THE HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

...

MD.Iqubal, aged about 49 years, Son of late Md.Irail, Primary Teacher under Kendriya Vidyalaya Sangathan, presented posted at Kendriya Vidyalaya Sangatha, C.R.P.F., Kohima, Nagaland ...Applicant

By the Advocates: M/s.J.Sengupta

D.K.Panda, G.Sinha, A.Mishra

-VERSUS-

- 1) Union of India represented through its Secretary, Ministry of Human Resources Development, Sastry Bhawan, New Delhi.
- 2) Principal, Kendriya Vidyalaya, Command Hospital, Alipore, Kolkata-700027
- 3) Chief General Manager, Mahanadi Coal Fields Ltd., PO-Dera, District-Angul
- 4) Assistant Commissioner, Kendriya Vidyalaya Sangathan, Kolkata Region, Kolkata ...Respondents

By the Advocates :Mr.Ashok Mohanty

M/s.S.C.Samantray

D.Mohanty

N.C.Sahoo (Res.No.3)

...

O R D E R

MR.N.D.RAGHAVAN, VICE-CHAIRMAN:

This matter was listed for hearing on 15.2.2007, 7.3.2007, 12.3.2007, 17.4.2007, 27.4.2007 and 25.6.2007 when it was adjourned from time to



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time at the request of the learned counsel for either side. On 25.6.2007 the matter was adjourned to 23.7.2007 when the learned counsels M/s J.Sengupta, D.K.Panda, G.Sinha and A.Mishra for the applicant and the learned counsels M/s Ashok Mohanty, S.C.Samantray, D.Mohanty and N.C.Sahoo for the Respondents remained absent due to advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar Association resolutions passed without any basis, no substance or value but violating principles of natural justice too. In this connection, I would like to refer to the decision in the case of **Ramon Services Private Limited Vrs. Subash Kapoor and Others**, reported in JT 2000 (Suppl. 2) Supreme Court 546, holding as follows:

"When the advocate who was engaged by a party was on strike, there is no obligation on the part of the court either to wait or to adjourn the case on that account. It is not agreeable that the courts had earlier sympathized with the Bar and agreed to adjourn cases during the strikes or boycotts. If any court had adjourned cases during such periods, it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a Counsel." (Judgment Paras-5 & 14)

"In future, the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self imposed dereliction of his advocate. The litigant who suffers entirely on account of his advocate's non-appearance in court, has also the



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remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, the same court has power to permit the party to realize the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause, the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any Advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. So, when he opts to strike work or boycott the court, he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate.”

(Para-15)

“In all cases where court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the court can as well permit the party to realize the costs from the advocate concerned without driving such party to initiate another legal action against the advocate.”

(Para-16)

“Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two, besides statutory limitations, restrictions, and guidelines incorporated in the Advocates Act, the Rules made thereunder and Rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service



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oriented profession. The relationship between the lawyer and his client is one of trust and confidence.”

(Para-22)

“No advocate could take it for granted that he will appear in the Court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the Court when the cause of his client is called for hearing or further proceedings. In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party and if the circumstances warrant to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting Counsel for the costs paid. In appropriate cases, the Court itself could pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting Courts may also be contributory to the contempt of this Court.”

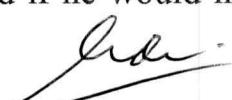
(Paras-24, 27 & 28)

Keeping in view the aforesaid case law laid down by the Hon’ble Supreme Court, condemning severely such strike as contempt of Court particularly Hon’ble Supreme Court itself and leaving the Ld.Counsels including those representing Governments^{as} at the peril of facing the consequences thereof and in view of the provisions contained in Section 22(2) of the Administrative Tribunals Act, 1985 that Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of the documents and written representations and after hearing such oral arguments, as may be advanced and in accordance with Rule 15



of the CAT (Procedure) Rules, 1987, the available record on hand has been perused for adjudicating the issue as below.

2. The brief history leading to filing of the present Original Application is that the applicant, while working as Primary Teacher, K.V. Mahanadi Coalfields Ltd. (MCL), Dera, was allotted with one B type quarters by the Management of M.C.L. The order allotting him the said quarters, according to the applicant, is at Annexure-A/1 dated 12.11.1993. While continuing as such, the applicant was transferred to K.V., C.R.P.F., Kohima, Nagaland (North East Region) in May, 2000 where he joined on 25.5.2000. The applicant has submitted that after joining K.V., Kohima, he used to send the license fee through the Principal, K.V., Kohima, in respect of the quarters occupied by him at the last station, i.e., M.C.L., Dera. On receipt of the said license fee, the Principal, K.V., M.C.L., Dera communicated to the Principal, C.R.P.F., Kohima that he had sought necessary clarification from the sponsoring authorities with regard to retention of the quarters by the applicant and license fee thereon and accordingly returned the amount of license fee. While the matter stood thus, it was communicated to the Principal, KV, C.R.P.F., Kohima by the Principal, KV, M.C.L., Dera that the applicant was entitled to retain the quarters up-to six months from the date of his transfer and if he would not



vacate the quarters within the stipulated period, he had to pay an amount of Rs.2688.75 paise only per month at the market rent which would be recovered from his salary(Annexure-A/5 dated 06.11.2000). In the circumstances, the applicant has filed this Original Application with the following relief:

“...under the facts and circumstances, it is prayed that this Hon’ble Tribunal shall be graciously pleased to issue a direction to the appropriate authority to consider the case of the applicant allowing him to retain the quarter upto three years as per the office memorandum issued by the Govt. of India, Ministry of Finance Department vide Annexure-A/8 with usual permissible license fees applicable to him, and further the order of the Principal dated 20.07.2000 for charging the market rent on the applicant may kindly be set aside declaring it as illegal and arbitrary and without jurisdiction”.

3. Respondent Nos. 2, 3 and 4 have filed their counter opposing the prayer of the applicant. The applicant has also filed rejoinder to the counter-replies filed by those Respondents.

4. Before going into the merits of the matter, it is to be mentioned herein that the applicant has called in question the order dated 20.07.2000 of the Principal, K.V., M.C.L., Dera (Annexure-A/4) and accordingly prayed for quashing the said order whereby market rent for occupation of the quarters has been charged. On perusal of the said order, it is found that the Principal while returning the Demand Draft has stated that after receiving necessary clarification from the sponsoring authority, he would intimate



regarding license fee for the quarters retained by the applicant and also recovery thereof. Thus, there is no sign of charging market rent on the applicant in the order, which is impugned and sought to be quashed in this O.A.

5. This apart, the order of allotment of quarter, as stated by the applicant under Annexure-A/1 dated 12.11.1993 has been examined by me. I find that Annexure-A/1 is a letter issued by the Principal, K.V., MCL, Dera to the General Manager, Jagannath Area, MCL, Talcher, enlisting 16 persons in whose favour quarters might be allotted. In this connection, I have also examined Annexure-A/9 dated 30.11.1993 which is the order of allotment of quarters in favour of 16 persons including the applicant. This order has been issued by the Addl.Chief Personnel Manager, Jagannath Area, Office of the Respondent No.3 laying down nine terms and conditions of allotment of quarters.

6. Coming to the merits of the O.A., I have examined the relevant rules based on which the applicant has claimed retention of quarters for three years in case of his transfer to North-East Region. In this connection, Para 2(ix) of Office Memorandum dated 22.7.1998 issued by the Government of India, Ministry of Finance, Department of Expenditure(Annexure-A/8) germane to the issue is quoted hereunder:



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Retention of Government ~~or~~ Accommodation at the Last Station of Posting:

“The facility of retention of Government accommodation at the last station of posting by the Central Government employees posted to the specified territories and whose families continue to stay at that station is available in terms of the orders contained in the erstwhile Ministry of Works & Housing O.M. No.12035/24/77-Vol. VI dated February, 12, 1984, as amended from time to time. This facility shall continue to be available to the eligible Central Government employees posted in the North Eastern Region, Andaman & Nicobar Islands and Lakshadweep Islands. In partial modification of these orders, License Fee for the accommodation so retained will be recoverable at the applicable normal rates in cases where the accommodation is below the type to which the employee is entitled to and at one and a half times applicable normal rates in case where the entitled type of accommodation has been retained. The facility of retention of Government accommodation at the last station of posting also be admissible for a period of three years beyond the normal permissible period for retention of Government accommodation prescribed in the Rules”.

6.1 In addition to the above, Kendriya Vidyalaya Sangathan (Allotment of Residence) Rules, 1998 (in short Rules) vide Annexure-A/10 have also been taken note of by me. Rule-6 which is relevant to the facts of the case, reads as under:

“The employees transferred and posted in North Eastern Region, Andaman & Nicobar Islands will be eligible to retain the residence allotted under these rules for the period prescribed by the Government from time to time”.

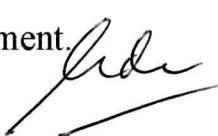
6.2 In the above background, Rule – 21 of the Rules, based on which the applicant has laid his claim is quoted hereunder:

“Applicability of the Rules of Sponsoring agencies: *Ans* .

Notwithstanding anything contained in these rules, the orders and rules of the sponsoring agencies shall mutatis mutandis apply where the terms and conditions of allotment so provide".

Thus in the context of the above position of Rules, 1998, the case of the applicant has to be examined.

7. In so far as Para-2(ix) of O.M. dated 22.7.1998(Annexure-A/8) (as quoted above) is concerned, there is no doubt about the eligibility and entitlement of the applicant to retention of quarters for a period of three years beyond the normal permissible period. But the whole structure of this rule, in order to make the applicant eligible and entitled for retention of the quarters for the period of three years at the last station of posting, rests upon only on the Government accommodation. Admittedly, the applicant was not in occupation of the Government accommodation at the last station of his posting, i.e., K.V., MCL, Dera and the order of allotment vide Annexure-A/9 dated 30.11.1993 unambiguously states that the applicant was allotted accommodation by the project authorities subject to the terms and conditions contained therein. To this extent, Rule 21 of the Rules relied upon by the applicant (quoted above) too does not come to his rescue. Rather it has given absolute authority to the sponsoring authorities to act in accordance with the terms and conditions of the allotment.

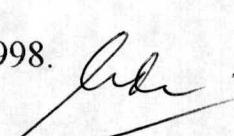


8. In order to properly adjudicate the matter, the meaning of the term "Allotting Authority", in so far as allotment of quarters to the present applicant is concerned, has been examined by me. It is found that the applicant's case is not at all covered within the scope and meaning of Allotting Authority (3(a) to (d)) of the Rules, 1998. Besides the above, Rule 10 of Rules, 1998 reads as under:

"Residence means any building under the control of the Kendriya Vidyalaya, Regional Office(s) and Head quarters office of the Kendriya Vidyalaya Sangathan and authorized to be used as residence, including residence belonging to the sponsoring agencies and handed over to the Sangathan for allotment to the employees of the Sangathan".

9. From this the threadbare consideration is that although the residence belongs to the sponsoring agency, ~~but~~ the same was not handed over to the KVS for allotment to the employees of the KVS. Had the residence been handed over to the KVS, certainly the applicant would have been entitled to what he has claimed in the present O.A.

10. For the reasons discussed above, I hold that the applicant is not entitled to retain the quarters in terms of the O.M. dated 22.7.1998 (Annexure-A/8) and under the Rules, 1998 (Annexure-A/10) dated 17.7.1998, since it is the sponsoring agencies whose orders and rules, vide Annexure-A/9 dated 30.11.1993, shall mutatis mutandis apply notwithstanding anything contained in Rules, 1998.



11. In the result, the O.A. fails. In view of the disposal of the O.A. as above, M.A. 378/06 also fails. No costs.

~~N.D.RAGHAVAN~~
(N.D.RAGHAVAN)
VICE-CHAIRMAN

PPS

fix for pronouncement.

ndr.